

INDEX.

	PAGE
Notice of Appeal.....	1
Petition of Appeal.....	2
Answer to Petition of Appeal.....	6
Bill of Complaint.....	7
Schedule A—Letter, May 22, 1922, De- fendants to Complainant.....	15
Schedule B—Letter, Dec. 24, 1923, De- fendants to Complainant.....	16
Schedule C—Letter, Jan. 11, 1924, De- fendants to Complainant.....	17
Schedule D—Letter, Apr. 3, 1924, De- fendants to Complainant.....	17
Schedule E—Summons to Tenant, De- fendants vs. Complainant.....	18
Order to Show Cause for Injunction.....	19
Injunction Order.....	21
Answer of Defendants.....	23
Replication.....	27
Petition for Leave to File Supplemental Bill.	28
Affidavit of Sam Levi for Motion.....	31
Order Granting Leave to File Supplemental Bill.....	33
Addition by Way of Supplement to Bill.....	36
Stipulation Admitting Additional Evidence..	38
Opinion of Backes, V. C.....	39
Final Decree.....	47
Testimony.....	49

TESTIMONY.

For Complainant.

	PAGE
Herman M. Zodikow :	
Direct	50
Cross	54
Recalled—Direct	91
Cross	92
Carl Worman :	
Direct	60
Cross	76
Further Direct	77
Further Cross	78
Redirect	90
Harry Block :	
Direct	93
Cross	94

For Defendants.

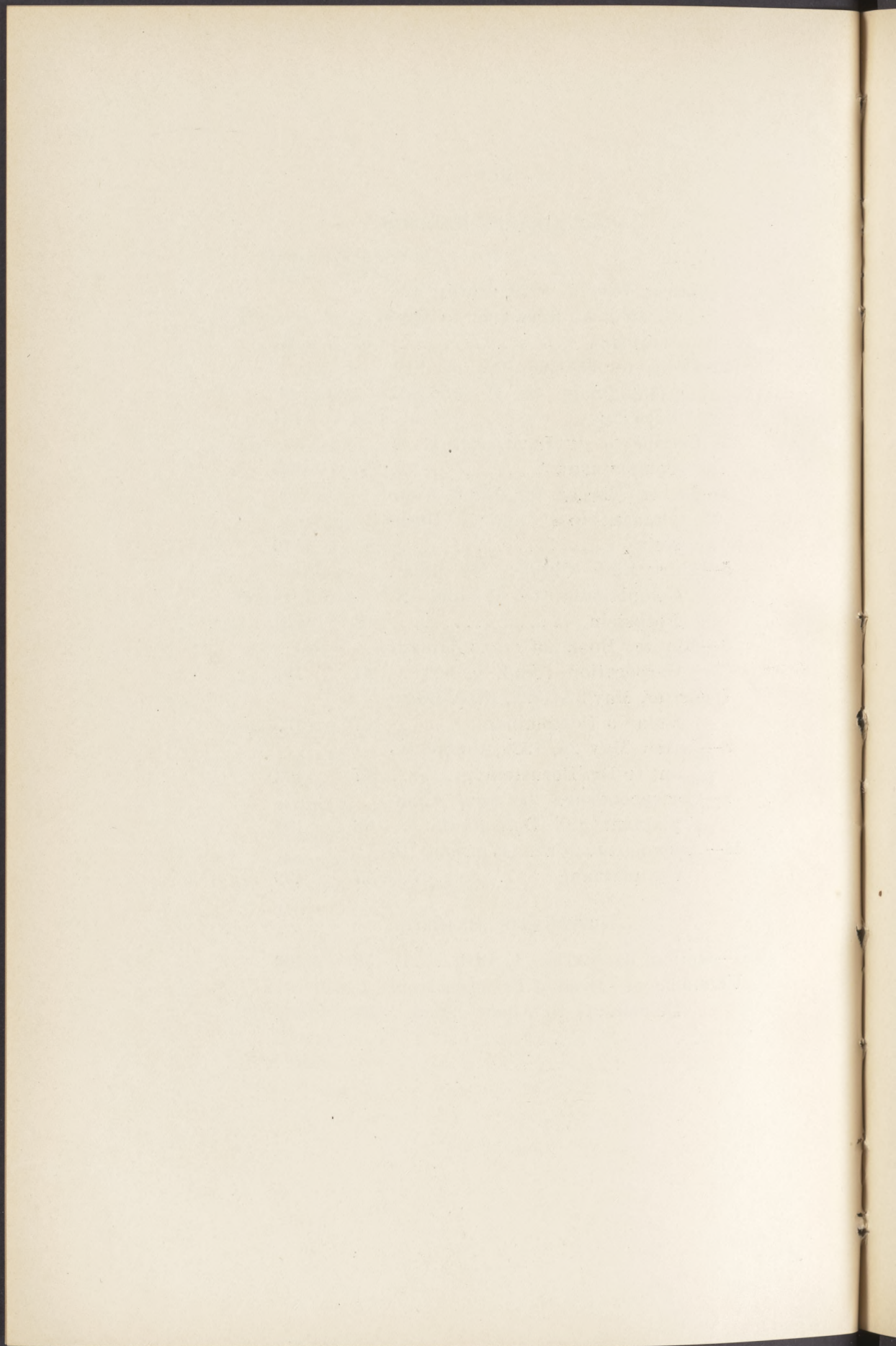
Charles M. Myers :	
Direct	96
Cross	102
Redirect	109
Recross	111
Recalled	121
Dr. Newton A. Bornstein :	
Direct	111
Cross	115
Redirect	120
Recalled	126
Philip Bornstein :	
Direct	122
Cross	124

COMPLAINANT'S EXHIBITS.

	Admitted Page	Printed Page
1—Lease, Dec. 8, 1919, Philip and Newton A. Bornstein to Carl Worman	52	127
2—Check for \$666.66, Jan. 5, 1919, Complainant to P. and N. Bornstein	53	134
3—Certificate of Incorporation of Complainant	54	135
4—Eleven Checks for Rent, Com- plainant to P. and N. Born- stein	61	140
5—Thirty-nine Checks for Rent, Complainant to P. and N. Bornstein	61	151
6—Minute Book of Complainant Corporation (read, p. 62) . . .	61	193
7—Letter, May 22, 1922, N. A. Born- stein to Complainant	67	193
8—Letter, May 26, 1922, Complain- ant to Dr. Bornstein	67	194
9—Correspondence between Com- plainant and Defendants . . .	68	194
11—Assignment, Carl Worman to Complainant	77	199

DEFENDANTS' EXHIBITS.

1—Option, dated Dec. 1, 1919	58	200
Unnumbered—Deed of Premises from Defendants to Albert Fried . .	38	201



Notice of Appeal.

In Chancery of New Jersey

Between	}	10
LINCOLN FURNITURE Co., a corporation, Complainant,		
and	}	On Bill, etc.
RACHEL BORNSTEIN, NEWTON A. BORNSTEIN and ALBERT FRIED, Defendants.		
		20

The complainant, Lincoln Furniture Co., hereby appeals from the final decree made in the above-entitled cause by the Chancellor on the advice of Vice Chancellor Backes, on the twenty-third day of November, A. D. 1926, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort In All Causes.

BILDER & BILDER,
Solicitors for and of Counsel
with Complainant. 30

I conceive there is good cause for appeal in the above-entitled cause.

DAVID H. BILDER,
Of Counsel with Complainant.

Petition of Appeal.

(Filed December 11, 1916.)

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10	Between LINCOLN FURNITURE Co., a corporation, Complainant-Appellant, and RACHEL BORNSTEIN & NEWTON A. BORNSTEIN and ALBERT FRIED, Defendants-Appellees.	} On Appeal from the Court of Chancery.
20	<hr/>	

To the Honorable Court of Errors and Appeals
in the last resort in all causes :

The petition of Lincoln Furniture Co., a corpo-
ration of the State of New Jersey, respectfully
shows :

30 That your petitioner finds itself aggrieved by the
final decree made in the Court of Chancery by his
Honor, Edwin Robert Walker, upon the advice of
his Honor, John H. Backer, bearing date the
twenty-third day of November, A. D. 1926, in a
cause wherein your petitioner, the said Lincoln
Furniture Co. is complainant, and Rachel Born-
stein, Newton A. Bornstein and Albert Fried are
defendants, in this respect to wit :

40 I. That the said Court of Chancery in and by said
decree finds that it is of the opinion that the defend-
ants, Rachel Bornstein, Newton A. Bornstein and
Albert Fried, did not nor did any or either of them,
acquiesce in the breach of the covenant against as-

Petition of Appeal.

signment of the lease referred to in the bill of complaint and that neither the said Rachel Bornstein, Newton A. Bornstein and Albert Fried did nor did any or either of them, perform any acts by which they are estopped from relying upon said breach of the covenant against assignment and that said defendants, Rachel Bornstein, Newton A. Bornstein and Albert Fried, did not, nor did any or either of them, waive the said breach of covenant against assignment and that said defendants, Rachel Bornstein, Newton A. Bornstein and Albert Fried, or any or either of them, may rely upon said breach of covenant against assignment set forth in the bill of complaint and that said complainant is not entitled to the relief prayed in its bill and addition to the bill by way of supplement.

II. It is therein ordered, adjudged and decreed that the said complainant's bill of complaint and addition thereto by way of supplement be and the same is thereby dismissed with costs to the said defendants against the said complainant, in which shall be included a counsel fee of One thousand (\$1,000.00) Dollars.

III. Your petitioner humbly appeals from said decree on the following grounds:

1. That said decree is erroneous in that said Court of Chancery should have granted paragraphs 2 and 3 of the prayer of said bill of complaint, and paragraph 2 of the prayer of said addition by way of supplement.

2. That said decree is erroneous in that said Court of Chancery should have ordered, adjudged and decreed that said complainant is the lawful assignee and owner of the lease described in para-

Petition of Appeal.

10 graph 4 of said bill of complaint and that said complainant is in lawful occupancy and possession of the premises in said lease described, under and by virtue of said lease and that there has been no forfeiture of said lease, by reason of the assign-
ment of said lease by Carl Worman to said complainant, described in said bill of complaint.

20 3. That said decree is erroneous in that the said Court should have therein granted an injunction in favor of the complainant and against said defendants and each of them, permanently restraining and enjoining said defendants and each of them, their heirs, executors, administrators, grantees or assigns from proceeding with the certain action in
said bill of complaint described instituted by the said Rachel Bornstein and Newton A. Bornstein in the Second District Court of the City of Newark, and from instituting any other action or proceeding at law or in equity in any Court for the purpose of attacking complainant's right to the possession and occupancy of said premises, on the ground that complainant is not the lawful assignee of said lease on said premises, and on the ground
30 that the assignment of lease to the complainant of the occupancy of said premises by complainant or the letting of said premises or under-letting of said premises to complainant constitutes a breach of any covenant of said lease, and enjoining the said defendants from declaring a forfeiture of said lease.

4. That said decree is erroneous in that said Court of Chancery should not have in and by said decree dismissed said complainant's bill of complaint and addition by way of supplement.

46 5. That said decree is erroneous in that said Court of Chancery should not have in any by said

Petition of Appeal.

decree awarded costs to the defendants against the complainant.

6. That said decree is erroneous in that said Court of Chancery should not have in and by said decree awarded costs to the defendants against the complainant in which shall be included a counsel fee of One thousand (\$1000.00) Dollars. 10

7. That said decree is erroneous in that the said Court of Chancery should have in and by said decree found that the said Rachel Bornstein, Newton A. Bornstein and Albert Fried did acquiesce in the breach of the covenant against assignment of said lease and that said defendants did perform acts by which they are estopped from relying upon said breach of the covenant against assignment, and that the said defendants did waive said breach of covenant against assignment, and that said defendants may not rely upon said breach of covenant against assignment, and that said complainant is entitled to the relief prayed for in its bill and addition to the bill by way of supplement. 20

Your petitioner therefor prays that said decree of the Chancellor made in the particulars aforesaid, be reversed, set aside and for nothing holden, and that your petitioner may have such other and further relief in the premises as may seem meet. 30

BILDER & BILDER,
Solicitors for and of Counsel
with Appellant.

Answer to Petition of Appeal.

(Filed December 16, 1926.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

LINCOLN FURNITURE Co., a
corporation,
Complainant-Appellant,

and

RACHEL BORNSTEIN, NEWTON A.
BORNSTEIN and ALBERT FRIED,
Defendants-Appellees.

On petition, &c

20

The answer of the above-named respondents to the petition of appeal of the above-named appellant.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the 23rd day of November, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

30

CHARLES MYERS,

Solr. and of Counsel with Respondents.

40.

MERRITT LANE,
of Counsel.

Bill of Complaint.

(Filed July 15, 1924.)

IN CHANCERY OF NEW JERSEY.

*To His Honor Edwin Robert Walker, Chancellor of
the State of New Jersey:*

Lincoln Furniture Co., a corporation organized and existing under and by virtue of the laws of this State, respectfully shows:

10

1. That complainant was incorporated under and by virtue of the laws of the State of New Jersey on December 12th, 1919.

2. That complainant's principal place of business in this State is now located at premises known as No. 47 Market Street, in the City of Newark, County of Essex and State of New Jersey, consisting of main floor, basement and three upper floors, all of which are occupied by complainant's business.

20

3. That complainant has occupied said premises known as No. 47 Market Street, in the said City of Newark, continuously since December 15th, 1919, and since said date has continuously carried on and conducted at the said premises the business of selling furniture, and has built up an extensive trade and has established a good will of great value.

30

4. That on or about December 8th, 1919, an agreement of lease relating to and covering the above-mentioned premises known as No. 47 Market Street, in the City of Newark, was entered into by and between Philip Bornstein and Newton A. Bornstein, both of the City of Newark, County of Essex and State of New Jersey, who were then the owners of said premises, and one Carl Worman, of the City

40

Bill of Complaint.

10 of New York, County of New York and State of New York, whereby the said Philip Bornstein and Newton A. Bornstein did let and rent to the said Carl Worman the said premises for a period of ten years from the first day of January, A. D. 1920, at a yearly rental of \$8,000.00, payable in advance in equal monthly installments of \$666.66 each.

6. That the said agreement of lease contained a provision by which the said Carl Worman agreed that he would not assign said lease without the written consent of Philip Bornstein and Newton A. Bornstein.

20 7. That on the date of the making and execution of the said agreement of lease, being December 8th, 1919, the said premises known as No. 47 Market Street, in the City of Newark, were occupied by the said Carl Worman as the owner of a furniture and carpet business which he was then conducting upon said premises.

30 8. That on or about December 15th, 1919, the said Carl Worman sold and transferred his said furniture and carpet business then located in and being conducted by him in the said premises to the complainant, a transfer and assignment by said Carl Worman to complainant of the above-mentioned lease on said premises being included in said sale and transfer.

9. That at all times since December 15th, 1919, the name "Lincoln Furniture Co." has been displayed in large and conspicuous letters upon the front windows of said store and premises.

40 10. That beginning with the first monthly payment of rent payable under the terms of said lease,

Bill of Complaint.

and on or about January 1st, 1920, all payment of rent and every monthly payment of rent thereunder has been made by complainant to the said Philip Bornstein and Newton A. Bornstein, and by means of complainant's own corporate stock.

11. That on May 22nd, 1922, complainant received from the above-mentioned Newton A. Bornstein a letter, a copy of which is attached to this Bill of Complaint and made a part thereof, marked Schedule "A," which letter was written by said Newton A. Bornstein on his own behalf and on behalf of Rachael Bornstein, wife of the above-mentioned Philip Bornstein, who on said date was the owner of the interest in the property in question which had theretofore been owned by her husband, the above-mentioned Philip Bornstein.

12. That on or about December 24th, 1923, complainant wrote to Rachael Bornstein, the person mentioned in the paragraph immediately preceding this, a letter, of which a copy is attached to this Bill of Complaint and made a part thereof, marked Schedule "B," and within a few days received said letter back by mail with the answer subscribed thereto and signed Philip Bornstein, which appears on said Schedule "B."

13. That on January 11th, 1924, complainant received by mail from the above-mentioned Philip Bornstein a letter, of which a copy is attached to this Bill of Complaint and made a part thereof, marked Schedule "C."

14. That in the month of April, A. D. 1922, complainant obtained the consent of the said Newton A. Bornstein and Rachael Bornstein to the making

Bill of Complaint.

of certain alterations in and upon the said premises, and did make certain alterations, consisting of the construction of new windows, new entrances, installation of elevator from the sidewalk to the cellar, and other extensive changes in the premises, at an expense of upwards of \$4800.00.

15. That on or about April 4, 1924, complainant received by mail a letter bearing date April 3, 1924, signed Rachael Bornstein and Newton A. Bornstein, by Newton A. Bornstein, of which letter a copy is attached to this Bill of Complaint and made a part thereof, marked Schedule "D."

16. That immediately after the receipt of the said letter containing complainant's check mentioned in said letter complainant tendered to the said Newton A. Bornstein \$666.66 in cash in payment of the rent for the above-mentioned premises under and in accordance with the above-mentioned lease for the month of April, A. D. 1924, but the said tender was refused by the said Newton A. Bornstein for and on behalf of himself and said Rachael Bornstein.

17. That on May 1st, 1924; June 1st, 1924, and July 1st, 1924, respectively, complainant did make a tender to the said Newton A. Bornstein of the sum of \$666.66 in cash in payment of the monthly rent for the said respective months of May, June and July, 1924, under and in accordance with the terms of the above-mentioned lease, but the said respective tenders were refused by said Newton A. Bornstein on his own behalf and on behalf of the said Rachael Bornstein.

18. That between eight and nine o'clock A. M. on July 3rd, 1924, complainant did find fastened

Bill of Complaint.

to the front of the said premises known as No. 47 Market Street a summons issued out of the Second District Court of the City of Newark, of which a true copy is attached to this Bill of Complaint and made a part thereof, marked Schedule "E."

19. That the said proceeding in said Court to which the said summons relates was brought under and by virtue of an Act of the New Jersey Legislature entitled as an "Act concerning District Courts" and under the provisions of that Act relating to landlord and tenant cases.

10

20. That the requisite affidavit filed by plaintiffs in said action in accordance with the provisions of said law show that the said proceeding is based upon the allegation that the above-mentioned lease was terminated on or about April 21st, A. D. 1924, by means of a notice and demand served by said plaintiffs on the said defendant, Carl Worman, which notice and demand was as follows:

20

"To Carl Worman:

You are hereby notified that your tenancy of the store premises known and designated as Number 47 Market Street, Newark, New Jersey, is hereby terminated and at an end, you having committed a breach and violation of the covenant and agreement contained in said lease of the aforesaid demised premises, that you would not re-let or under-let the premises or any part thereof nor assign the lease without our written consent under penalty of forfeiture and damages, for the breach and violation of which covenant and agreement a right of re-entry is reserved in the said lease.

30

40

Bill of Complaint.

10 You are hereby therefore notified that having violated said covenant, that said lease is hereby declared to be forfeited, and your term therein is therefore terminated, and demand is hereby made that you remove from said premises and deliver possession thereof to us within three days from the service of this notice upon you.

Dated: April 21, 1924.

RACHAEL BORNSTEIN.
NEWTON A. BORNSTEIN."

20 21. That there is no provision in said law which enables complainant to interpose a defense to said action or proceeding in said Second District Court of the City of Newark.

22. That the said Carl Worman is not in possession or occupancy of said premises nor any part thereof, but that complainant is in sole and exclusive occupancy and possession of said premises.

30 23. That under and by virtue of the provisions of said law in the event that a judgment is entered in said above-mentioned suit in the Second District Court of the City of Newark in favor of the said plaintiffs and against the said defendant, Carl Worman, an appropriate writ may issue out of said Court to a Sergeant-at-Arms of said Court or a Constable of the County of Essex of this State empowering or commanding such officer to remove from the said premises any and all persons in the occupancy and possession thereof. That consequently if said actions shall proceed and a judgment be entered therein in favor of said plaintiffs
40 and against said defendant and an appropriate

Bill of Complaint.

writ be issued out of said Court on said judgment as aforesaid complainant is liable to be removed from its possession on or occupancy of said premises and complainant's said business is liable thereby to be broken up and seriously damaged and injured, if not totally destroyed.

10

24. That the said defendants at no time between the 15th day of December, 1919, and the receipt by complainant of the letter marked Schedule "D" objected to complainant's occupancy of said premises, the assignment of said lease and the payment of rent by the complainant to the said defendants, although the said defendants well knew or had notice of the assignment of said lease to the complainant, which assignment was also well known to the said defendants at the time that the complainant procured their consent to the making of the above said improvements, the cost of which aggregated approximately \$4800.00.

20

Complainant is without adequate remedy at law and, therefore, prays:

1. That Rachael Bornstein and Newton A. Bornstein, and each of them, who are the defendants in this action, may without oath, full, true and perfect answer make to all and singular the matters and things hereinabove stated.

30

2. That a decree may be made by this Court adjudging and determining that complainant is the lawful assignee and present owner of the aforementioned lease on the above mentioned premises and adjudging and determining that complainant is now in lawful occupancy and possession of the said premises under and by virtue of said lease and adjudging and determining that there has been no

40

Bill of Complaint.

forfeiture of the said lease by reason of the assignment of said lease by said Worman to complainant as aforesaid.

10 3. That a decree may be made by this Court granting an injunction in favor of the said complainant and against said defendants, and each of them, permanently restraining and enjoining said defendants, and each of them, their heirs, executors, administrators, grantees or assigns from proceeding with said action instituted by them in the Second District Court of the City of Newark as aforesaid, and from instituting any other action or proceeding at law or in equity in any Court for the purpose of attacking complainant's right to the possession and occupancy of said premises, on 20 the ground that complainant is not the lawful assignee of said lease on said premises, and on the ground that the assignment of lease to the complainant of the occupancy of said premises by complainant or the letting of said premises or under-letting of said premises to complainant constitutes a breach of any covenant of said lease, and that the said defendants may be enjoined from declaring a forfeiture of said lease.

30 And that complainant may have such other and further relief as may be equitable and just in the premises.

And complainant will ever pray, &c.

BILDER & BILDER,
Solicitors for and of
Counsel with Complainant.

Bill of Complaint.

Schedule "A".

N. A. BORNSTEIN, D.D.S.
 942 Broad Street,
 Newark, N. J.

10

May 22, 1922.

Lincoln Furniture Co.,
 47 Market St.,
 Newark, N. J.

Dear Sir:

In order to meet Taxes June 1st would ask you
 to send check for June rent, May 31 and greatly
 oblige. 20

Yours very truly,

N. S. BORNSTEIN,
 for Rachel & N. A. Bornstein.

30

40

Schedule "B".

LINCOLN FURNITURE CO.
47 Market Street.

Newark, N. J., Dec. 24, 1923.

10 Mr. P. Bornstein,
642 High St.,
Newark, N. J.

Dear Sir:

We are enclosing herewith bill for repairs to
roof at 47 Market St.

Kindly forward check to us by return mail, and
oblige.

Yours truly,

20

LINCOLN FURNITURE CO.
(Sgd.) L. RIVELLE.

ENC.

Kindly read your lease page 4 paragraph 3. "And
the said party of the second part further agrees
that he will make any and *all* repairs to said prem-
ises during the term of this lease."

30

Resp. yours,

(Sgd.) PH. BORNSTEIN.

40

Schedule "C".

Newark, N. J., Jan. 11, 1924.

Lincoln Furniture Co.

Gentlemen:

Kindly mail checks for rent to Mrs. Ph. Bornstein, 77 Goldsmith Ave., Newark. 642 High Str. 10 is the old address.

Resp. yours,

PH. BORNSTEIN.

Schedule "D".

Telephone Market 1778

N. A. BORNSTEIN, DDS.

942 Broad Street.

20

Newark, N. J.

April 3, 1924.

Lincoln Furniture Company,
47 Market St.,
Newark, N. J.

Gentlemen:

We are in receipt of a check dated April 1, 1924, for \$666.66, signed Lincoln Furniture Company, by J. W. Frankel, Manager, and Louis Rivello, bookkeeper, which check we are herewith returning, as we do not recognize the Lincoln Furniture Company as our tenants. 30

The lease which we hold contains a provision that the lessee shall not re-let or assign the lease without our written consent, which has not been asked for or given.

Yours very truly,

(Sgd) RACHEL & N. A. BORNSTEIN.

By N. A. BORNSTEIN.

40

Schedule "E".

ESSEX COUNTY, ss. :

THE STATE OF NEW JERSEY, *To any Constable of
of said County or to the Sergeant-at-Arms of
the Second District Court:*

10 YOU ARE HEREBY COMMANDED TO REQUIRE
Carl Worman

in possession of all those certain store and premises
known as number 47 Market Street, in the City
of Newark, County of Essex, forthwith to remove
from the same or show cause before the Second
District Court of the City of Newark, to be held
on the ground floor of the City Hall, on Broad
Street, in the said City, on Wednesday the Ninth
day of July, 1924, at half past nine o'clock in the
20 forenoon, why possession of said premises should
not be delivered to Rachel Bornstein and Newton
A. Bornstein, claiming the same.

WITNESS, LOUIS R. FREUND, Esq., Judge
of said Court at Newark, aforesaid,
the Second day of July, in the year
One Thousand Nine Hundred and
Twenty-four.

JAMES E. CARRIGAN,
Clerk.

30 District Court Summons to Tenant.
Endorsed:
47 Market St.,
Second District Court Newark, N. J.

SUMMONS IN TENANCY

Rachel Bornstein, et al.

vs.

40 Carl Worman

Costs \$2.10
Mileage
Returnable July 9th, 1924.

Order to Show Cause.

(Filed July 15, 1924.)

7.924

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between LINCOLN FURNITURE CO., a corporation, Complainant, and RACHEL BORNSTEIN and NEWTON A. BORNSTEIN, Defendants.</p>	}	<p>10</p> <p>On Bill, &c.</p> <p>20</p>
--	---	---

This cause being opened to the Court by Walter J. Bilder, one of the solicitors for and of counsel with complainant, and upon reading and filing the Bill of Complaint herein, duly verified by Isaac W. Frankel, Secretary of said complainant, and Carl Worman, and good and sufficient reason appearing therefor, it is, on this 15th day of July, A. D. 1924, on motion of Bilder & Bilder, solicitors for and of counsel with the complainant,

ORDERED, that Rachel Bornstein and Newton A. Bornstein show cause before the Chancellor, at Chancery Chambers, Prudential Building, in the City of Newark, County of Essex and State of New Jersey, at 10.00 o'clock in the forenoon on Tuesday the 29th day of July, A. D. 1924, why an injunction should not issue in accordance with the prayer of the Bill of Complaint filed in this cause, and it is further

40

Order to Show Cause.

10 ORDERED, that in the meantime and until this
order shall be made absolute or be discharged the
said Rachel Bornstein and Newton A. Bornstein
be and they are hereby restrained and enjoined
from proceeding with said action instituted by
them in the Second District Court of the City of
Newark against one Carl Worman and now pending
in said Court, and from instituting any other ac-
tion or proceeding at law or in equity in any Court
for the purpose of attacking complainant's right to
the possession and occupancy of premises known
as No. 47 Market Street, in the City of Newark,
County of Essex, in this State, on the ground that
complainant is not the lawful assignee of said lease
on said premises, until the further order of this
20 Court, and it is further

ORDERED, that a copy of this order and the Bill
of Complaint be served on said defendants within
5 days from the date of this order.

E. R. WALKER,
C.

30 Respectfully advised,
JOHN H. BACKES,
V. C.

Injunction Order.

(Filed July 29, 1924.)

7,29.24.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between LINCOLN FURNITURE Co., a corporation, Complainant, and RACHEL BORNSTEIN and NEWTON A. BORNSTEIN, Defendants.</p>	}	<p>10</p> <p>On Bill, &c.</p> <p>20</p>
---	---	---

This cause being opened to the Court by Nathan Bilder, of counsel with the complainant, in the presence of Charles M. Myers, solicitor for the defendants, upon the return of an order to show cause made by this Court on the 15th day of July, 1924, and returnable on this date, why an injunction should not issue in accordance with the prayer of the bill of complaint filed in this cause until the final hearing to be had upon said bill of complaint, as well as the hearing on the motion of the defendants to dismiss the bill of complaint and vacate the restraining order entered in this cause on the 15th day of July, 1924, upon grounds set forth in said notice, it is on this 29th day of July, A. D. 1924, on motion of Bilder & Bilder, solicitors of the complainant,

ORDERED that the order to show cause made in this cause on the 15th day of July, 1924, be and the same is hereby made absolute, and it is further

Injunction Order.

10 ORDERED that until the final hearing to be had the said Rachel Bornstein and Newton A. Bornstein be and they are hereby restrained and enjoined from proceeding with a certain suit in the Second District Court of the City of Newark against one Carl Worman, and now pending in said court, and from instituting any other suit or proceeding at law or in equity in any court for the purpose of contesting the complainant's right to the possession and occupancy of the premises described in the bill of complaint, and it is further

20 ORDERED that until the further order of this court, and without prejudice to the rights of either the complainant or defendants, the said complainant pay to the defendants the monthly rental reserved in the lease of the premises occupied by the complainant, which is mentioned and described in the bill of complaint aforesaid.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

30

40

Answer of Defendants.

(Filed November 18, 1924.)

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between LINCOLN FURNITURE CO., a corporation, Complainant, and RACHEL BORNSTEIN and NEWTON A. BORNSTEIN, Defendants.</p>	}	<p style="text-align: center;">On Bill, &c.</p>	10
--	---	---	----

The defendants, Rachel Bornstein and Newton A. Bornstein, answering the bill of complaint, say that: 20

1. These defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraphs 1, 2 and 3.
2. Paragraphs 4, 6 and 7 are admitted.
3. These defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraphs 8 and 9. 30
4. Paragraph 10 is denied.
5. Defendant Newton A. Bornstein admits writing a letter, a copy of which is attached to the bill of complaint and marked Schedule A.
6. They admit receiving a letter, a copy of which is attached to the bill of complaint and marked Schedule B. 40

Answer of Defendants.

7. Paragraph 13 is admitted.

8. Paragraph 14 is denied.

10 9. Paragraphs 15, 16, 17, 18, 19 and 20 are admitted.

10. Paragraphs 21 and 22 are denied.

20 11. They admit that if a judgment is entered in the suit in the Second District Court of the City of Newark in favor of the plaintiffs and against the defendant, Carl Worman, a writ may issue empowering and commanding the removal of any and all persons in the occupancy and possession of the premises, but they deny that the business therein conducted is liable to be thereby broken up and seriously damaged and injured or destroyed.

30 12. These defendants further say that they had no knowledge of complainant's occupancy of the premises, the alleged assignment of the lease and the payment of rent by the complainant, and they deny that at any time they knew or had notice of the alleged assignment of the said lease to the complainant, and they deny that the complainant procured their consent to the making of any improvements.

DEFENSES TO THE BILL OF COMPLAINT.

40 1. At the time of the negotiation for the said lease with the said Carl Worman he stated that inasmuch as he was engaged in the wholesale furniture business in the City of New York he did not desire to carry on the business in his individual name, and that he expected to use a trade name, but he was distinctly told by the defendant Newton

Answer of Defendants.

A. Bornstein, and by Philip Bornstein, who at that time was an owner of the equal undivided one-half interest in said premises, that a lease would not be made to a corporation, and that the lease, if and when made, would have to be with the said Carl Worman as an individual, and there was placed in said lease, by and with the consent of the said Carl Worman, the following paragraph: 10

“The party of the second part does further promise and agree that he will not re-let or under-let the said premises or any part thereof nor assign this lease, without the written consent of the party of the first part, their heirs or assigns, under penalty of forfeiture and damages.” 20

2. That these defendants believed that the use of the name “Lincoln Furniture Company” on checks and on letterheads was the trade name assumed by the said Carl Worman.

3. At no time until April 21, 1924, did these defendants know that the Lincoln Furniture Company was a corporation and that the said Carl Worman had made an assignment of his lease to it. The first intimation that these defendants had that any person other than Carl Worman was in the occupancy or possession of the premises in question was shortly before the first day of April, 1924, when these defendants heard that the said Carl Worman had disposed of the furniture business to one Harry Bloch, and when a check was tendered for the April rent it was observed that it was signed by some person other than Carl Worman, who had been in the habit of signing all checks for rent. 30

4. On April 21st, 1924, the said Carl Worman for the first time informed this defendant, Newton 40

Answer of Defendants.

10 A. Bornstein, that he had incorporated the business under the name of the Lincoln Furniture and that he had assigned the lease to it, and that during the month of March, 1924, he had sold the furniture business to one Harry Bloch; that thereupon an
20 examination of the records in the office of the Secretary of State was made, which showed that on December 12, 1919, a certificate of incorporation of Lincoln Furniture Company was filed, the incorporators of which were the said Carl Worman, Julius Worman, Fred J. Sterne and Samuel Goldstein, and that reports on file showed that the said Carl Worman was president, the said Fred J. Sterne was secretary and treasurer, and one Hedwig Sterne was vice-president; that on March 24,
20 1924, there was filed a certificate of decrease and reclassification of capital stock, which was signed by one Harry Bloch as president.

5. These defendants further charge that the formation of said corporation and the assignment of the lease to it, if made, was without notice to these defendants and was deliberately concealed from them, and that said corporation was formed and the assignment made in violation of the covenant
30 contained in said lease for the purpose of depriving these defendants of their rights under said lease, and with intent to deceive and defraud these defendants of their rights thereunder, the said Carl Worman and the said Lincoln Furniture Company well knowing of the provision of said lease providing for forfeiture thereof in the event of the assignment without the written consent of these
30 defendants.

40 These defendants pray to be hence dismissed, with their reasonable costs and charges most wrongfully sustained.

CHARLES M. MYERS,
Solicitor of Defendants.

Petition for Leave to File Supplemental Bill.

(Filed January 21, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between LINCOLN FURNITURE Co., a corporation, Complainant, and RACHEL BORNSTEIN and NEWTON A. BORNSTEIN, Defendants.	}	On Bill, &c.
----	---	---	--------------

20 *To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:*

The petition of the Lincoln Furniture Co., a corporation, of the City of Newark, in the County of Essex and State of New Jersey, respectfully shows that:

30 1. Petitioner is the complainant in the bill of complaint filed herein. In and by said bill of complainant, complainant, alleging that it is the owner of a leasehold interest in certain premises mentioned and described in said bill of complaint, of which premises defendants, at the time of the filing of said bill of complaint, were the owners, seeks to obtain from this Court a decree adjudging and determining that complainant is the lawful assignee and present owner of said leasehold interest on said premises, and that complainant is now in lawful occupancy and possession of said premises under and by virtue of said lease, and enjoining and

40 restraining defendants, their heirs, executors, administrators, grantees or assigns, from proceeding

Petition for Supplemental Bill.

with a certain action instituted by them in the Second District Court of the City of Newark prior to the filing of complainant's bill of complaint herein, by which action defendants seek to remove complainant from said premises and enjoining and restraining defendants, their heirs, executors, administrators, grantees or assigns, from instituting any other action at law or in equity against complainant on the alleged ground that complainant is not the lawful assignee or owner of said leasehold interest in said premises. 10

2. Subsequent to the filing of the bill of complaint herein, and on or about July 25th, 1924, the said defendants conveyed said premises to Albert Fried of the City of Newark, County of Essex and State of New Jersey. 20

3. At the time of said conveyance by said defendants to said Albert Fried the said Albert Fried had knowledge and notice of the pendency of this cause and of the substance of the allegations set forth in complainant's bill of complaint filed herein and of the pendency of the aforementioned action instituted by defendants in the Second District Court of the City of Newark. From and after the date of the said conveyance of said premises to said Albert Fried by said defendants said Albert Fried had received and accepted from complainant on the first day of each and every month after said date the payment of the monthly rent for said premises, in the sum of \$666.66 per month, under and in accordance with the terms of the aforesaid lease. 30

4. By reason of the aforementioned facts said Albert Fried is a necessary and proper party to this cause and should be joined as a party defend- 40

Petition for Supplemental Bill.

ant in this cause, and petitioner believes and alleges that when and after said Albert Fried has been joined as a party defendant in this cause petitioner, as complainant in this cause, will be entitled to the same relief in this cause as against said Albert
10 Fried that complainant is entitled to and in said bill of complaint prays for as against the original defendants in this cause.

Petitioner, therefore, prays that it may be permitted to file an addition by way of supplement to complainant's original bill of complaint herein for the purpose of joining said Albert Fried as a party defendant in this cause and for the purpose of praying for and obtaining the same relief as against
20 said Albert Fried as complainant prays for in its original bill of complaint as against said original defendants.

And that petitioner may have such other and further relief as may be equitable and just in the premises.

And petitioner will ever pray, &c.

BILDER & BILDER,
Solicitors of Petitioner.

Affidavit of Sam Levi on Motion.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss. :

SAM LEVI, being duly sworn, upon his oath, according to law, deposes and says: That he is secretary of the Lincoln Furniture Co., a corporation, the complainant in the above-entitled action; petitioner is the complainant in the bill of complaint filed herein. In and by said bill of complaint, complainant, alleging that it is the owner of a leasehold interest in certain premises mentioned and described in said bill of complaint, of which premises defendants, at the time of the filing of said bill of complaint, were the owners, seeks to obtain from this Court a decree adjudging and determining that complainant is the lawful assignee and present owner of said leasehold interest on said premises, and that complainant is now in lawful occupancy and possession of said premises under and by virtue of said lease, and enjoining and restraining defendants, their heirs, executors, administrators, grantees or assigns, from proceeding with a certain action instituted by them in the Second District Court of the City of Newark prior to the filing of complainant's bill of complaint herein, by which action defendants seek to remove complainant from said premises, and enjoining and restraining defendants, their heirs, executors, administrators, grantees or assigns, from instituting any other action at law or in equity against complainant on the alleged ground that complainant is not the lawful assignee or owner of said leasehold interest in said premises.

Subsequent to the filing of the bill of complaint herein, and on or about July 25th, 1924, the said defendants conveyed said premises to Albert Fried, of the City of Newark, County of Essex and State of New Jersey.

Affidavit of Sam Levi.

10 That at the time of said conveyance by said de-
fendants to said Albert Fried the said Albert Fried
had knowledge and notice of the pendency of this
cause and of the substance of the allegations set
forth in complainant's bill of complaint filed herein,
and of the pendency of the aforementioned action
instituted by defendants in the Second District
Court of the City of Newark. From and after the
date of the said conveyance of said premises to said
Albert Fried by said defendants said Albert Fried
has received and accepted from complainant on the
first day of each and every month after said date
the payment of the monthly rent for said premises,
in the sum of \$666.66 per month, under and in ac-
cording with the terms of said lease.

20 By reason of the aforementioned facts said Al-
bert Fried is a necessary and proper party in this
cause and should be joined as a party defendant in
this cause, and petitioner believes and alleges that
when and after said Albert Fried has been joined
as a party defendant in this cause petitioner, as
complainant in this cause, will be entitled to the
same relief in this cause as against said Albert
Fried that complainant is entitled to and in said
bill of complaint prays for as against the original
30 defendants in this cause.

SAM LEVI.

Subscribed and sworn to before me this
13 day of January, 1926.

ANNA T. CEDER,
Notary Public
of New Jersey.

40 (Seal)

Order for Supplemental Bill.

10 Second District Court of the City of Newark prior to the filing of complainant's bill of complaint herein, by which action defendants seek to remove complainant from said premises, and enjoining and restraining defendants, their heirs, executors, administrators, grantees or assigns from instituting any other action at law or in equity against complainant on the alleged ground that complainant is not the lawful assignee or owner of said leasehold interest in said premises;

20 And it further appearing that subsequent to the filing of the bill of complaint herein, and on or about July 25th, 1924, the said defendants conveyed said premises to Albert Fried, of the City of Newark, County of Essex and State of New Jersey;

30 And it further appearing that at the time of said conveyance by said defendants to said Albert Fried the said Albert Fried had knowledge and notice of the pendency of this cause and of the substance of the allegations set forth in complainant's bill of complaint filed herein, and of the pendency of the aforementioned action instituted by defendants in the Second District Court of the City of Newark; from and after the date of the said conveyance of said premises to said Albert Fried by said defendants said Albert Fried has received and accepted from complainant on the first day of each and every month after said date the payment of the monthly rent for said premises, in the sum of \$666.66 per month, under and in accordance with the terms of the aforesaid lease;

40 And it further appearing that by reason of the aforementioned facts said Albert Fried is a necessary and proper party to this cause and should be joined as a party defendant in this cause, and petitioner believes and alleges that when and after

Order for Supplemental Bill.

said Albert Fried has been joined as a party defendant in this cause, petitioner, as complainant in this cause, will be entitled to the same relief in this cause as against said Albert Fried that complainant is entitled to and in said bill of complaint prays for as against the original defendants in this cause, and good and sufficient reason appearing for the entry of this order, it is, on this 21 day of January, A. D. 1926, on motion of Bilder & Bilder, solicitors of the complainant, 10

ORDERED, that the said complainant, Lincoln Furniture Co., a corporation, be and it is hereby permitted to file an addition by way of supplement to complainant's original bill of complaint in this cause, setting forth the above facts and making the said Albert Fried a party defendant thereto, within 3 days after the date hereof; and it is further 20

ORDERED, that service of process shall be made on said Albert Fried as in the case of the original bill of complaint; and it is further

ORDERED, that a copy of said addition by way of supplement to complainant's bill of complaint be served on each of the defendants, Rachel Bornstein and Newton A. Bornstein and Albert Fried, within 3 days after the date hereof, personally or by leaving the same at his residence or usual place of abode with a member of his family over the age of fourteen years. 30

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

40

Order for Supplemental Bill.

3. From and after the date of the said conveyance of said premises to said Albert Fried by said defendants, said Albert Fried has received and accepted from complainant on the first day of each and every month after said date, the payment of the monthly rent for said premises in the sum of \$666.66 per month, under and in accordance with the terms of the aforesaid lease. 10

Complainant, therefore, prays:

1. That the said Albert Fried, who is the defendant to this addition by way of supplement to the Bill of Complaint herein, may answer the same and each statement therein made (without oath).

2. That the complainant may have the same relief against the defendant Albert Fried as the said complainant might have had if the facts hereinabove by way of supplement had been stated in the complainant's original Bill of Complaint. 20

BILDER & BILDER,
Solicitors for and of
counsel with Complainant.

30

40

Stipulation Admitting Additional Evidence.

(Filed Nov. 19, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between LINCOLN FURNITURE Co., a corporation, Complainant, and RACHEL BORNSTEIN, NEWTON A. BORNSTEIN and ALBERT FRIED, Defendants.	}	On Bill, &c.
----	---	---	--------------

20 IT IS HEREBY STIPULATED AND AGREED by and between the solicitors of the complainant and the solicitors of the respondents, as follows:

(1) That the deed for the premises mentioned and described in the bill of complaint, which deed is dated July 25th, 1924, and recorded on the same date in Book D-71, page 33, which conveys said premises by deed from Rachel Bornstein and Philip Bornstein, her husband, and Newton A. Bornstein and Margaret Bornstein, his wife, to Albert Fried, be received in evidence.

30 (2) That the said premises were conveyed to the said Albert Fried as aforesaid, subject to the rights, if any, of the complainant, with full knowledge on the part of the said Albert Fried of the litigation pending in this Court concerning the premises described in said deed.

BILDER & BILDER,
Solicitors of Complainant.

40 CHARLES M. MYERS,
Solicitor of Respondents.

Opinion.

(Filed November 16, 1926.)

IN CHANCERY OF NEW JERSEY.

Between LINCOLN FURNITURE Co., a corporation Complainant, and RACHEL BORNSTEIN and NEWTON A. BORNSTEIN, Defendants.	}	10
--	---	----

20

(1) Waiver of a breach of covenant is a good defense at law or in equity. It is primarily of equitable cognizance, but equity will not ordinarily exercise its jurisdiction when the defense is pleadable in a common law action.

If the action at law is of a summary nature where there is no appeal on the merits, equity will entertain the defense and stay the action at law.

(2) A forfeiture of a lessee for breach of covenant not to assign without the written consent of the lessor is not waived by accepting rent from the assignee, unless the lessor knew that the Lease has been assigned. Mere knowledge of facts which would put the lessor on notice is not sufficient.

40

Opinion.

ON FINAL HEARING.

For complainant: BILDER & BILDER (NATHAN BILDER).

10 For defendants: CHARLES M. MYERS and MERRITT LANE.

BACKES, V. C.

On December 8, 1919, Philip and Newton Bornstein leased to Carl Worman the store building 47 Market Street, Newark, for ten years from January 1, 1920. The lease contains a covenant that the lessee "will not re-let or under-let the said premises or any part thereof, nor assign this lease, 20 without the written consent of" the lessors, and the right of re-entry was reserved upon default in any of the covenants. Four days later Worman incorporated the Lincoln Furniture Co., of which he held seventy-five per cent. of the capital stock, was its president, and since its inception the company has carried on the retail furniture business in the premises. All during his incumbency the monthly rental was paid by the company's checks, all signed by Worman, as president, and by the 30 treasurer, except three which were signed by the treasurer alone. Worman sold his interest in the company in February or March, 1924, to one Block, and quit the business. He assigned the lease to the company February 29, 1924, by an assignment which recites that it was confirmatory of a previous assignment dated December 15, 1919. Upon learning of Worman's withdrawal, the defendants, the owners, rejected the company's check for the April (1924) rent, signed by or for the new management, 40 gave notice to Worman of the forfeiture and termination of the lease, because of the assignment, and

Opinion.

brought suit in the District Court to dispossess him for breach of the covenant. The company, in danger of being ousted, filed this bill to restrain the suit, on the ground that the defendants, with notice of the assignment, acquiesced in its possession, and, by accepting the monthly rental from the company, had waived the breach of the covenant. An injunction pendente lite was ordered. 10

The defendants' objection that equity is without jurisdiction, because the defense of waiver is available at law, is not substantial. The complainant is not a party to the summary proceeding and, although the victim of a threatened judgment of eviction, cannot be heard to assert its rights, and a warrant of removal against its assignor will carry with it as well the dispossession of the company. *Brahn v. Jersey City Forge Co.*, 38 N. J. L. 74; *Township of Union v. Bayliss*, 40 N. J. L. 60. Its only redress would be by action for damages, *McGann v. LaBrecque*, 91 N. J. Eq. 307. This predicament does not constitute a ground for equity interference with the statutory remedy of the landlord, to which the complainant's possession is subordinate, but its succession to the lease entitles it to appeal for equitable relief from forfeiture upon a waiver of the breach of the covenant. That a waiver is an available defense at law is settled law. *North v. Jersey Knitting Mills*, 98 N. J. L. 157. But the relief rests purely on equitable doctrine, and was originally granted by the Chancellor alone and later adopted by the courts of law. The inherent jurisdiction of courts of equity to relieve against forfeiture, as in case of waiver of breach of covenant, is too well established to need extended citation of authority. *Pom. Eq. Jur. Sec. 454*. However, when the defense may be pleaded at law, and adjudicated 20 30 40

Opinion.

according to the course of the common law, equity courts refrain from exercising its jurisdiction. But it is not called upon to stay its arm when the proceedings at law are summary and the defense precarious. The discussion of this point in

10 Windholz v. Burke, 98 Equity 471, is repeated: "Furthermore, if the District Court has jurisdiction, and erroneously should refuse to entertain or uphold the defense of waiver, or any other valid defense, its judgment would be final, the complainant's possession would be lost to it, and its only remedy would be a suit for damages for unlawful ouster. McGann v. LaBrecque Co., 91 N. J. Eq. 307. The proceedings are summary; there is no appeal on the merits and, on certiorari, the only

20 reviewable question is, had the Court below jurisdiction. Cases in 4 Park. Dig. 7917. The relief the complainant presently stands in need of is the protection of its possession, not damages, and while the law may grant compensating damages for the injury now threatened, equity prevents the infliction of the injury altogether. It is obvious that the defense at law is not complete and adequate. Equity will not refuse to interpose when the remedy is more nearly complete and

30 perfect in equity than at law. Henwood v. Jarvis & Schafer, 27 N. J. Eq. 247."

The alleged waiver is pleaded to the breach of the covenant not to assign the lease; there is no re-letting or under-letting. To maintain the bill the complainant must satisfactorily establish that the defendants with *knowledge* of the assignment accepted the rent from the assignee. It is an uncontroverted fact that the defendants did not have

40 knowledge of the assignment until after the company's last check for the April (1924) rent was received and rejected, but the contention is that

Opinion.

they had notice of facts and circumstances from which knowledge of the assignment is imputed as a matter of law. The claim is, in substance, that the defendants were forewarned that the lease was to be assigned, that they tacitly consented that it should be assigned, and accordingly accepted payment of the rent from the assignee. It appears that during the negotiations for the lease, which were conducted by Worman and his New York lawyer, Zodikow, and the Bornsteins and their lawyer, Myers, it was made known that Worman, being in the wholesale furniture business, regarded it as unwise, for commercial reasons, to engage in the retail trade under his own name, and that the Bornsteins, upon the advice of Myers, refused to make a lease to a corporation, because of unfortunate experiences, and would lease only to Worman. In spite of this determination of the Bornsteins, Zodikow says he announced that a corporation would be formed to conduct the business; that it would take over the lease and would be the tenant, and so that there should be no uncertainty as to the company's status in the future, he would pay the first month's rent by the company's check, and that he opined that under such circumstances, according to the laws of New York, "there could never be any question raised with respect to the covenant against assignment"; to which he says Myers replied that he saw no objection as long as Worman remained responsible on the lease. Worman told substantially the same story. Zodikow would not say, though pressed for an explicit answer, that it was stated the lease was to be assigned, nor did Worman; in fact, both admit that, though it was urged by them, the Bornsteins refused to give their written consent to an assignment to the company. Their testi-

10

20

30

40

Opinion.

mony was fully met by the circumstantial denials of both the Bornsteins and Myers. It is highly improbable that, having insisted upon the covenant against assignment and having refused to waive it, the Bornsteins entered into an arrange-
10 ment to defeat it. Zodikow's recital, it would seem, is an echo of his secret contrivance and design to circumvent the covenant. That he disclosed his scheme to the defendants and their counsel and forewarned them that he intended to render the integrity of the covenant ineffective is incredible; and it is not accepted.

For a week before the company organized (December 15, 1919) Worman, who had purchased the stock of furniture of the previous tenant,
20 carried on the business under the trade name of the Lincoln Furniture Co. The minutes of the company show that upon its formation the directors confirmed a resolution of the stockholders to accept Worman's offer to sell to the company the merchandise and the lease for a fixed issue of capital stock. From that time on the business was carried on in the name of the corporation, its corporate name being conspicuously displayed on the building, show windows, delivery wagons,
30 in advertisements and upon its stationery, including checks. The defendants knew, of course, that the business was being conducted in the name of the Lincoln Furniture Co., they had seen the outward expressions and had letter communications from and with the concern and had received the checks bearing the signature of its president and treasurer with the imprint of their offices, but both assert that these indications of corporate personality did not suggest their true characters. It is not inconsistent with this attitude
40 that the name of the Lincoln Furniture Co. did

Opinion.

not signify corporate existence, in view of the common practice of individuals trading under such captions, but it is odd that they did not sense the significance of the official signatures on the checks. However, it appears that they were indifferent while Worman was connected with the store and did not concern themselves whether he, as lessee, was conducting the business personally under a trade name or through a corporation. Either way was not dissatisfactory so long as he was in charge, and no inquiry was made until they discovered that he had sold out to Block, and then they were not informed and were not sure until after they had given notice of forfeiture and termination that the assignment had been made, for, even at the time of service of the notice Worman denied that it had been executed.

Occupation of the store and carrying on the business of the corporation would of itself amount to an assignment of the lease, and a forfeiture; but acceptance of the rent from the company would not effect a waiver unless the defendants accepted the rent with knowledge of the existence of the corporation and of its exclusive occupancy. It is a fact beyond serious question that the defendants had no knowledge of the incorporation and none of Worman's offer to sell and the company's resolution to purchase the business, including the lease. The display of corporate activities was no doubt sufficient to put them on notice, but such notice is not knowledge and they were under no legal duty to inquire into and be informed of the facts, and it is inferable that had they inquired of the interested parties they would not have been told the truth. It was their privilege to rely in confidence on Worman's covenant not to assign his lease, and neither he nor the com-

Opinion.

pany, for obvious reasons, ventured to dispel their faith by a disclosure of the facts. It would have been a simple thing to do had they been frank, and safer than the gestures which the defendants interpreted entirely consistent with their theory, that Worman was in possession and operating the business under a trade name or through the medium of a company. Waiver is the intentional relinquishment of a known right. "To constitute a waiver the lessor at the time of the receipt of rent must have had knowledge of the existence of the cause of forfeiture. Thus forfeiture for a breach of a condition not to assign is not waived by acceptance of rent from the assignee, unless the landlord has knowledge of this assignment." 16 R. C. L. 1135. German Am. Sav. Bk. v. Gollmer, 155 Calf. 683, 24 L. R. A. (N. S.) 1066; Drummond v. Fischer, 18 N. Y. S. 868; Emery v. Hill, 39 Atl. Rep. 266; West Shore R. R. Co. v. Wenner, 70 N. J. L. 233; Decker v. Hartshorn, 60 N. J. L. 548.

It is doubtful that a formal assignment of the lease was executed before the so-called confirmatory assignment of February 29, 1924, which was given to clear the record for the sale of Worman's stock holdings in the company to Block. Zodikow's scheme, as he says he outlined to the defendants' was not to breach the covenant by assigning the lease to the company when formed, but to have the company take it over in possession and to effect a waiver by paying the first month's rent on January 1, 1924, with the company's check. With this undisclosed plan in mind, and obviously sensible of the penalty of assigning the lease on the heels of the covenant not to assign, it does not seem plausible that the lessee or his attorney took the chance of discovery and the risk of for-

Opinion.

feiture. The attorney's safer manipulation, which he undoubtedly pursued, was to have the company carry on the business under Worman's management, neither re-let or under-let, nor assign the lease, and by assuming an equivocal occupancy the better ward off both charge and proof of forfeiture; and it would appear that not until it became expedient to Worman's sale was the so-called confirmatory assignment made. 10

Although forfeitures are not looked upon with favor, relief cannot be granted unless the waiver is satisfactorily established, and as the evidence does not measure up to the legal requirements, the bill will be dismissed.

20

Final Decree.

(Filed November 23, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

LINCOLN FURNITURE Co.,
Complainant,

and

RACHEL BORNSTEIN, NEWTON A.
BORNSTEIN and ALBERT FRIED,
Defendants.

30

The above entitled cause coming on to be heard before the Chancellor, wherein the Lincoln Furniture Co., a corporation, is complainant and Rachel Bornstein, Newton A. Bornstein and Albert Fried, 40

Final Decree.

are defendants, in the presence of Nathan Bilder, of counsel with the complainant, and Charles M. Myers and Merritt Lane, of counsel with the defendants, and the proofs taken by the respective parties having been submitted and the Court having considered the pleadings, proofs and argument of counsel, and the Court being of the opinion that the defendants, Rachel Bornstein, Newton A. Bornstein and Albert Fried, did not nor did any or either of them, acquiesce in the breach of the covenant against assignment of the lease referred to in the bill of complaint, and that neither the said Rachel Bornstein, Newton A. Bornstein and Albert Fried did, nor did any or either of them, perform any acts by which they are estopped from relying upon said breach of the covenant against assignment, and that said defendants, Rachel Bornstein, Newton A. Bornstein and Albert Fried did not, nor did any or either of them, waive the said breach of covenant against assignment, and that said defendants, Rachel Bornstein, Newton A. Bornstein and Albert Fried, or any or either of them, may rely upon said breach of covenant against assignment set forth in the bill of complaint, and that said complainant is not entitled to the relief prayed in its bill and addition to the bill by way of supplement;

It is, on this twenty-third day of November, 1926, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, that the said Chancellor doth, by virtue of the power and authority of this court and the acts of the legislature in such case made and provided, ORDER, ADJUDGE and DECREE that complainant's bill of complaint and addition thereto by way of supplement, be and the same is hereby dismissed with costs to the defendants against the

Final Decree.

complainant, in which shall be included a counsel fee of \$1,000.00.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V.C.

10

Testimony.

IN CHANCERY OF NEW JERSEY.

Between
LINCOLN FURNITURE COMPANY,
Complainant,

and

RACHEL BORNSTEIN and NEWTON
A. BORNSTEIN,
Defendants.

20

30

February 11, 1926.

Transcript of shorthand notes of testimony taken in the above entitled matter before his Honor, JOHN H. BACKES, Vice-Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of MESSRS. BILDER & BILDER, for complainant, and CHARLES M. MYERS and Mr. MERRITT LANE, for defendants.

40

Herman Zodikow—For Complainant—Direct.

HERMAN M. ZODIKOW, sworn for complainant.

Direct examination by Mr. Bilder.

10 Q. Mr. Zodikow, you reside in New York? A.
I do.

Q. And you are admitted to the Bar of New
York? A. I am.

Q. How long have you been practicing? A.
Fifteen years.

Q. Did you represent Mr. Carl Worman at the
time that he entered into this lease with the de-
fendants in this proceeding? A. I did.

20 Q. Will you please state the occurrences which
immediately preceded the making of this lease?
A. Why, we were discussing with the law firm of
Riker & Riker the purchase of the Crown business,
then on Market Street, in this city. It seems that
the Crown business at that time was in some finan-
cial difficulties, and a bank represented by Riker
& Riker controlled the business at that time—
some bank here in Newark, which name I do not re-
call—and we discussed the purchase of the business
of the Crown company with Messrs. Riker & Riker.
30 Before completing negotiations with Messrs. Riker
& Riker we, Mr. Worman, who I represented at
that time, and myself, went over to the office of
Mr. Myers, the attorney representing the landlord
of the building—we learned the names of the land-
lords through Messrs Riker & Riker. There we
discussed with Mr. Myers and the landlords the
question of a new term of the lease; that is, we
wanted a ten-year term lease with a five-year privi-
lege. The old lease held by the Crown company
40 had two years to run with a three-year option at
the rental of \$6100, so that we had five years under

Herman Zodikow—For Complainant—Direct.

the old lease. I told the attorney, at least, offered the attorney and the landlords at that time that if they would give us a ten-year lease with a five-year privilege, we would pay them a rental of \$8,000 a year, which meant to them a difference for the unexpired term of approximately \$10,000 more rent, and that before we would complete negotiations with the attorneys for the purchase of the Crown business, we wanted to know if we could get that lease. 10

Q. Who was there present at that conversation?
A. Mr. Myers and the landlords.

Q. Who were they? A. The Bornsteins. One was a doctor, I believe, and I don't know what business the other landlord was in—and this was in December, early part of December, 1919, while our negotiations were pending with Messrs. Riker & Riker. Mr. Myers, the attorney for the landlords, then drew up an option and gave us an option, giving us the right to rent the premises for ten years, with a five-year privilege, providing, of course, that our negotiations with Messrs. Riker & Riker were successfully concluded. Then we continued our negotiations with Messrs. Riker & Riker, and purchased the Crown furniture business. It was at the time that I had the conversation with Mr. Myers and the landlords with respect to this option that I explained to them that Mr. Worman was in the wholesale furniture business in the City of New York, that I represented a client who was about to invest approximately \$15,000 in this business, that we intended to organize and form a corporation for the purpose of conducting this business—retail furniture business—that Mr. Worman could not afford to run a retail furniture business in his own name in the City of Newark because he did quite an extensive business throughout the 20 30 40

Herman Zodikow—For Complainant—Direct.

State of New Jersey with retail furniture dealers—
Mr. Worman was manufacturing living room
furniture—and I told them at that time that we
intended to form a corporation. Mr. Myers, for
the landlords, at that time replied to me that that
10 would be all right, as long as they had a responsible
party on the lease it didn't make any difference
to them. This option, as I stated before, was drawn
and delivered to me, and we concluded our negotia-
tions with Messrs. Riker & Riker for the purchase
of the Crown business, and then five or six days
later, or seven days later, during the period that
it took us to conclude our negotiations for the pur-
chase of the business, the lease was drawn and
signed at the attorney's office, Mr. Myer's office.

20 Q. And is this the lease (showing paper to wit-
ness)? A. Yes, sir; this is the lease.

Mr. Bilder: I offer it in evidence.

(Paper marked Exhibit C-1.)

Witness: Before this lease that is in evi-
dence was signed, I again took up the
question of the corporation conducting this
business in Newark here, with respect to the
covenant against assignment without the
30 landlords' consent in writing—

Q. Let me interrupt you just a moment. At that
time had the corporation been organized? A. No.

Q. Go ahead. A. And I discussed the question of
the covenant against assignment with the landlords
and the attorney, and I again told them at that
time that a Mr. Stern, who I represented, was going
to invest approximately \$15,000 in this business,
that the business was going to be conducted through
40 a corporation, and that I did not want any question
to arise at any time with respect to the corporation
conducting the business in these premises. Again

Herman Zodikoiv—For Complainant—Direct.

it was stated to me by both the landlords and Mr. Myers that they saw no objection to it as long as Mr. Worman remained personally liable under the lease. I told them I had no objection to Mr. Worman remaining personally liable, but I wanted them to understand that a corporation was going to run this business—that the corporation would be their tenant, with Mr. Worman being personally liable, and they assured me that there would be no trouble or difficulty or question arising at any time with respect to the corporation being a tenant in the premises. I then stated that in order that there shall be at no time any ambiguity in this question—I stated that I would pay the first month's rent with the corporation's check under this lease. I stated to them at that time that under the laws of New York that where the landlord will accept the rent under those circumstances that there could never be any question raised with respect to the covenant against assignment, and we did, by my advice and instruction, pay the first month's rent under the lease in evidence here, to the landlord, by the corporate check. The lease was closed and they remained in possession.

The Court: Have you got that corporate check? 30

Mr. Bilder: Yes, sir.

Q. Is that the check? A. That is the check, your Honor.

Mr. Bilder: I offer it in evidence.

(Paper marked Exhibit C-2.)

The Court: It is the president's check, Mr. Lane.

Witness: And the rent was paid by corporate checks until the time when the land- 40

H. Zodikow—For Complainant—Direct—Cross.

lord commenced this proceeding for the forfeiture of this lease.

Q. Did you proceed to organize the corporation?

10 A. I did not. A Newark attorney here organized the corporation.

Mr. Bilder: I offer the certificate of incorporation, dated the 12th day of December, to go into operation the 1st of January.

(Paper marked Exhibit C-3.)

The Court: The lease was dated when?

Mr. Bilder: The 8th of December.

Cross-examination by Mr. Lane.

20

Q. In this talk that you had with Mr. Myers and Mr. Bornstein with respect to the covenant against assignment, did you suggest that it might be a wise thing for them to sign a paper in the language of the covenant which would relieve you from any embarrassment in the future? A. Yes, sir; I asked them for it.

30 Q. Why didn't you get it? A. Mr. Myers told me it was all right. "You are dealing with us. There won't be any trouble. All we are looking for is a good tenant."

The Court: Why didn't you get it, he asked you.

Witness: He did not want to give it to me, because he was afraid if he gave me that paper he might release Worman's personal liability under the lease and he didn't want in any way to jeopardize that.

40

Q. Didn't you explain to him, as a lawyer, that there might be an assignment drawn, or consent

Herman Zodikow—For Complainant—Cross.

to assignment drawn, which would retain the liability? A. I asked Mr. Myers for a—we discussed that and Mr. Myers said it wasn't necessary. He was afraid if he gave me any such paper that it might affect Mr. Worman's personal liability under the instrument.

10

Q. And you were content, as a lawyer, notwithstanding the provision in that lease which requires a written consent—you were content to take the say-so of Myers? A. I was.

Q. Rather than to get what you were entitled to? A. I was, plus the fact that the rent for the premises was to be paid by the corporate check for the very first month—from the beginning of the term of the lease.

Q. And you say you explained the law of the State of New York to Mr. Myers? A. I did not. I said, probably discussed that under the laws of the State of New York, in my opinion, the acceptance by the landlord of the corporate check under those circumstances was knowledge—would make the corporation the tenant.

20

Q. And did Myers enter into any discussion as to what the laws of the State of New Jersey were on that subject? A. He did not, except to assure me there would be no trouble, that the only reason he didn't want to give me any writing on the question of the covenant was because, as I stated before, he was afraid it might in some way affect the personal liability of Mr. Worman under the instrument.

30

Q. Did you tell Mr. Myers and the Bornsteins that you intended to assign that lease to the corporation? A. We didn't tell him—we told him that the corporation would be the tenant; that the corporation would take the lease over.

40

Herman Zodikow—For Complainant—Cross.

Q. Did you tell them that you were going to assign that lease to the corporation, or did you tell him that the corporation was going to run the business? A. I told him that the corporation was going to conduct the business; that the corporation was going to take over the lease, yes.

10

Q. Then you told them in so many words— A. Or in substance.

The Court: Wait until the question is asked.

Q. Do you remember the language that you used?

A. The exact language?

Q. As nearly as you can. A. With respect to

A. With respect to what?

20

Q. Wit respect to what the corporation was going to do. A. I told them that the corporation was going to conduct the business on the premises and a client of mine, Mr. Fred Stern, related to Mr. Worman, was going to invest approximately \$15,000 in cash at the time of the incorporation of that business, and that Mr. Stern asked me to please to look out after his interests and to see that all the papers with respect to the corporation were properly drawn.

30

Q. Is that all you told them with respect to the corporation? A. We discussed that the corporation would conduct the business, that Mr. Worman was to remain personally liable, and the Bornsteins even asked me whether or not—I even discussed with the Bornsteins the question of them investing money in this furniture business.

Q. Anything further with respect to the corporation and the lease? A. Well, I have practically given you all that was said.

40

Q. Now, when you first talked with the Bornsteins and Mr. Myers, in Mr. Myers' office, Mr.

Herman Zodikow—For Complainant—Cross.

Myers and Mr. Bornstein refused to give a lease to a corporation, didn't they? A. No, sir.

Q. Well, then, why wasn't the suggestion made at that time that the lease— A. The suggestion was made at the time—

The Court: Wait until the question is finished. 10

Q. Why wasn't the suggestion made at that time that the lease go direct to the corporation? A. The talk was had at that time and they didn't want a corporation; they wanted—they would give Worman, individually, the option, and they gave him the option.

Q. Then they refused to give a lease to the corporation, didn't they? A. No, they did not. 20

Q. What did they do? A. They gave the option to Worman. And they knew at that time—I explained to them at that time that a corporation would be the tenant, that a corporation would conduct the business there. I told them at that time that Mr. Worman was in the wholesale manufacturing of living room furniture in New York City, that he did quite an extensive business—

The Court: Do you want all this again? 30
Mr. Lane: No.

Q. Wasn't the suggestion made that the lease should go to the corporation by you? A. It was not.

Q. And there was no talk about the lease being given to the corporation? A. There was.

Q. What was it? A. I told them that we were going to conduct the business in Newark under a corporation and that the corporation would become the tenant and take this lease over. 40

Herman Zodikow—For Complainant—Cross.

Q. Was there anything said with respect to the lease being given direct to the corporation? A. No, sir.

Q. Why didn't you make that suggestion if you were going— A. Because no corporation was in
10 existence at the time.

Q. Is that the reason? A. Yes, sir; the corporation couldn't take it.

Q. And nothing was said. What did you mean a few moments ago when you said that they said they would give the lease to Worman personally?

A. I told them that we intended to organize a corporation to conduct the business on the premises and there was no one to deal with at that time except Worman, personally, not a corporation—
20 it wasn't in existence at that time.

Q. So that it was your suggestion that it should be given to Worman, personally, rather than—it was because the corporation was not in existence at the time, is that right? A. It was my suggestion—we went up there to ask them whether they would give us this option—

Q. I am not talking of the option. I am talking about the lease now. A. First we got the option, then the lease was drawn.

30 Q. Where is that option? A. (Producing paper.)

Mr. Lane: I offer it.

(Paper marked Exhibit D-1.)

Q. Now, as I understand it, at the time you had this talk which resulted in the giving of this option of December 1st, 1909, you at that time told them about the corporation too; is that right? A. Yes, sir.

40

The Court: What date?

Witness: December 1st, 1919.

Herman Zodikow—For Complainant—Cross.

Q. You also told them that Mr. Worman couldn't do business, or couldn't very well do business in his own name in Newark, didn't you? A. I didn't say couldn't very well do business in his own name. I said Mr. Worman don't want to do business in Newark, in the furniture business, under his own name, because he was manufacturing and selling throughout the State of New Jersey his own product, furniture. 10

Q. And how did you come to discuss that with him, that he didn't want to do business in his own name? A. That was the reason I told them for forming the corporation to conduct the business.

Q. I thought the reason for the forming of the corporation was the fact that somebody else was going to invest some amount of money. A. That plus the fact that Worman wouldn't conduct business in his own name in this state. 20

Q. If he wouldn't conduct business in his own name in this state, he could conduct business under a trade name, couldn't he? A. No, I don't think so.

Q. You don't think so. So the words "trade name" were not used, were they? A. Never, at no time.

Q. Although the reason why you gave—why Worman shouldn't conduct business in his own name was that he was engaged in the furniture business in New York under such circumstances that made it inadvisable to do it here, is that right? A. Yes, sir. 30

Carl Worman—For Complainant—Direct.

CARL WORMAN, sworn for complainant.

Direct examination by Mr. Bilder.

10 Q. Mr. Worman, where do you reside? A. 2 West
86th Street, New York.

Q. What is your business? A. Manufacturer of
upholstered furniture.

Q. Are you now a stockholder or officer or
director of the Lincoln Furniture Company? A.
Right now?

Q. Yes. A. No.

The Court: You were connected with the
company until when?

20 Witness: About a year ago.

Q. You were president of the company at the
inception—at the organization of the corporation?
A. Yes, sir.

Q. And how much of the stock holdings of the
company did you own? A. 75 per cent.

Q. Who owned the other 25? A. 25 was owned
by Fred J. Stern.

30 Q. Mr. Goldstein was the treasurer of the com-
pany in the beginning? A. Yes, sir.

The Court: He is who?

Witness: He was the manager of the Lin-
coln Furniture Company at the beginning.

The Court: Manager of the store?

Witness: Of the store; yes, sir.

40 Q. I show you eleven checks for rent for the
month of February to and including November 1st,
and ask you whether those—1920—and ask you
whether those are the checks which were given to

Carl Worman—For Complainant—Direct.

the landlord in payment of rent for the premises occupied by the Lincoln Furniture at that time?

A. Yes, sir; they are.

Mr. Bilder: I offer in evidence these checks.

10

(Checks marked Exhibit C-4.)

The Court: Where are the rest of the checks?

(Mr. Bilder produces checks.)

The Court: Put them all in. You do not object to their being offered without formal proof?

Mr. Lane: No, sir.

Mr. Bilder: I offer a bundle of checks, payable in monthly installments for rent from 1920 until the filing of the bill.

20

(Checks marked Exhibit C-5.)

The Court: I understand that the rent paid since the filing of the bill was paid under order of the Court without prejudice.

Mr. Bilder: That is the way the order of the Court read.

Q. When this corporation was organized did you assign to the corporation the lease in question?

30

A. Yes, sir.

Mr. Bilder: I offer in evidence the minute book of the corporation, showing the holding of the meeting—

The Court: Is there a formal assignment?

Mr. Bilder: No, there is not a formal assignment. There is an offer in writing and acceptance by the corporation.

40

(Minute book marked Exhibit C-6.)

Carl Worman—For Complainant—Direct.

The Court: Read into the record what you want.

Mr. Bilder: The first meeting of the incorporators, showing the election of officers, directors, and containing—

10 The Court: Usual organization minutes?

Mr. Bilder: Yes, sir.

The Court: Now read into the record what you want.

20 Mr. Bilder: "Upon motion duly made and seconded, by the affirmative vote of all present, the following preambles and resolutions were adopted: Whereas Carl Worman has offered to sell to this company the business now owned and conducted by him under the name of the Lincoln Furniture Company, on premises No. 47 Market Street, Newark, New Jersey, including all the stock in trade, fixtures, accounts receivable, together with the good will of the said business, and also a certain indenture of lease dated the 8th day of December, 1919, made between Philip Bornstein and Newton A. Bornstein and the said Carl A. Worman, for premises No. 47 Market Street, Newark, New Jersey, which

30 lease is for a period of ten years, in consideration of the issuing of stock of this company to the amount of \$62,500, par value, said company to take the said business subject to all the liabilities of the same, which said liabilities the said company shall assume; and whereas it appears to the stockholders of this company that such property is necessary for the business of the company, and that the same is of the value of \$85,000; resolved that the board of directors of this

40 company be, and they are hereby authorized

Carl Worman—For Complainant—Direct.

in their discretion to purchase the property above mentioned for the said price and to issue stock in payment therefor."

The Court: Stockholders' meeting.

Mr. Bilder: Yes, sir. Then the directors' minutes of the same date, December 15th, 1919, showing the election of Carl Worman as president, Fred J. Stern as vice-president, Julius Worman as secretary, Samuel Goldstein as treasurer, and the resolution of the directors, reading as follows: "Upon motion duly made and seconded, it was resolved that this company accept the offer of Carl Worman to sell to this company the property described in the draft agreement presented to this meeting, and the board of directors do hereby adjudge and declare the said property is of the fair value of \$85,000, and that the same is necessary for the business of the company. Further resolved that the draft agreement for the sale of the property presented at this meeting be and the same hereby is approved, and the president and secretary of this company are hereby authorized and directed to execute said agreement in the name of and on behalf of this company, and to affix the corporate seal thereto."

The Court: Where is the draft agreement?

Mr. Bilder: It is really the offer of Carl Worman.

The Court: Is it a lengthy agreement?

Mr. Bilder: No, it is a short agreement. "I, Carl Worman, do hereby agree to sell and convey to the Lincoln Furniture Company, a New Jersey corporation, the business now conducted by me at No. 47 Market Street,

Carl Worman—For Complainant—Direct.

10 Newark, New Jersey, including all the stock in trade, merchandise, fixtures, and accounts receivable and the good will of said business, and I also agree to assign, transfer and set over to the said company a certain indenture of lease dated the 8th day of December, 1919, made to me by Philip Bornstein and Newton A. Bornstein, for the premises No. 47 Market Street, Newark, New Jersey, which lease is for a period of ten years from the 1st day of January, 1920, all for the sum of \$62,500, providing the said company will assume the payment of all the debts and liabilities of said company. I further agree to accept in

20 payment for the same, 62,500 shares of the capital stock of said company, fully paid and non-assessable, which shares shall be of the par value of \$100 each, and which shares are hereby authorized and directed to be issued on the name of the following persons, in the following amounts: Carl Worman, 500 shares; Julius Worman, 25 shares; Samuel Goldstein, 25 shares; Fred Stern, 75 shares." Dated, December 15th, 1919; signed, Carl Worman."

30 The Court: Now, was there an actual assignment of the lease? Did you afterwards execute an assignment of the lease?

Witness: I do not remember.

The Court: You do not remember that.

Witness: You mean did I issue a new lease to the company?

The Court: No. Did you make a formal assignment of that lease after these resolutions?

40 Witness: I would have to look that up.

The Court: Accepting your offer?

Carl Worman—For Complainant—Direct.

Witness: I don't know.

The Court: You do not remember that, eh?

Witness: I do not think so.

The Court: Was anything more done than what was done at the meeting? 10

Witness: No, I don't think so.

The Court: What does your bill allege?

Mr. Lane: Assignment.

Mr. Bilder: There undoubtedly is an assignment, if I may proceed with the rest of the proof and see if I can find it.

The Court: I don't know whether it makes much difference. I was wondering whether that was in the case.

20

Q. Now, Mr. Worman, when possession was taken of these premises, were there signs put upon the building? A. The following morning the Crown Furniture Company name came down.

Q. What signs were put on the outside of the building? What signs were put on the outside of the building and how did they read? A. Lincoln Furniture Company.

Q. How many of them? A. Two.

Q. Are they large signs or small signs? A. Two large signs. 30

Q. How large were they? A. Well, approximately about 4 feet high and the length of the building—I think it's 25 feet.

Q. Front of the building? A. The width of the building.

Q. The front? A. Front of the building.

Q. And is there also the sign "Lincoln Furniture Company" painted on the awning? A. On the window we put it on. 40

Carl Worman—For Complainant—Direct.

Q. Does the name "Carl Worman" appear any place on the outside of the building? A. No.

Q. Or on the inside of the building? A. Never.

Q. Did the name "Carl Worman" appear upon any of the stationery of the company? A. No, sir;
10 never.

The Court: Do you have truck deliveries?

Witness: Yes, sir; we have a truck delivery.

The Court: Any name?

Witness: On the truck.

Q. What? A. Lincoln Furniture Company, 47 Market Street.

Q. Did the name "Carl Worman" appear upon the trucks? A. No, sir.
20

Q. I notice that the checks for the first eleven months were signed by two officers of the company, and then checks contain your name as president after that. Was there any reason for that? A. Well, Mr. Stern, who owned stock in the company, wanted it that way. He suggested it and I accepted it.

Q. Well, did Mr. Goldstein continue to be the manager of the business after the first eleven checks? A. He was discharged.
30

The Court: So that is the reason.

Q. Did he resign as treasurer? A. Yes, sir.

Q. And then you continued to sign the checks alone? A. Yes, sir.

The Court: As president only?

Witness: Yes, sir.

Mr. Bilder: The by-laws provided that.

40 The Court: Is that statement agreed to?

Carl Worman—For Complainant—Direct.

Mr. Lane: I will agree to it. I don't know that it makes any difference.

The Court: I don't know that it does. It will save the time of reading into the record.

Q. Did you have some correspondence—did your company have some correspondence with the landlord? A. Yes, sir.

10

Q. I show you a letter signed N. A. Bornstein, dated May 22, 1922, and ask you whether that letter was received by the Lincoln Furniture Company. A. Yes, sir.

Mr. Bilder: I offer it in evidence.

(Paper marked Exhibit C-7.)

20

Mr. Bilder: On the stationery of N. A. Bornstein. "Lincoln Furniture Company, 47 Market Street, Newark, N. J. Attention of Mr. Worman. Dear sir: In order to meet taxes June 1st, would ask you to send check for June rent May 31st, and greatly oblige, Yours very truly, N. A. Bornstein, for Rachael and N. A. Bornstein."

Q. I show you a copy of letter dated May 26, 1922, and ask you whether that letter was sent by you—sent by the company to Dr. Bornstein. A. Yes, sir; Lincoln Furniture Company.

30

Mr. Bilder: I offer that.

(Paper marked Exhibit C-8.)

The Court: Are you familiar with all this correspondence?

Mr. Lane: If it is annexed to the bill of complaint, I am.

40

Carl Worman—For Complainant—Direct.

The Court: Put them all in subject to correction and objection.

(Bundle of letters marked Exhibit C-9.)

10 The Court: If it is necessary you may incorporate them in the record later.

Q. Mr. Worman, about how much business did this company do at the time when it began operating at that place? A. You mean how much business did the Crown Furniture Company do?

Q. Yes. A. Approximately sixty-five or seventy thousand dollars worth a year.

The Court: Were you interested in that company?

20 Witness: No, sir.

The Court: How do you know?

Witness: But I had the books.

Q. At the time you sold—you did subsequently sell your stock interest to Mr. Block, the complainant in this case, didn't you? A. Yes, sir.

30 Q. At the time you turned over your stock to Mr. Block, what was the extent of the business annually? A. Approximately about a hundred and fifty thousand dollars.

Q. A hundred and fifty thousand dollars? A. Yes, sir.

Q. And how many customers did it have? A. Oh, well, that would be hard for me to answer.

Q. Approximately. A. How many customers—350—450—something like that.

Q. What is the nature of the business—is it installment furniture? A. Installment furniture.

40 Q. Is this store located in what is known as any installment furniture district? A. Yes, sir.

Carl Worman—For Complainant—Direct.

Q. How many stores are there in that immediate vicinity?

The Court: You mean furniture stores?

Mr. Bilder: Yes, sir.

A. There are five next to each other, I believe, 10
right where we are.

The Court: Adjourning?

Witness: Adjourning.

Q. And how much time did you spend in the Newark store? A. After I purchased the Crown Furniture Company, you mean?

The Court: Until you sold it.

Witness: Oh, about once a week, maybe 20
not then.

Q. And during the rest of the time who was in charge? A. Mr. Goldstein.

Q. And after he left who? Different managers?
A. Different managers.

Q. Did the time come when you were to make repairs and alterations to the premises? A. Yes, sir.

Q. And before you made those repairs and altera- 30
tions did you see Dr. Bornstein? A. Yes, sir; I went to his office.

Q. What did you say to him? A. I told him I am about to make some expensive alterations, and he said, "Go ahead"; so I went ahead. Of course, he did mention at that time in case he shouldn't like the alterations I am doing and after my lease expired—I mean, after the company's lease expired, that I might have to put the same front in there, and I agreed to that. 40

Carl Worman—For Complainant—Direct.

Q. Did you make alterations to the premises?

A. I did.

Q. Who paid for the alterations? A. The Lincoln Furniture Company.

10 Q. And how much was spent? A. Approximately about \$4500 or \$5,000.

Q. What were the nature of the alterations which were made? A. Entire new front and balcony on the first floor and painting and decorating.

Q. How many stories? A. Five floors.

The Court: Store covers the entire lot?

Witness: Yes, sir.

The Court: What depth?

Witness: I guess it is about a hundred feet deep or a hundred and twenty feet.

20

Q. After the alterations were made did the company name continue to be upon the outside of the building? A. Never changed.

Q. Did you have any conversation with Dr. Bornstein concerning the purchase of the building or purchase of an interest in this company? A. I did.

30 Q. And when was that? A. Oh, approximately—I think the first time that Dr. Bornstein came in must have been approximately about six or seven months after the business was bought, and he offered the building for sale and I wasn't interested at that time, but I did say that "I will talk it over with Mr. Fred Stern, one of the officers of the company, and let you know," and then—

The Court: Did you say "one of the officers of the company"?

Witness: Yes, sir.

The Court: Did you say to him "one of the officers of the company"?

40

Witness: Yes, sir.

Carl Worman—For Complainant—Direct.

Q. Did you tell him what officer it was? A. I don't remember that.

Q. Did you tell him what interest he had? A. Yes, sir.

Q. What did you say? A. I told him he was interested in the company. I don't know whether he said he knew it or didn't know it. I do not remember that, but I mentioned Fred Stern, "because I don't do anything—couldn't do anything alone; I don't own the business." 10

Q. And did you also have a conversation with Mr. Fried, Albert Fried? A. Yes, sir.

Q. When? A. Oh, approximately about a year later he came to see me.

Q. Was that before this suit was instituted? A. Yes, sir. 20

Q. He came to see you where? A. At the Lincoln Furniture Company.

Q. What did he say to you? A. Well, he wanted—first he wanted to find out whether I was interested in buying the building and I told him again that I will talk it over with Mr. Stern, and then finally he says, "Well, will you be interested in selling some of your stock in this company—could I buy any stock?" I said, "Well, I will let you know." And Mr. Fried left then and then we had telephone conversations after that two or three times. He called me up at the company in New York. I told him that Mr. Stern was not interested and called it off. 30

The Court: You mean called you up about selling the stock or called you up about selling the building?

Witness: Yes, sir.

The Court: Your buying the building? 40

Witness: Yes, sir.

Carl Worman—For Complainant—Direct.

The Court: That was the subject of your conversation over the telephone?

Witness: Yes, sir. And he also wanted to know whether I would be interested to let him have the building and move my stock and fixtures—whether I would be interested. He also suggested in case he wanted the building whether I wouldn't take my stock and fixtures and outstanding accounts and move into some other building. I said, "No, I wouldn't be interested to do that."

Q. Did he tell you that he wanted to terminate the lease? A. Something on that order.

20 Q. Did he tell you that he would make any inducements to you? A. Oh, yes; naturally.

Q. What did he say about that? A. He will make it worth my while. So I said, "I can't act alone. I will have to talk that over with Mr. Fred Stern."

The Court: When was this?

Witness: When was that? It must have been approximately—

The Court: Before the bill was filed—before the suit was brought?

30 Witness: Oh, yes.

Q. Did Mr. Fried tell you what interest he had in the matter? A. He—I believe he told me he was a relative of the Bornsteins and that he was acting for them, that he is negotiating buying the building or doing something with it.

Q. Did you tell him what interest Mr. Stern had in the company? A. I did.

40 Q. What did you say to him? A. I told him that he is an officer of the company and that he

Carl Worman—For Complainant—Direct.

holds 25 per cent. of the stock and that I must consult him about it.

Q. Did he afterwards call you up? A. He did.

Q. On the telephone? A. In New York.

Q. Do you recall an instance when you met Dr. Bornstein and his brother at the Furniture Exchange in New York City? A. No, I met Dr. Bornstein and Mr. Myer. 10

Q. When was that?

The Court: The attorney? You mean the attorney, Mr. Charles M. Myers?

Witness: Yes, sir; Mr. Charles M. Myers and Dr. Bornstein—I did meet them in New York at the Furniture Exchange.

Q. Will you state the circumstances and when that was? A. About three years ago, I guess. 20

Q. Was it before this suit? A. Yes, sir.

Q. Now, just state what happened. A. Well, they mentioned something about selling the building, I believe—I really did not pay much attention. That is about all.

Q. What was said—how did they happen to meet you? A. Well, they came there and I believe they wanted entrance into the furniture building, and I was called down and I met them. There wasn't very much said. 30

Q. Well, what was said by Dr. Bornstein or Mr. Myers to you and what did you say to them?

The Court: About the building and business.

Witness: Yes, sir; about—

Q. What was said by them about the building and the business? A. Whether I wouldn't be interested in buying the building, and I again told them that 40

Carl Worman—For Complainant—Direct.

I personally am not, but I will talk it over with Mr. Stern, and nothing came of it.

Q. Did you tell them what interest Mr. Stern had? A. Yes, sir; I mentioned that many a time.

Q. What did you say? A. "Well, you know, Mr. Stern is an officer of the company and I will have
10 to talk it over with him."

Q. Did you tell them what financial interest he had? A. I told them that before.

The Court: This is Bornstein?

Mr. Bilder: Yes, sir.

Q. Did you tell them what financial interest Mr. Stern had in the company? A. Yes, sir; I told Mr. Bornstein that when he was in the store, before
20 I met him in New York.

Q. What did you tell him? A. Well, Mr. Bornstein used to come in—

The Court: What did you tell him, please?

Witness: I told him that I personally cannot buy the building alone, that it is a company and that Mr. Stern owns shares in the business and that I have to consult him. If he is willing, we can come to terms.

Q. Which Mr. Bornstein was that conversation with? A. The doctor.
30

Q. Was that before the suit was instituted? A. Yes, sir.

Q. How long before, about? A. Oh, approximately—well, Mr. Block will have the business three years—about three and a half years ago.

Q. How many different times would you say that they tried to sell you this building? A. Five times—six times—five or six times.
40

Carl Worman—For Complainant—Direct.

Q. That is to say, both the Bornsteins and Fried?

A. Fried and Mr. Bornstein.

Q. Did you go to Mr. Myers' office before this lease was signed with Mr. Zodikow? A. I went to Mr. Myers' office with Mr. Zodikow after I spoke to Mr. Adrian Riker about purchasing the Crown Furniture Company. 10

Q. Now, what took place in Mr. Myers' office on the first occasion when you went there? A. Well, I explained to them that it wasn't advisable for me—that I didn't intend to buy this business and run it under Carl Worman's name; that it would hurt me in the wholesale business, and that I intended to form a corporation—not knowing the name then—and if they would be willing to have me do that I will go back to Adrian Riker and close the deal, which I did. We came back, and I told him I would let him know in a day or two what we will name the corporation, and he told me it was perfectly O.K. After the corporation was formed I went back— 20

Q. Who did you see? A. I went back to Mr. Myers' office and I spoke to Mr. Myers alone, and Mr. Myers told me—he says, "Why, Carl Worman, we looked you up; you are financially rated very good and we have a good tenant. Why worry about it?" I said, "I am not worried about it, but being I am running this business under the Lincoln Furniture Company now, why not have the lease transferred?" and he says, "That is all right. We are accepting the checks of the company and you are honest. Why worry about it?" I walked out. I thought that was satisfactory. 30

Q. Did you have any talk with Dr. Bornstein after that? A. Yes, sir. In fact, Dr. Bornstein came in after we put in the front—after we made 40

Carl Worman—For Complainant—Direct—Cross.

the alterations; he happened to walk in, and I also spoke to him about that. He says, "Why, that is all right."

The Court: What did you say to him?

10 Witness: I said, "Dr. Bornstein, don't you think that we ought to have this lease changed into the Lincoln Furniture Company?" He says, "No, the Lincoln Furniture Company probably isn't as good as you. You pay your rent, and I am satisfied with that, and why change it?" And I said, "All right."

20 Q. Did you continue to remain in this business until you sold your stock to Mr. Block? A. I sold some stock to Mr. Block about two years ago, but I remained in the business; I believe I retained 25 per cent. interest.

The Court: Until when?

Witness: Until approximately—well, the records will show that.

The Court: About a year ago?

Witness: About that.

30 Q. You still had a 25 per cent. interest in this company when this proceeding was instituted, didn't you? A. Yes, sir.

Q. And continued them some time after? A. Yes, sir.

Q. It was only this past year that Mr. Block bought that 25 per cent. interest from you? A. Yes, sir.

Cross-examination by Mr. Lane.

40 Q. The date that you had your talk with Mr. Myers and Mr. Bornstein over in New York was

Carl Worman—For Complainant—Direct.

the date you were served with notice of the cancellation of this lease, wasn't it? A. I personally was never served with any notice. I was informed that they pasted something on the window. I never saw it; didn't know anything about it.

Q. I am not talking about that. I am talking about the summons in the dispossess case. I show you a copy of what purports to be a notice directed to Carl Worman, dated April 21st, 1924, signed by the Bornsteins. A. Where was that sent to? 10

Q. It was not sent. A. It was served on me?

The Court: You answer the questions.

Q. I ask you to read that and tell me whether that does not refresh your recollection that you saw such a paper and that the original of that was served upon you on the 21st day of April—or handed to you on the 21st day of April in New York in front of the Furniture Exchange by Mr. Myers. 20

Mr. Bilder: May I ask Mr. Worman two questions that I omitted?

Further direct examination by Mr. Bilder.

Q. I meant to ask you, and forgot it, about daily papers. Did you advertise in the daily papers? A. The Lincoln Furniture Company? 30

Q. Yes. A. Yes, sir, I did.

Q. Does your name appear in those advertisements? A. No, sir.

Q. How frequently would you advertise? A. Approximately about twice a week.

Q. What would be the name? A. Lincoln Furniture Company. 40

Q. I show you a paper which appears to bear your signature and ask you whether that is your

Carl Worman—For Complainant—Cross.

signature? This is the assignment. A. Yes, sir, that is my signature.

Mr. Bilder: I offer it in evidence.
(Paper marked Exhibit C-11.)

10 *Further cross-examination by Mr. Lane.*

Q. May I ask why this assignment, Exhibit C-11, was not executed until the 29th day of February, 1924?

Mr. Bilder: I was going to put the attorney on the stand to explain that.

The Court: Do you know why?

Witness: No, I do not.

20 Q. You don't know why it was?

The Court: It is dated, you say?

Mr. Lane: February 29, 1924.

Mr. Bilder: Before the suit was instituted; the time Mr. Block purchased.

Q. Do you know? A. I do not.

Q. You don't know? It was about the time you sold your entire interest in this company, wasn't it? A. Yes, sir.

30 Q. Isn't it your recollection that this was signed as part of the transaction by which you sold your interest in this company to Mr. Block? A. Correct.

The Court: To perfect the record and to bring on this cause?

Mr. Lane: A little bit more than that.

The Court: It had the effect of bringing on this case?

40 Mr. Lane: It is highly significant in our case. We say we had no knowledge of the assignment until that date.

Carl Worman—For Complainant—Cross.

Q. Mr. Worman, having looked at that notice that I showed you— A. Yes, sir.

Q. —attached to the bill, does that refresh your recollection as to whether you were served with that or whether that was handed to you, or the original of it? A. No, it doesn't refresh my memory at all, because I was not served with any paper to my knowledge. 10

Q. How long did you and Mr. Myers and Mr. Bornstein talk outside of the Furniture Exchange in New York that day? A. Ten or fifteen minutes.

Q. What did they say they had come for? A. They wanted—Dr. Bornstein told me that he wanted to purchase some furniture, and I told him I couldn't do it in that furniture building, but if he comes downtown I can sell him some stuff, and he says he will let me know. 20

Q. Dr. Mr. Myers say anything? Did he bring his lawyer there to purchase furniture?

The Court: Which question are you asking?

Mr. Lane: The first one.

Q. Did Mr. Myers say anything? A. No, he didn't say anything.

Q. Did Mr. Bornstein say anything as to why he had brought his lawyer there to purchase furniture? A. The furniture might have been for Mr. Myers, for all I know. He didn't say that he wanted the furniture for himself. 30

Q. So that there was nothing said there to indicate whether the furniture he wanted to purchase was for Mr. Myers or Dr. Bornstein? A. No, there wasn't.

Q. That was the reason that he gave for coming over to see you; is that right? A. I suppose so. 40

Carl Worman—For Complainant—Cross.

And before they left they did mention about buying the building.

Q. What was said about buying the building?

A. If I wouldn't be interested in buying the building. I said no.

10 Q. Is that all that was said about it, just a casual conversation? A. That is about all.

Q. Just a casual conversation—or remarks, rather, with respect to this buying of the building, was simply casual. A. I suppose so.

Q. The main thing was to buy furniture, is that right, as you understood it? A. I can't—I am not a mindreader. I don't know. It didn't develop.

20 Q. From what was said? A. The furniture was mentioned first and the building was mentioned after—before we parted.

Q. Where was all this—where did this happen? A. Seventh Avenue and 34th.

Q. In front of what building? A. In front of the Furniture Exchange Building.

Q. What is the meaning of that? A. The manufacturers—out-of-town manufacturers exhibiting their furniture.

30 The Court: Having a convention?

Witness: No.

The Court: You say Dr. Bornstein wanted to get in there?

Witness: Yes, sir.

The Court: Is that what you told me?

Witness: Yes, sir. The man came and inquired about me.

The Court: Where?

Witness: And I came down because they couldn't get in the building.

40

The Court: Did you let them in?

Witness: I inquired whether I could and they wouldn't let me.

Carl Worman—For Complainant—Cross.

Q. Didn't they come there after having been to your office, or trying to find you somewhere else, because they were informed you were there and they wanted to see you, didn't they? A. I didn't ask them how they got there. They seemed to know I was there.

10

Q. They seemed to know you were there? A. Yes, sir.

Q. What purpose did you get from what they said for having come there to see you? A. No other purpose than to purchase furniture or talk about the building.

The Court: Is that the time you say the notice was served?

Mr. Lane: Yes, sir.

20

Q. They didn't hand you any notice to quit or revocation? A. No, sir. I don't remember that.

The Court: They did not?

Witness: No.

Q. You didn't have any talk about the lease, did you? A. No.

Q. Nothing was said about the lease at all? A. No.

30

Q. You did talk about the corporation, though? A. No.

Q. Did you talk about the interest of Mr. Stern? A. No; not at that time.

Q. I thought you said at that time you told them you could not—again told them, rather, that you could not dispose of the property yourself, you had to talk to Mr. Stern, who was an officer of the company. A. I think that this date is wrong. I see that this thing is dated 1924. I have forgotten the month and I do not think that was the time I

40

Carl Worman—For Complainant—Cross.

saw Dr. Bornstein and Mr. Myers. I thought it was prior to that that they saw me at the Furniture Exchange.

10 Q. Never mind that, what you thought or when you thought it was. At the time that the conversation took place, as I understood, whenever it was, as I understood your testimony before, you told them you couldn't do it yourself, you had to consult Mr. Stern, I think his name is, who was an officer of the company? A. In reference to purchasing the building?

Q. Yes. A. Yes, sir, I might have said that.

Q. Now, on April 21st, 1924—if that is the correct date— A. I don't think so.

20 Q. Wait. On April 21st, 1924, Mr. Stern didn't have any interest in this corporation at all, had he? A. No, none on that date. The records will show.

Q. And how long before that had it been since he had any interest? How long had his interest ceased? A. That is 1924. Must have been about a year prior.

30 Q. Now, you think it was not in April, 1924, that you saw Mr. Myers and Dr. Bornstein over in New York. When do you think it was? A. I think it was a year or a year and a half prior to that.

Q. That would make it in 1922; is that right? A. 1923.

Q. Or 1923. That would be three years ago, almost. Is that what you mean, that you had a talk with them over there? A. I think so.

Q. And how do you fix that date? A. How do I fix that date? Well, Mr. Block will own the business two years, and it was before that, I am positive.

40 Q. Have you ever seen a notice of which this is a copy, that I showed you a few moments ago?

Carl Worman—For Complainant—Cross.

A. No, sir, I don't remember reading it or seeing it.

Q. Never knew that such a notice was served?

A. Not on me.

The Court: That copy isn't on the record, is it? 10

Mr. Meyers: I think it is annexed to the bill of complaint.

The Court: The notice to which you have referred the witness is a copy of the one attached to the bill of complaint?

Mr. Lane: Yes, sir.

Mr. Bilder: It is in the body of the bill.

Q. Do you know how this notice got into your bill of complaint, or in the bill of complaint of the Lincoln Furniture Company? A. What notice? 20

Q. The notice that you have just read. A. No; I didn't read that notice. I don't know anything about it.

Q. Did you see this bill of complaint at the time it was prepared? A. I didn't see any bill of complaint at all.

Q. Did you talk with your counsel before it was prepared? A. No. I don't know. The bill of complaint that you just gave me to read, is that what you are referring to? 30

Q. I refer to paragraph 20 of the bill of complaint.

The Court: Tell him what the bill of complaint is. The complaint in this suit.

Witness: Yes, sir, your Honor, I didn't see it. I don't know anything about it.

The Court: Didn't he make an affidavit?

Mr. Lane: The affidavit doesn't refer to it. 40

Carl Worman—For Complainant—Cross.

Q. When did you take possession of this property? A. When did I take possession of what?

Q. Of the property.

The Court: Under the lease.

10 Q. When did you actually take physical possession of the property? A. I don't understand.

The Court: When did you go into the store on Market Street?

Witness: Well, the records will show the year. 1919, I believe, wasn't it?

Q. What month? A. I guess January.

20 Q. Well, don't you recollect when you purchased the assets of the Crown Furniture Company? A. December, 1919, I think.

Q. What day in December, or what month in December did you go in business?

The Court: What day in December.

Q. Or what day in December did you go in business, as a matter of fact, do you remember? A. I don't remember.

30 Q. How long had you been in business there before the incorporation of the Lincoln Furniture Company? A. We have the records.

Q. How long had you been in the business there? A. I never been in the business.

40 Q. Then will you tell me why it is that in the minutes the resolution reads, "Whereas, Carl Worman has offered to sell to this company the business now owned and conducted by him under the name of the Lincoln Furniture Company—" A. Well, Carl Worman purchased the Crown Furniture Company and made a corporation, so Carl Worman never owned any part of that business.

Carl Worman—For Complainant—Cross.

The Court: Lawyers' phraseology.

Mr. Lane: A little more than lawyers' phraseology. It fits in with other things.

Witness: I don't know what your object is. If you will tell me what you want to know——

10

The Court: Just answer the questions.

Q. When did you take over the assets of the Crown Furniture Company with respect to the time that you incorporated the Lincoln Furniture Company? A. When did I take over the assets of the Lincoln Furniture Company?

Q. When did you take over the assets of the Crown Furniture Company with respect to the time that you incorporated the Lincoln Furniture Company? A. The Lincoln Furniture Company was formed after I purchased the Crown Furniture Company; I believe a week may have elapsed.

20

Q. And during the time that week elapsed you were conducting business at that place with the Crown assets, weren't you? A. With the Crown assets, yes, sir.

Q. Yes. And you were conducting business for that week before the incorporation of the Lincoln Furniture Company as a corporation under the name of the Lincoln, weren't you? A. Yes, sir.

30

Q. And then you incorporated the company after a week, and you sold your business, or transferred your business which you were then conducting as the Lincoln Furniture Company to the corporation, didn't you? A. I did.

Q. So that that resolution which has been referred to expresses the real facts, doesn't it? A. Real facts of what?

Mr. Lane: I will withdraw the question.

40

Q. Now, as soon as you took over the Crown

Carl Worman—For Complainant—Cross.

assets and started business in that place you began to advertise in the newspapers, didn't you? A. The Lincoln Furniture Company did.

10 Q. You during the week that you were there before the incorporation of the Lincoln Furniture Company, you advertised, didn't you? A. The Lincoln Furniture Company didn't advertise until we were incorporated.

Q. I understand that. During the week that you were there before the incorporation of the Lincoln Furniture Company, doing business, you advertised, didn't you? A. I did not.

Q. Then there was no advertisement of the business during that week? A. During the five or six days.

20 The Court: Under what name did you conduct the business you did at that time?

Witness: Lincoln Furniture Company, immediately until we got the incorporation papers back from Albany.

30 Q. And you mean to say that during that week you didn't have advertisements—before the incorporation of the Lincoln Furniture Company you didn't have advertisements running in the newspapers, Lincoln Furniture Company? A. No, sir.

The Court: New York corporation?

Witness: New Jersey corporation.

Mr. Myers: He made a mistake.

Mr. Bilder: He doesn't know.

The Court: You said "until the papers came back from Albany." What did you mean by that?

40 Witness: Until the incorporation papers came back.

The Court: From where, Albany?

Carl Worman—For Complainant—Cross.

Witness: No. Until the company was incorporated.

The Court: What until the company was incorporated?

Witness: Lincoln Furniture Company.

The Court: What did you do up to that time? 10

Witness: Well, we were running that business.

The Court: Under what name?

Witness: Under the Lincoln Furniture Company.

The Court: Before you had this meeting to incorporate?

Witness: We had a meeting after I bought the Crown Furniture Company. We had a meeting right at the store there. 20

The Court: How soon?

Witness: Well, how soon? I believe a day after we made the lease.

Q. How soon after you bought from the Crown did you decide upon the name Lincoln Furniture Company? A. Approximately about two days later, and then we had the stock certificate and everything attended to, going to the lawyer and having the meeting, and so on and so forth. 30

Q. Do you remember in a conversation which you had with Mr. Myers in New York he asked you—and Mr. Bornstein—he asked you whether you had parted with your interest in the company? A. I do not remember that.

Q. Have you any recollection of your interest in the business being discussed at that time, or any time, with Mr. Myers and Mr. Bornstein in New York? A. No, only in reference to buying the building. 40

Carl Worman—For Complainant—Cross.

Q. Do you remember you told him that all you had done was to transfer your stock? A. I don't remember that.

10 Q. Do you remember there was a talk as to whether the lease had been assigned or whether you had simply transferred your stock in the company that was running the business? A. No.

Q. Nothing of that kind was said? A. Not to my knowledge.

Q. You didn't tell Mr. Myers at that time that there had been an assignment of the lease, did you? A. I did not.

Q. You didn't tell Mr. Myers or Dr. Bornstein at any time that there had been an assignment of the lease, did you? A. I did.

20 Q. When? A. After I bought the Crown Furniture Company and I formed the Lincoln Furniture Company Carl Worman assigned the lease to the Lincoln Furniture Company, and they knew that.

Q. When did you tell Mr. Myers about that? A. Approximately six months later or so, when I happened to be in his office.

30 Q. Now, just tell us about that. What it is all about, what took place, how you happened to be there, and some detail about it. A. I asked him whether it wasn't advisable to have the lease made under the Lincoln Furniture Company's name, so he said, "Well, why? You are paying the rent. We are satisfied to have you. The Lincoln Furniture Company may not be even as good as you are; you are all right. But"—he said he would talk it over with the boys—meaning the Bornstein brothers—and he would let me know.

40 Q. How did you come to ask him that at that time, six months later, as I understand? A. No other reason. As long as we were running the Lincoln Furniture Company, Inc., business I thought it would be better to have it that way.

Carl Worman—For Complainant—Cross.

Q. In your talk with Mr. Myers that you had before you got the option—before you got the lease, there was some talk about the formation of a corporation then? A. Yes, sir.

Q. And Mr. Myers and Mr. Bornstein said at that time, did they not, that they would not give a lease to a corporation? A. They didn't say that at all. 10

Q. What did they say? A. They said that I can do anything I want to; I can incorporate—which I told them I am going to do—and that I shouldn't worry about the incorporation of the corporation at all, that they will accept my checks—that they will accept the Lincoln Furniture Company's checks, it will be just as good as long as I am on it. That I am the responsible party, and they will feel all right about it. They told me—— 20

Q. If you were going to incorporate didn't you suggest to them that you were going to incorporate and you wanted a lease for the company—wasn't that suggested? A. Yes, sir, it was suggested.

Q. Then they wouldn't give it to you, would they? A. Well, they didn't. They drew a report—they couldn't draw a report on a new-formed corporation and they probably didn't think the new corporation would be worth while bothering them to give them a lease. 30

Q. I am not interested in that or what reasons may have induced them to do that. But didn't they tell you they would not give a lease to a corporation? A. No, they didn't; they said that they might.

The Court: What is your rating in Bradstreet's—what was it then?

Witness: Seventy-five to a hundred thousand dollars. 40

C. Worman—For Complainant—Cross—Redirect.

The Court: And Dun the same?

Witness: I think so; they run about the same.

10 Q. You have spoken about some conversation with a Mr. Fried. A. Yes, sir.

Q. Which Mr. Fried do you refer to? A. Well, I don't remember his first name. Mr. Fried. I guess it is Albert Fried.

Q. You think? A. I don't know what his first name is.

Q. Don't you know there are two Mr. Frieds, one is Louis and the other is Albert Fried? A. I only met one.

20 Q. Do you know which one you met? A. I guess it is Albert Fried.

Q. Do you know? A. Positive, no.

Q. Don't you know that it was Louis Fried, who is a real estate broker?

The Court: Is he here?

Mr. Lane: He is not just at the moment.

Q. Don't you know it was Louis Fried, who is a real estate broker? A. I don't know that, either.

30 Q. Didn't he tell you when he saw you that he was a real estate agent? A. No; I don't remember that.

Redirect examination by Mr. Bilder.

Q. Did you tell Dr. Bornstein in your conversation with him that the corporation was running the business? A. You mean in the beginning, you are referring to?

Q. After the incorporation. A. Yes, sir.

40 The Court: Isn't it perfectly obvious that they were running the business? Their let-

Carl Worman—For Complainant—Redirect.
Herman M. Zodikow—For Complainant—Direct.

ters show. And they dealt with them as running the business. There is no question about it. Can there be?

Mr. Lane: Yes. We will attempt to show your Honor that we didn't know the corporation was running that business until— 10

The Court: The Lincoln Furniture Company?

Mr. Lane: We knew the Lincoln Furniture Company was running it, yes.

Q. How long is it that you have been an exhibitor in this Furniture Building? A. Three years ago.

Q. Were you an exhibitor in the Furniture Building at the time you had the conversation with Mr. Myers and Dr. Bornstein? A. Yes, sir. 20

Q. You were. And what is the Furniture Building—what is the purpose of this Furniture Building? A. Exhibiting building.

Q. Do they do anything else besides exhibit furniture? A. They sell.

Q. How? A. They sell to the dealers.

Q. Is it a wholesale place? A. Manufacturers selling to dealers.

Q. And was it in connection with gaining access to this building to buy at wholesale that Myers and Bornstein came over? A. Yes, sir; I believe he wanted some desks or something. 30

HERMAN M. ZODIKOW recalled.

Direct examination by Mr. Bilder.

Q. I show you Exhibit 11 and ask you—which is the assignment—and ask you to explain the cir- 40

H. M. Zodikow—For Complt.—Direct—Cross.

10 cumstances under which that was executed. A. When Mr. Block purchased the interest in here, his attorneys, Katz & Sommerich, 120 Broadway, New York—while they had the record of the assignment of the lease which was made out to Mr. Worman on the 15th day of December, 1919, at the time the corporation was formed it seemed that this assignment could not be found, but it was my recollection that the assignment was drawn up and executed at the time, so the attorneys wanted to have the record of that assignment. That is how this was—come to be drawn.

Q. That was before any litigation occurred between the landlord and tenant, wasn't it? A. Yes, sir.

20 *Cross-examination by Mr. Lane.*

Q. Why didn't the resolution bear date—or why didn't the assignment that was drawn bear date as of the time when you thought the original assignment was executed? A. Well, the date is here, the 15th day of December.

Q. The date of that is the 29th of February? A. Yes, sir; that is correct—before any action was started in this case.

30 Q. The date of that assignment is the 29th day of February, 1924? A. That is correct. This is confirmatory of the assignment made on the 15th day of December, 1919.

Q. And that has reference, you think, to an actual paper writing? A. That has reference to this paper writing that was executed.

Harry Bloch—For Complainant—Direct.

HARRY BLOCK, sworn for complainant.

Direct examination by Mr. Bilder.

Q. You are president of this company? A. I am.

Q. You purchased Mr. Worman's stock? A. Not right off. I purchased—my associates and I purchased 75 per cent. of the stock of the Lincoln Furniture Company about March, 1924, which left 25 per cent. in the name of Mr. Worman, and 75 per cent. in the name of my associates and myself.

10

Q. What is the rating of the Lincoln Furniture Company to-day? A. I couldn't answer that question offhand because I never looked it up.

Q. How many customers has the Lincoln Furniture Company? A. To-day?

20

Q. Yes. A. Approximately fifteen hundred.

Q. And what is the nature of its business? A. Selling furniture on the installment plan.

Q. And what proportion of those accounts, in your judgment, would become worthless or impaired if the Lincoln Furniture Company were to discontinue business? A. Well, if you will allow me to answer it this way, if they were to discontinue business the account wouldn't be worth over 50 cents on the dollar, as a quitting business.

30

The Court: Wouldn't be worth 30 cents on the dollar?

Witness: I want to put it conservatively. I wouldn't buy it and pay 50 cents for it.

Q. Is the store located in an installment neighborhood?

The Court: We have had all that, and it isn't to be disputed. There has been no cross-examination on that subject whatever.

40

Harry Bloch—For Complainant—Direct—Cross.

Q. Did you have any conversation, Mr. Bloch, with Mr. Bornstein—with Dr. Bornstein? A. Yes, sir.

10 Q. When? A. Well, the exact date I cannot say, but some time after they served notice on the Lincoln Furniture Company, my manager at that time, Mr. Frankel, called me up.

Q. Never mind what Mr. Frankel said. Did Dr. Bornstein come to your office? A. He came to my office in New York City.

20 Q. What did he say to you? A. He asked me if the corporation wanted to buy the building. I said, "No; in the first place, the corporation isn't financially strong enough to buy the building, as it has all it can do to take care of the business that it was incorporated for, namely, the sale of furniture." Then he asked me why don't I buy it personally. I answer, "Why ask me to buy a building when the thing is in litigation?" Whereupon he answered, "That is an easy way to get rid of the litigation; buy the building and get through with it." And I answered that I wouldn't say anything on the subject at this time and we discussed different matters that did not concern the business, and then Mr. Bornstein left my office and I have not seen him to this time, and that is the first
30 time I had met the gentleman.

The Court: Is that the doctor?

Witness: The doctor.

Cross-examination by Mr. Lane.

Q. When you came to buy your interest in this business you had before you the lease, didn't you? A. My attorneys had all that, Katz & Sommerich.

40 Q. You knew the lease contained a provision against assignments without consent of the land-

Harry Bloch—For Complainant—Cross.

lord? A. I didn't go into that at all. I left everything—

The Court: Answer the question.

Witness: I didn't see the lease.

The Court: Do not argue. Just answer the question. Your answer is no. 10

Q. Did you know? No matter from where or whence you got the information. Did you know the lease contained an assignment, or rather a provision against assignment? A. I didn't know anything about it.

Q. Were you told about it by anybody? A. Can I answer that in my own way?

The Court: You can answer it yes or no, can't you? 20

Witness: Was I told what?

Q. Were you told about it? A. I was told the lease was all right by my attorneys, Katz & Sommerich.

Q. Were you told the lease contained a provision against assignment? A. That particular question didn't enter into it.

Q. Were you told it? A. No.

Q. Then you never heard of the condition in the lease against assignment until after this suit was started, is that right? A. I didn't know anything about that part of it. 30

Q. Did you hear from any source that this lease contained such a condition? A. I didn't know anything about it.

Q. Did you know that a confirmatory agreement had been made to assign this lease? A. I didn't know anything about it.

Q. Why didn't you know? A. We operate a chain of stores— 40

Harry Bloch—For Complainant—Cross.
Charles M. Myers—For Defendants—Direct.

Q. Why didn't you know? A. Because I left it to my attorneys. They passed on the lease and told me it was all right, so far as the business.

10 Q. And you didn't discuss the details with your attorneys at all? A. I didn't, not so far as the lease was concerned.

Q. So far as the lease was concerned? A. No, sir.

Q. You did not discuss the giving of the checks by the corporation during the time that they were in the business? A. How is that?

Q. (Question repeated). A. No.

Q. That wasn't talked about at all? A. No, sir.

COMPLAINANT RESTS.

20

CHARLES M. MYERS, sworn for defendant.

Direct examination by Mr. Lane.

Q. What is your profession? A. Lawyer.

Q. How long have you been practicing your profession? A. Thirty-three years.

Q. Do you know the Bornsteins? A. I do.

30 Q. At the time this matter first came up with respect to the giving of the lease or option by the Bornsteins to Worman, were you consulted? A. I was.

Q. Were you consulted at the time of the giving of the option? A. I was.

Q. Did you draw the option? A. I did.

40 Q. Who saw you? A. Mr. Worman saw me. I do not recollect whether the lawyer was present at that time or not, but my impression is that he was. I had forgotten his name until he appeared this morning.

Charles M. Myers—For Defendants—Direct.

Q. What was said? A. They wanted to rent the building providing they could make arrangements with Mr. Riker, representing the receiver of the Crown Furniture Company, so the option was given pending the settlement of the negotiations between Mr. Worman and Mr. Riker. 10

Q. Was Mr. Bornstein present at that time? A. Both Mr. Bornsteins were present whenever I met Mr. Worman.

Q. Was anything said at that time with respect to the incorporation of a company? A. Absolutely not by way of consent. There was something said about a corporation.

The Court: Answer the question, please, and let Mr. Lane conduct the examination. Go on, Mr. Lane. 20

Q. Was anything said with respect to a corporation to be incorporated?

The Court: He said there wasn't.

Witness: The subject of an incorporation was discussed at one interview, whether it was on the date of the making of the option or when the lease was being negotiated I am not sure, but it was before the execution of the lease. 30

Q. Upon that occasion, whenever it was, what was said? A. Mr. Worman, who had told us that he was engaged in the wholesale business with the backing of an aunt and a Mr. Schlary, I think it was—I had Mr. Worman's financial standing investigated and found he was financially responsible—and the lease was discussed with Mr. Worman as an individual and the negotiations were with Mr. Worman as an individual, and during the 40

Charles M. Myers—For Defendants—Direct.

10 course of the negotiations, which lasted over three or four days—at different times in the three or four days—Mr. Worman said he was engaged in the wholesale business in New York and did not want to conduct the business under the name of
20 Carl Worman and wanted to know whether there would be any objection on the part of the Bornsteins to his forming a corporation, and I told Mr. Worman in the presence of Dr. Bornstein and his brother that no consent would be given to the making of a lease to a corporation because of the unfortunate experiences that the Bornsteins had had with two previous corporations who had had leases on the property, and he then said that he would like to use a trade name. I told him—
20 because I was doing most of the talking for the Bornsteins—that there would be no objection to his using a trade name, in view of his statement that he didn't want to conduct it under the name of Carl Worman.

Q. Was there anything said at that time or any time prior to the execution of the lease that the checks would be made by the corporation for the first month's rent? A. No, sir.

30 Q. And that, therefore, it would be all right or words to that effect? A. Nothing was discussed as to how the rent was to be paid except by the maker of the lease.

40 Q. Did Mr. Zodihow and yourself enter into any conversation or discussion with respect to what the law in New York was as to the acceptance of rent from a corporation as to binding the parties to a recognition of the corporation or anything of that kind? A. There was no reference to the New York law in connection with the lease or in connection with any other subject relating to these negotiations.

Charles M. Myers—For Defendants—Direct.

Q. At any time was the subject of a corporation occupying the position of a tenant discussed? A. Except when Mr. Worman said that he would like—didn't want to run the business under his own name and he intended to form a corporation, and I told him if he intended to form a corporation the lease would not be made. 10

The Court: What objection did you have to the forming of a corporation as long as you had Worman as the lessee?

Witness: I didn't want that any question could arise.

The Court: What question could arise?

Witness: At that time, I thought some question might arise.

The Court: What did you think could arise, he having been bound as your tenant? 20

Witness: That the lessee might claim—I didn't want to enter into any litigation. He might claim that the taking of the rent from some other person might absolve him from responsibility and liability.

Q. Now, did you at any time after the making of this lease—did you have any conversation with the lawyer who has testified here this morning? 30

A. I never saw the gentleman except the time that the lease was under negotiation and perhaps on the date it was executed. I do not recall whether he was there that day or not.

Q. Did you have any conversation with Mr. Worman after that time with respect to the corporation's running this business? A. No, sir; Mr. Worman was never in my office after the lease was signed on any occasion when I saw him.

Q. Did you have a conversation with Mr. Worman after the execution of the lease, or with this 40

Charles M. Myers—For Defendants—Direct.

10 lawyer from New York, in which the statement was made that the corporation had been formed and they thought that the lease ought to be with the corporation and you used language equivalent to this, "Why worry about it?" You were accepting checks and "it was all right," or words to that effect? A. No such conversation ever took place. I didn't know the corporation was formed until I investigated myself in Trenton in the month of April, 1924.

20 Q. How did you come to investigate the situation in Trenton in April, 1924? A. Dr. Bornstein had informed me that he had understood that Mr. Worman had disposed of the furniture business, and I saw Mr. Worman on the 21st of April, 1924, and at that time he told me that he had sold practically all of his interest in the business to Mr. Harry Bloch; that he had retained some interest himself, and he then told me for the first time that he had formed a corporation under the name of Lincoln Furniture Company; and I had occasion to be in Trenton a few days later and made the notes which I have on my file, abstracting the record.

30 Q. On the 21st day of April, 1924, did you see Mr. Worman? A. I did.

Q. Where? A. In front of a building known as the Furniture Exchange Building in New York; I do not recall the street. I was under the impression it was on Fourth Avenue. He says it was Seventh Avenue.

Q. With whom? A. Dr. Bornstein was with me.

40 Q. How did you come to go there? A. After I had been told by Dr. Bornstein that he had heard about this change in the business, either Dr. Bornstein or I made an appointment by telephone with Mr. Worman, and he said, as it was reported to

Charles M. Myers—For Defendants—Direct.

me, that he was busy with that Furniture Exchange and we could see him over there; we went there together and we were declined admission to the floors upon which the Furniture Exchange was being held, but we telephoned up and Mr. Worman came downstairs and we talked in front of the building. It was about half-past one or quarter to two in the afternoon of April 21st, 1924. 10

Q. Tell me what was said as nearly as you can recollect. A. Well, as I just said, we told him what we had heard. He said, "Yes," it was true that he had sold most of his interest in the business to Mr. Harry Bloch, and that he was retaining some of the stock he had, and during the course of the conversation he told us of the fact that it was incorporated. At that time I asked him whether any assignment of the lease had ever been made and he said no to that, and threw it back at Dr. Bornstein that the Lincoln Furniture Company's name was always on the window and the doctor must have seen it, and I then served him with that notice which is attached to the District Court proceedings and copy of which is in the bill of complaint. We talked for probably fifteen or twenty minutes. Nothing was said about the sale of the building at that time or at any other time with Mr. Worman. 20 30

Q. Was anything said about your buying furniture? A. I had no intention of buying any furniture.

The Court: That is not the question.

Witness: Nothing was said; no, sir.

Q. What was said about the assignment of the lease at that time? Did he say he had assigned it or what? A. He said he had not. No assignment of the lease had been made. He said that 40

Chas. M. Myers—For Defendants—Direct—Cross.

Mr. Bloch's lawyers had advised Mr. Bloch that no assignment was necessary.

Q. What did he say when you served him with the notice? A. He took it and said he would turn it over to Mr. Bloch's attorneys.

10 Q. Did he say anything to the effect that you had been told before the lease was made that it was going to be made to a corporation or anything of that kind? A. No, sir; nothing was said.

Q. Have you anything from which you can definitely fix the date of April 21st as the day of that talk in New York? A. Yes, sir.

20 Q. Will you produce it? A. The date of the notice makes me certain, and I have in my diary of 1924, a memorandum which indicates that between 12.10 and 3 o'clock I was in New York with Bornstein. That was the day I was there because I made a memorandum when I came back.

Q. Did you know as a matter of fact at the time you served this notice on April 21st, 1924, on the Bornsteins that there had been an assignment of the lease? A. No, I didn't know anything about it.

30 Q. On Worman, I mean. A. No, sir. I know—I didn't know there had been an assignment of the lease.

Cross-examination by Mr. Bilder.

Q. On April 21st when you went to New York City you did not know there had been an assignment of the lease? A. No, sir.

Q. Before you went to New York you prepared a notice terminating the lease, though, didn't you? A. Yes, sir.

40 Q. Upon what grounds? A. Upon the ground that I had understood that Mr. Worman had sold

Charles M. Myers—For Defendants—Cross.

his interest in the business to Mr. Bloch, and I determined that a violation of the terms of the lease.

Q. Was the selling of the business a violation of the lease? A. No.

Q. What was— A. The fact that there had been some change which may have affected Mr. Bornstein's rights in the lease. I didn't know what it was. 10

Q. What was the theory on which you drew this notice? A. That they had—because they had violated this lease—the covenant against this lease as to assignment. I rather took it that if Mr. Bloch had purchased the business he had purchased whatever interest Mr. Worman had in the lease. I didn't know it. 20

Q. Before you knew it definitely you nevertheless drew up your notice to serve on Mr. Worman's counsel to create a forfeiture under the lease? A. If Mr. Worman had sold his interest in that business and I—knowing that he was the lessee in the lease—if he had sold it, I assumed, of course, that Mr. Bloch must have purchased something in connection with the lease.

Q. Now, didn't you as a matter of fact—hadn't your client consulted you prior to that in an effort to break this lease? A. No. 30

Q. It was for that— A. He told me that he had heard on the street that Mr. Bloch had purchased the Worman business, and in order to find out definitely I got in touch with Mr. Worman and it happened as I have just related it.

Q. Now, prior to that date, hadn't Dr. Bornstein consulted you and told you that he wanted to break this lease if he could? A. No.

Q. Well, what was the reason for the preparation of this notice to be served upon Mr. Worman 40

Charles M. Myers—For Defendants—Cross.

if Dr. Bornstein didn't want to break the lease?

A. I don't know what was in Dr. Bornstein's mind.

10 Q. Didn't he tell you? A. If Mr. Worman had violated the covenant of the lease it was my duty, representing the Bornsteins, to terminate it if it could legally be done.

Q. Didn't Dr. Bornstein discuss with you the advisability of terminating this lease? A. I don't know what you mean by the "advisability."

Q. Just what the word implies. A. No, he did not discuss the advisability of terminating it.

20 Q. Didn't he tell you that if he could get out of this lease, he could make a lease at a larger price—it was of enhanced value? A. He didn't tell me that. He didn't have to tell me that. I don't know and didn't know it then.

Q. What was the discussion between you? A. As to his ability to make a lease for a longer term or for larger rates, no.

Q. Didn't he tell you that this lease had a much greater value than he was realizing on it? A. He did not. I might say, if you will permit me, that I know enough about Market Street values to know that Mr. Worman had a very cheap lease.

30 Q. Didn't you also know that that was the reason why Bornstein wanted to break it? A. I don't know why Mr. Bornstein wanted to break it, except that Mr. Worman, in Dr. Bornstein's judgment and mine, had violated the covenant contained in the lease.

40 Q. And in what respect? A. By transferring his business, which I took it must carry with it the lease to Mr. Bloch. I thought I had a right to assume if Mr. Bloch, who I understood was engaged in large furniture enterprises, would not buy the business unless he had control of the lease.

Charles M. Myers—For Defendants—Cross.

Q. Had you before that time examined the records at Trenton and ascertained about this corporation? A. Not until after April 21st, if my recollection is correct. It might have been a few days—I am not sure.

Q. I show you a letter of April 3rd, 1924, and ask you whether that letter was dictated by you? 10

A. It might have been. I wouldn't be positive about it. I would say—just a moment. I can tell whether Mr. Bornstein was in my office on that day. If he was then I had something to do with the writing of it. Yes; both the Bornsteins were in my office on the 3rd of April, Thursday, so I assume thereby I had something to do with the writing of that letter.

Q. As a matter of fact, you dictated it, didn't you? A. I do not recall positively. If you want me to say I dictated it, I will say I dictated it. I don't think it makes any difference. 20

The Court: Answer the question.

Witness: All right. I dictated it.

Q. When you say—or this letter says, "The lease which we hold contains a provision that the lessee shall not relet or assign the lease without our written consent, which has not been asked for or given," what did you mean by that? A. Just what the letter says. 30

Q. Why did you call the attention of the Lincoln Furniture Company to that clause in the lease? A. Because I assumed that the Lincoln Furniture Company probably did not know it.

Q. Who did you think the Lincoln Furniture Company was on that day, April 3rd? You hadn't yet examined— A. I thought Carl Worman was the Lincoln Furniture Company. 40

Charles M. Myers—For Defendants—Cross.

Q. You thought Carl Worman was the Lincoln Furniture Company? You hadn't yet examined the records and found there was a corporation? A. No, not on the 3rd of April.

Q. You didn't know there was a corporation?
10 A. No.

Q. The letter is addressed to whom? A. Lincoln Furniture Company, and the reason for addressing it to the Lincoln Furniture Company was—

The Court: Answer the questions, please.

Q. And when you addressed this letter to the Lincoln Furniture Company and referred to a provision of the lease against assignment, it was to call their attention to the fact that they had no
20 right to possession, isn't that so? A. Yes, sir; and had no right to give a check—

Q. But you knew at that time, didn't you, that the Lincoln Furniture Company, a corporation, was in possession? A. Only so far as it indicates in the letter that the check was signed by the president and treasurer.

Q. Does the letter say it was signed by the president and treasurer? A. Well, it was signed differently than Mr. Bornstein had told me the checks
30 had been in the habit of being signed.

Q. How had you been told the checks were? A. Carl Worman.

Q. Is that all? A. I think that is what he told me at the time.

Q. Didn't he say they were signed Lincoln Furniture Company, Carl Worman, president? A. He told me when he showed me this check that the letters had been on the stamp of the Lincoln Furniture Company, yes.

40 Q. Hadn't he prior to that time told you that the checks had been signed Carl Worman, president? A. No, he did not.

Charles M. Myers—For Defendants—Cross.

Q. As a matter of fact, this check that you rejected was signed Manager & Bookkeeper, wasn't it? A. Yes, sir.

Q. There wasn't even president and treasurer on that check, was there? A. No.

Q. Then why, if that is so, Mr. Myers, why did you return this check to the Lincoln Furniture Company and call their attention to that provision of the lease, if you thought you were directing the letter to Carl Worman trading as the Lincoln Furniture Company? A. The check was made by the Lincoln Furniture Company and signed by the Manager & Bookkeeper. Dr. Bornstein told me that he had understood Mr. Harry Bloch had purchased Worman's interest in it, which give me the right to believe that he took whatever Worman had, and I wanted to notify the persons, whoever they were— whoever were then the present owners of th Lincoln Furniture Company that Mr. Worman, if he had turned over the business together with the lease, that it violated the covenant in the lease. 10 20

Q. But you didn't know that when you went to New York City to see Mr. Worman? A. As I said, I am not sure whether it was prior to the 21st or a few days after that I went to Trenton, but it was after the 3rd of April, 1924, that I went to Trenton. 30

Q. And found out there was a corporation? A. Yes, sir.

Q. Now, Mr. Myers— A. Mr. Worman had told me there was a corporation. I checked it up.

The Court: When had he told you?

Witness: On the 21st of April, 1924; the first I knew.

The Court: You said you were in Trenton before and found it out?

Witness: I said he also had told me that. 40

Charles M. Myers—For Defendants—Cross.

My information came to me on the 3rd of April and after the 3rd of April, 1924.

10 Q. This conversation which took place between you, Mr. Worman and Mr. Bornstein in which he told you that he wanted to form a corporation, was it you that suggested the trade name? A. No.

Q. Who did? A. Mr. Worman wanted to know if there would be any objection then for him to use a trade name. I told him there would be none.

Q. He told you, however, prior to that that he didn't want to have it known that he was operating this store? A. Yes, sir.

20 Q. Didn't you know that if he used a trade name he would have to file in the County Clerk's office a record showing who the Lincoln Furniture Company was? A. Yes, sir; I did. I also knew if he formed the Lincoln Furniture Company with himself as an officer—

The Court: Answer the question.

Witness: I did know that.

30 Q. You knew if he used the trade name he would have to file in the County Clerk's office a certificate Carl Worman trading as? A. If he obeyed the law he would, yes, sir.

Q. And then his purpose in concealing the fact that he was the real owner of that business would be frustrated, if that were done? A. That was up to him.

Q. Did you tell him that would happen? A. No. He was advised by the New York lawyer. I was not advising Mr. Worman.

40 The Court: Won't you answer the question? I don't want to caution you again.

Charles M. Myers—For Defts.—Cross—Redirect.

Q. Did you tell Mr. Worman on that occasion or his attorney that under the law of New Jersey he would be obliged to file such a certificate? A. I did not.

Redirect examination by Mr. Lane.

10

Q. Mr. Myers, when you examined this certificate of incorporation, did you find out who the incorporators were? A. I did.

Q. Who were they? A. May I refer to—Carl Worman, Julius Worman, Fred J. Stern, Samuel Goldstein.

Q. As a matter of fact, Mr. Myers, did you know, up until the filing of the bill of complaint in this case, that there had been an assignment of this lease as a matter of knowledge apart from suspicion? A. If you will tell me when the bill of complaint was filed.

20

The Court: July 18th, 1924.

Witness: I might have known it through conversations with Mr. Bilder, but not through any with Mr. Worman.

Q. Or with your client? A. Or with my client, no.

30

By the Court.

Q. You did not know April 21st, that they had assigned? A. No, sir; I didn't know it.

Q. That Worman had assigned the lease? A. No, sir; I didn't know.

Q. Or that he had relet or sublet the premises? A. No; I did not know. He told me he still owned interest in the business.

40

Charles M. Myers—For Defendants—Redirect.

10 Q. Why did you incorporate in this notice terminating the lease because of breach of covenant, "that you would not relet or underlet the premises or any part thereof or assign the lease without our written consent," if you did not know it, how did you come to incorporate it in the lease? A. In the notice?

Q. In the notice. A. Dr. Bornstein had told me that he had heard through some people in the furniture business that Mr. Worman had sold his business to Mr. Harry Bloch, and that was the reason, necessarily, as it then seemed to me, I assumed that Mr. Bloch would not have bought the business if he had not taken control of the lease.

20 Q. The notice reads, "You are hereby notified that your tenancy of store premises known and designated as No. 47 Market Street, Newark, New Jersey, is hereby terminated and at an end, you having committed a violation in violation of the covenant and agreement contained in said lease of the aforesaid demised premises that you would not relet or underlet the premises or any part of them or assign the lease without written consent." A. That notice is addressed to Mr. Carl Worman.

30 Q. I don't know. This is what you say was served on April 21st, prepared on that day or prior to that day? A. On Carl Worman, that he had violated a covenant of the lease.

Q. Before you knew that there had been any subletting or underletting? A. Oh.

Q. And you were not informed of it by Mr. Carl Worman on the 21st? A. I was not.

40 Q. He told you that it wasn't so? A. I felt, as I just said, I had a right to assume that if the business had been transferred that the lease must have been transferred with it.

Charles M. Myers—For Defts.—Redirect—Recross.
Dr. N. A. Bornstein—For Defendants—Direct.

Q. You took a chance on giving him the notice?
 A. Certainly, the notice did no harm.

Further cross-examination by Mr. Bilder.

Q. You say the notice didn't do any harm? You instituted suit at once in the District Court to dispossess? A. It did no harm if it was— 10

Q. You instituted your suit in the District Court immediately to dispossess, didn't you? A. I did when Mr. Worman told me on the 21st of April that he had actually transferred his interest in the business.

The Court: You, in fact, brought suit on the 2nd of July. 20

DR. NEWTON A. BORNSTEIN, sworn for defendants.

Direct examination by Mr. Lane.

Q. Dr. Bornstein, where do you live? A. 27 Johnson Avenue.

Q. And you are one of the owners of this property? A. I was at the time. 30

Q. When did you first see Mr. Worman and the lawyer—New York lawyer—with respect to making a lease of this property? A. I don't remember. I guess it was in December, 1919.

Q. Were you present at the time there was talk as to the giving of an option? A. I was.

Q. Can you tell me what was said at that time as nearly as you can recollect? A. Why, the talk was about obtaining the property of the Crown Furniture Company by Mr. Worman and transferring it 40

Dr. N. A. Bornstein—For Defendants—Direct.

to Mr. Worman who was to do business there instead of the Crown Furniture Company. We were to make a new lease with Worman on this new proposition.

10 Q. Was anything said at that time as to—by Mr. Worman or by his lawyer or by anybody with respect to the incorporation of a company? A. No—there was something said, yes, sir.

20 Q. What was said? A. Well, the same as was testified before, that Mr. Worman didn't want to do business under his own name in Newark, having a wholesale business in New York and selling the Newark people, and didn't want to double cross them that way, so he wished to do business under a trade name—something of that kind—and we told him that we wouldn't make a lease with a corpora-
tion.

Q. Was there at that time any talk about—

The Court: What further was said? Let the witness tell me.

30 Q. What else was said? Give us the whole conversation as nearly as you can recollect it. A. Well, there was a lot of conversation along the same line, that Mr. Worman didn't want to do business under his own name.

The Court: You have told us all, have you, that you remember?

Witness: All I remember; yes, sir. That was the gist of it.

40 Q. Was anything said about it being all right if he incorporated? That you would accept the checks and that would make it all right, anything of that kind? A. No; I don't recall anything about the checks.

Dr. N. A. Bornstein—For Defendants—Direct.

Q. Did you have a conversation with Mr. Worman and Mr. Myers and this lawyer from New York before the lease or at the time the lease was executed—negotiations for the lease? A. Why, yes, there were several meetings on that question.

Q. Now, in any of those conversations, was anything said that the acceptance of the checks from the corporation would make it all right, that the corporation could then be considered the tenant, or anything of that kind? A. No, sir. 10

Q. Was there any talk about six months, I think it was, after the lease was executed when Mr. Worman said to you that the business had been transferred to a corporation and that it would be advisable to have the lease changed, and you said it would be all right, that you were accepting checks or words to that effect? A. No. 20

Q. Was there any such conversation? A. No, sir.

Q. Did you ever know until April 21st, 1924, that there was a corporation actually involved in this transaction at all? A. I did not.

Q. Did you ever know that there had been any assignment of the lease to a corporation or to anybody else? A. No, I did not.

Q. When was it that you first began to suspect that Mr. Worman may have parted with his interest in that lease? A. Well, I don't remember just how the information came to me, but it came to me from some source and then the checks were signed differently after that. Mr. Worman's name didn't appear on it and I took the check to Mr. Myers. I think that was the first time. And we made inquiries and we found that the business had been transferred. 30

Q. Up to that time, had you ever been told by anybody that there had been an assignment of the 40

Dr. N. A. Bornstein—For Defendants—Direct.

lease or that anyone had any interest in that business except Mr. Worman? A. I had not, no.

Q. Do you remember going to New York with Mr. Myers on the 21st of April? A. I do.

10 Q. Will you tell me who you met there and what took place on that day? A. We made an appointment to meet with Mr. Worman there because he couldn't see us at his place of business here and we went over and he was called down from the place of business and we spoke to him, asked him if this lease—if he had assigned the lease to someone else—
20 we heard—there were rumors that he had sold out and assigned the lease to someone else and we objected to that and Mr. Myers served him with notice, after waiting some time, just before we left him.

Q. When you asked him whether he had assigned the lease, what did he say? A. He—I don't recall what he said about assigning the lease, but I know he said he sold his interest—most of his interest to Mr. Bloch.

Q. During the course of your talks with Mr. Worman, did he ever—did you have any talks with him with respect to selling the building? A. I believe I did at one time ask him why he didn't buy the
30 building. I told him he was the logical owner—he ought to be the owner of the buildings, having the business there, that is about all. It didn't get far enough to name any price or anything of that kind. He wasn't interested, so I dropped it.

Q. When you talked with him at any time with respect to the sale of this business, did he ever tell you that he wasn't—that he couldn't speak for himself—speak for the company or for the corporation, and Stern or someone else was interested and had
40 to be consulted? A. No; I never knew Mr. Stern or anyone else was interested in the business.

Dr. N. A. Bornstein—For Defts.—Direct—Cross.

Q. Did he at any time during the course of his talks ever tell you that the business would be run by the corporation—that a corporation was interested in the matter at all? A. No, he did not.

Q. Did you have a talk with him as to the institution of this suit, or talks with Mr. Bloch, rather, after the institution of this suit? A. Yes, sir; I talked to Mr. Bloch. 10

Q. When? A. I do not recall the date.

Q. What was said? A. I asked Mr. Bloch if he didn't want to buy the building. That is what I went to see him for. I made an appointment with him and went to see him about that.

Q. In this talk of April 21st, 1924, was anything said about your purchasing furniture or Mr. Myers purchasing furniture or anything of that kind? A. Not a word. 20

Q. Was the talk confined to one subject? A. Yes, sir.

Q. And what was the subject? A. The subject was as to whether the business had been sold or not, and we didn't get any information on that point. Oh, yes, we did; he told us that he had sold most of his interest to Mr. Bloch, that he still retained part of the stock of the company. 30

Cross-examination by Mr. Bilder.

Q. He told you in that conversation that he sold most of his stock to Mr. Bloch and that he had retained a part of the stock himself? A. Yes, sir.

Q. Well, I thought you said in your direct examination that you didn't know anything about the corporation until after April 21st? A. Well, that is what he told me.

Q. As a matter of fact— A. I am telling you what he told me. 40

Dr. N. A. Bornstein—For Defendants—Cross.

Q. As a matter of fact, you knew prior to this conversation that this was a corporation carrying on this business? A. No, sir.

Q. You did not? A. No.

10 Q. You were getting these checks from time to time, weren't you? A. Yes, sir.

Q. You saw the name president and treasurer on them, didn't you? A. Didn't pay any particular attention to it.

The Court: Didn't you see it? He didn't ask you whether you paid particular attention? Answer the question.

Witness: I did.

20 Q. Didn't that indicate to your mind— A. No, not under those circumstances.

Q. Under what circumstances? A. That Mr. Worman said that he wasn't going to trade under his own name and that he would use a trade name or something of that kind. I didn't know just what legal steps he had to take to make it so.

Q. Do you own stock in any corporation? A. Yes, sir.

30 Q. Are you an officer of any corporation? A. I think I am.

Q. What officer are you? A. I am secretary.

Q. Of what company? A. Of the Free Dental Clinical Association.

Q. That is a corporation? A. I presume it is.

Q. And you are the secretary and it has a president and it has a treasurer, that is right, is it? A. Yes, sir.

By the Court.

40 Q. Do you know of any institution at all that is not a corporation that has a president and secre-

Dr. N. A. Bornstein—For Defendants—Cross.

tary? A. Yes, sir; we have clubs. They are not necessarily incorporated.

Q. How do you know that? A. Because I saw and have the constitution and by-laws of those clubs.

Q. You are familiar with those things, are you? 10
A. They weren't incorporated.

Q. You are also familiar with corporations, aren't you? You know there are things of that kind and you know corporations have presidents? A. Yes, sir.

Q. Do you know of any institution—any body of men, incorporated or not incorporated that has a president? A. Incorporated or not incorporated? I know both kinds.

Q. Associations—association of men in business, whether incorporated or unincorporated that have no president? A. Well, I don't know if business organizations or not. 20

Q. I say, do you know of any association of men engaged in business? A. No; I do not.

Q. Whether incorporated or unincorporated that have presidents and that have not presidents? A. Have not presidents?

Q. That have presidents; you know that? A. Yes, sir. 30

Q. And have not presidents? A. Yes, sir.

Q. Do you know of any incorporation of business men—any association of business men engaged in business that haven't presidents? A. No; I don't know of any business association.

Q. Well, this furniture company you knew they did business? A. Yes, sir.

Q. You saw the president and secretary on the check. Didn't that suggest itself to you that it was a corporation? A. I never gave it any thought. 40

Dr. N. A. Bornstein—For Defendants—Cross.

Further cross-examination.

10 Q. I understood you to say that you didn't know a Mr. Stern in the business at all—didn't know any Mr. Stern? A. Never knew of him at all.

Q. And you felt that Worman's name was on the check and that sort of gave you some comfort, didn't it? Did you ever get any checks without Mr. Worman's name on them? A. I do not recall. I simply glanced at the check after it came after the first several months and then placed it on to the bank.

Q. You were interested in the amount? A. Yes, sir; whether they were good or not.

20 Q. I show you three checks, one dated November 5th, 1921, one dated November 23rd, 1921, and one dated February 2nd, 1921. These checks bear the name of Mr. Stern, do they not? A. They certainly do.

Q. And they haven't Mr. Worman's name on them, have they? A. His name isn't on them.

Q. You got those checks, did you not? A. Yes, sir. That is the first time I saw Mr. Stern's name.

Q. They didn't raise your suspicion about the thing at all? A. Not at all.

30 Q. Well, as a matter of fact, doctor, at the time when—in April, 1924—about that time—property in upper Market Street began to boom, didn't it? A. I don't know whether it did or not.

Q. Well, now you were interested in that property at that time, weren't you? A. We were interested in it at that time and a good many years before.

46 Q. And for a number of years before that property was a drudge on your hands, wasn't it? A. Well, it was—

Dr. N. A. Bornstein—For Defendants—Cross.

Q. Give you a lot of trouble? A. No; it was carrying itself.

Q. Did you ever tell anybody that you would love to get rid of it, that it was a drudge on your hands? A. I may have. I may have said I was willing to sell it.

10

Q. And this lease that was made with you by Mr. Worman, at the time, which gave you an increase of \$2,000, was a mighty good lease for you, wasn't it? It gave you an immediate increase of \$2,000 a year instead of waiting until the expiration of that Crown lease. It was a good lease for you, wasn't it? A. Not necessarily.

The Court: This property is near Washington Street, is it?

Witness: No; near Plane—above Plane.

20

The Court: Property has gone up pretty well.

Witness: Well, there have always been offers on it.

The Court: Answer the question. You know the property has gone up pretty well in that neighborhood.

Witness: Since 1924.

The Court: No. From 1921 to 1924, it really came into the Market at a big price.

30

Witness: I don't think so. I don't think there were any offers at that time—that is, offers at that time that were tempting. We have had plenty of offers on it all through these years. There wasn't any offer that came up to what our estimate of it was.

Further cross-examination.

Q. That was a good lease to you at the time it was made? A. Not particularly.

40

Dr. N. A. Bornstein—For Defts.—Cross—Redirect.

Q. Gave you an increase of \$2,000? A. Not particularly.

Q. Not particularly? A. No; it wasn't up to our expectations.

10 Q. Didn't it give you immediately \$2,000 a year instead of waiting four years—taking four years at \$6,000? A. Yes; it was better than what we had had.

Q. If you had been able to get out of this lease in April, 1924, you could have rented the store at a much higher rate, couldn't you? A. Probably.

Q. Well, you know that, don't you? A. Probably.

Q. And you know it to be so? A. In April, 1924?

20 Q. Yes; when you were trying to break this lease. A. Well, I had no offers—I had no definite way of knowing whether it would be or not.

Q. If rents had gone down in that neighborhood, you would have tried to break it? I mean you would have been glad to have this—I mean if the rent had gone down in that neighborhood? A. If the rent had gone down?

Q. Yes. You wouldn't have been anxious to break the lease then because there was an assignment. A. There was plenty of property to be had around that neighborhood.

30 Q. Won't you answer my question? A. Why, I suppose we would be willing to let it ride or make some new arrangements.

Redirect examination by Mr. Lane.

Q. You understood, did you not, from the lease, that the lease was to be cancelled at the option of the landlord? A. What was that?

40 Q. That the lease was to be cancelled or forfeited at the option of the landlord? A. Yes, sir.

*Dr. N. A. Bornstein—For Defendants—Redirect.
Charles M. Myers—For Defendants—Recalled.*

Q. And you don't know what, I assume, would have influenced you if the rent had gone down—there might have been some other influences, I suppose, that might have induced you——

The Court: He would have held on to it like grim death. 10

Q. Mr. Bornstein, do you recollect now ever having seen the name of Stern on these checks?

The Court: Never noticed it until now, is that right?

Witness: That is right.

Q. Do you know that there are associations who are actually engaged, or who were actually engaged in business, who had by name president and secretary and yet not incorporated? A. It seems to me I have some recollection of some such a concern, but I am not clear on the subject. 20

Q. Do you happen to know that there is a statute specifically providing for suits against such associations engaged in business? A. No, I do not.

Q. You don't know that, and you don't happen to know how Chinese restaurants are run with presidents and secretaries? A. No, I do not. 30

Q. And yet not incorporated? That is all.

CHARLES M. MYERS, recalled for further direct examination.

By Mr. Lane.

Q. Mr. Myers, have you located any memorandum from which you can determine definitely now when 40

Charles M. Myers—For Defendants—Recalled.
Philip Bornstein—For Defendants—Direct.

it was that you first knew that this Lincoln Furniture Company was a corporation? A. On Thursday, the 17th of April, 1924.

10 Q. How did you ascertain it at that time? A. Because I was in Trenton that day on business. I said I wasn't sure whether it was before or after the 21st. It is the 17th. I found there——

The Court: That is all.

PHILIP BORNSTEIN, sworn for defendant.

Direct examination by Mr. Lane.

20

Q. Where do you live? A. 77 Goldsmith Avenue.

Q. What is your business? A. Why, at present I am in the real estate business.

Q. Were you one of the owners of this building that is involved in this controversy? A. Yes, sir.

Q. Were you present at the time that there was some talk between Mr. Zodikow and Mr. Myers with reference to the giving of an option? A. I think I was there, sir.

30 Q. Do you remember what took place at that talk? A. Well, we simply on that day, when the option was drawn, we simply agreed on the terms, that is, rental and time.

Q. Was anything said at that time with respect to the intent of Mr. Worman to have this business operated by a corporation or anything of that kind that you recollect? A. Not at that time.

40 Q. Now, do you remember any talk with the New York lawyer and Mr. Worman and Mr. Myers in the negotiating for the lease after this option was given? A. Yes, sir. Right before the lease was

Philip Bornstein—For Defendants—Direct.

consummated Mr. Myers said we had trouble enough with the two previous tenants and we had decided, my brother and I, we would not take another corporation on a lease—we would not give another corporation a lease.

Q. Now, what was said with respect to the corporation, do you remember? A. Mr. Worman, just as has been testified, said he didn't want to do business under his own name, if we would have any objection to his using a trade name. We said we wouldn't, but no corporation any more. 10

Q. Was anything said during any of those talks as to it being all right that the corporation—the lease would be made to the individual but the corporation would pay the rent so that the lease would be given anyhow in favor of the corporation, or anything of that kind? A. There was nothing said how the rent was going to be paid. 20

Q. After this lease was made, do you remember any time when Mr. Worman came to you—(withdrawn). Was there any time that Mr. Worman came to you and said he had formed his corporation and he thought it advisable that there should be a lease made to the corporation, that you said it would be all right because you accepted the checks or anything of that kind? A. I never met Mr. Worman after we left Mr. Myers' office. 30

The Court: He said he met the doctor, not this gentleman.

Q. Did you have any conversation with Mr. Worman after the lease was signed? A. I had not. I did not see him any more after that.

Q. Did you know that this business was being operated by a corporation? A. No, I did not.

Q. You were not sure of it? A. I was not sure. 40

Philip Bornstein—For Defendants—Direct—Cross.

Q. Did you know that the lease had been assigned or had you any knowledge of any assignment of any lease to anybody? A. No; I never knew there was any assignment of any lease. As far as I knew, Worman was on the lease. That is all I
10 knew.

Q. Do you know now, as a matter of fact, except from what you have discovered in this suit, that there has been any assignment of this lease? A. Well, after we gave it to Mr. Myers to investigate, then we found there was an assignment of the lease.

Q. Well, before that time, had you any knowledge? A. No, no knowledge.

Cross-examination by Mr. Bilder.

20 Q. Mr. Bornstein, did you bank any of these checks yourself? A. When my brother was in Europe.

Q. That was about three months in a year? A. About that.

Q. And the checks would come to you and you would bank them? A. That is right.

Q. All these checks you banked were Lincoln Furniture Company, Worman, president. A. That
30 is all—Worman, president, yes, sir.

Q. Are you connected with any corporation? A. I have been, yes, sir.

Q. What officer have you been in a corporation? A. Oh, various, generally secretary.

Q. Business corporations? A. I was in the theatrical business—theatre. We had a chain of theatres in which I was connected.

Q. And you operated as a corporation? A. Yes, sir.

40 Q. What was your position? A. Secretary.

Q. It had a president? A. Yes, sir.

Philip Bornstein—For Defendants—Cross.

Q. You are familiar with the fact that there are corporations? A. Oh, sure.

Q. And that men frequently organize corporations to carry on business? A. Yes, sir.

Q. And when they have those corporations, they usually have officers like president and secretary. 10
As a matter of fact, you don't know of any corporation that hasn't a president and secretary, do you? A. No.

Q. Another thing I wanted to ask you, Mr. Bornstein. You say you are in the real estate business? A. I am since the first of the year.

Q. Isn't it a fact, Mr. Bornstein, that in 1924, when you decided that you wanted to break this lease that there had been a rise in the valuation in this neighborhood and it would have been very 20
advantageous to you to have broken the lease? A. I don't know, in 1924. In 1924? I don't remember.

Q. You don't remember?

The Court: Too far back?

Witness: No; it ain't too far back, but I wasn't interested in real estate.

Q. Why did you as one of the owners of this property want to break the lease? A. When you make an agreement with a man and he— 30

The Court: Because it would benefit him. If it is going to hurt him he wouldn't do it, it isn't likely.

Mr. Lane: It is his option.

The Court: He might bite off his own nose.

Mr. Lane: Be very foolish for him to do it.

N. A. Bornstein—For Defts.—Recalled—Direct.

DR. NEWTON A. BORNSTEIN, recalled for further direct examination.

By Mr. Lane.

10 Q. Do you remember an occasion when Mr. Wor-
man came to you and asked you with respect to some
alterations that were to be made in this property?

A. No.

Q. Don't you remember that occasion at all? A.
I do not.

20 Mr. Lane: We are through, with the ex-
ception of one witness, Mr. Albert Fried,
who had no connection with this matter. Mr.
Louis Fried did have a conversation with re-
spect to the property. He is a real estate
man who has no connection with these people.

The Court: Is it agreed if he took the
stand he would deny the conversation?

Mr. Lane: He would testify that he had
no conversation of any kind, nature or de-
scription.

The Court: Will you agree that he would
so testify if produced?

Mr. Bilder: I will agree to that, yes, sir.

30

TESTIMONY CLOSED.

40

Exhibit C-1.

THIS INDENTURE, made this Eighth day of December, One Thousand Nine Hundred and Nineteen, between PHILIP BORNSTEIN and NEWTON A. BORNSTEIN, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part, and CARL WORMAN, of the City of New York, in the County of New York and State of New York, party of the second part: 10

WITNESSETH, that the said party of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and in behalf of the party of the second part, to be paid, kept and performed, have hereby let and rented to the said party of the second part, and the said party of the second part has hereby hired and taken from the said party of the first part: 20

All those certain store premises known and designated as number 47 Market Street, in the City of Newark, Essex County, New Jersey.

TO HAVE AND TO HOLD the said above mentioned and described premises with the appurtenances unto the said party of the second part, for and during and until the full end and term of ten years from the first day of January, Nineteen Hundred and Twenty, then next ensuing, yielding and paying therefor unto the said party of the first part, their heirs or assigns, the yearly rent of Eight Thousand Dollars, said rent to be payable monthly in advance; that is, the sum of six hundred and sixty six dollars and sixty six cents on the first day of each and every month during the term hereby granted. 30

PROVIDED ALWAYS, however, that if the rent above reserved, or any part thereof, shall be behind or 40

Complainant's Exhibit C-1.

10 unpaid on any day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants herein contained on the part and behalf of the said party of the second part, to be paid, kept and performed, then and from thenceforth, it shall and may be lawful for the said party of the first part, their heirs or assigns, into and upon the said demised premises and every part thereof wholly to re-enter, and the same to have again, re-possess and enjoy, as in their first and former estate, anything hereinbefore contained to the contrary thereof in any wise notwithstanding, but such re-entry shall not cancel the obligation of the party of the second part to pay the rent heretofore provided.

20 And the said party of the second part covenants and agrees to and with the said party of the first part, their heirs or assigns, by these presents, that the said party of the second part shall and will yearly and every year during the term hereby granted, or any renewal thereof, well and truly pay or cause to be paid unto the said party of the first part, their heirs or assigns, the said yearly rent herein reserved on the days and in the manner limited and prescribed for the payment thereof, without any deduction, fraud, default or other delay, according to the true intent and meaning of these presents, and that on the last day of the said term or other sooner determination of the estate hereby granted, the said party of the second part shall and will peaceably and quietly, leave, surrender and yield up to the said party of the first part, their heirs or assigns, all and singular the said demised premises.

30

40 And it is further agreed that if the said rent or any part thereof shall be unpaid on any day whereon the same ought to be paid as aforesaid, or if the

Complainant's Exhibit C-1.

said premises shall be abandoned or become vacant or be deserted during the said term, or any renewal thereof, or if default shall be made in any of the covenants herein contained on the part of the said party of the second part, it shall not be the duty of the party of the first part to re-let the same in diminution of the damages of the party of the second part, but the said party of the second part hereby authorizes the said party of the first part, their heirs or assigns, agents or attorney, to re-enter the same at their option, and to re-let them as agent of the said party of the second part in the name of the party of the second part, or of the said party of the first part, applying the rent so received, first to the payment of the expenses of re-entering, and then to the payment of the rent reserved by this lease, and the balance, if any, to pay over to the said party of the second part, and the said party of the second part hereby covenants and agrees to pay to the said party of the first part, their heirs or assigns, any deficiency between the amount received on such re-letting and the rent reserved by this lease.

And it is further agreed that in case of re-entry by the said party of the first part, and whether they shall re-let as agent of the said party of the second part, or not, that the said party of the second part shall be liable to the said party of the first part for a sum equal to the rent hereby reserved, and payable at the same periods, less any sum that shall be received by the said party of the second part for rent of the said premises for said periods.

And the said party of the second part, covenants and agrees that he will not use or permit the said premises or any part thereof to be used for any other purpose than a store for the sale of furniture and carpets, without the written consent of the

Complainant's Exhibit C-1.

party of the first part, their heirs or assigns, under penalty of forfeiture and damages.

10 The party of the second part does further promise and agree that he will not re-let or under-let the said premises or any part thereof nor assign this lease, without the written consent of the party of the first part, their heirs or assigns, under penalty of forfeiture and damages.

20 And the said party of the second part hereby agrees that the said party of the first part, their heirs and assigns, may enter into and upon the said premises at reasonable hours in the daytime to examine the same, and at any time during the last six months of the term hereby granted or any renewal thereof, to exhibit them from ten o'clock in the morning until five o'clock in the afternoon, Sundays and holidays excepted, to any person or persons, and to put up notices "To Let" or "For Sale" on the outside wall thereof.

30 And the said party of the second part further agrees to indemnify and save harmless the said party of the first part, their heirs or assigns, from any loss or damage to any person or persons using or being upon said premises or any part thereof, during the term of this lease or any renewal thereof.

And the said party of the second part further agrees that he will make any and all repairs to said premises during the term of this lease or any renewal thereof, and that the said party of the first part are not to be responsible or chargeable for any repairs to said premises.

40 And it is further agreed that in the event that the said party of the second part makes an assignment for the benefit of his creditors or shall be adjudicated a bankrupt, or if a receiver, assignee or trustee shall be appointed for his property or

Complainant's Exhibit C-1.

estate, then the party of the first part may, at their option terminate this lease by giving thirty days notice to the party of the second part, or to his assignee, receiver or trustee, or other officer of the court in charge of his assets and affairs, and upon the expiration of said thirty day period, this lease shall thereupon become and be null and void. 10

And the said party of the second part covenants and agrees that no alterations, additions or improvements shall be made to said premises without the written consent and approval of the said party of the first part, their heirs or assigns, and all such alterations, additions or improvements shall be made at the expense of the said party of the second part, and in a workmanlike manner, and in accordance with the ordinances of the City, or any department thereof, and with the laws of the State of New Jersey, and the rules of the Board of Underwriters, and at the expiration of the said term, or any termination of this lease, shall remain upon, be surrendered with said premises as a part thereof, and shall belong to and become the immediate property of the said party of the first part. 20

And it is further understood and agreed that if any alterations are required by any department of the City of Newark or of the State of New Jersey, said alterations shall be made at the expense of the party of the second part. 30

And it is further agreed between the parties hereto that in case of the total destruction of the premises by fire during the first two years of this lease, this lease shall not be thereby terminated, but the said party of the first part shall use all due and reasonable diligence in rebuilding said building, but in case of the partial destruction of said premises by fire at any time during the term of this lease or any renewal thereof, the said party of the 40

Complainant's Exhibit C-1.

first part shall use all due and reasonable diligence in repairing said building, the rent to abate while the premises remain untenable, either because of the total or partial destruction of said building.

10 And it is further agreed that the said party of the second part will insure and keep insured the plate glass on said premises for its full value and will pay all premiums for such insurance.

And it is further understood and agreed that said party of the second part in addition to the yearly rent to be paid as aforesaid, shall pay all water rents and charges for the use of water on said premises during the term of this lease or any renewal thereof.

20 And the said party of the first part, for themselves, their heirs and assigns, do covenant and agree by these presents that the said party of the second part paying the said rent hereby reserved and performing the covenants and agreements herein contained on his part, the said party of the second part shall and may at all times during the said term hereby granted, or any renewal thereof, peaceably and quietly have, hold and enjoy the said demised premises without any let, suit, trouble or hindrance of or from the said party of the first
30 part, their heirs or assigns, or any other person or persons whomsoever.

And it is further expressly agreed that the party of the second part shall have the privilege, at his option, of a further period of five years, from the first day of January, Nineteen Hundred and Thirty, at a yearly rental that will net the party of the first part five and one half per cent on the then appraised value of said property, which valuation shall be fixed by three disinterested appraisers, one
40 to be chosen by each of the parties hereto and the two appraisers shall select the third, but it is hereby

Complainant's Exhibit C-1.

understood and agreed that the said yearly rental shall not be less than the sum of \$10,000, which renewal shall be upon the same agreements and conditions as contained herein, and said rental when fixed shall be payable monthly in advance on the first day of each and every month, beginning with January 1, 1930, provided, that the said party of the second part shall give to the said party of the first part a notice in writing on or before the 1st day of January, 1929, that he will exercise said option. 10

And it is further agreed that this instrument shall not be a lien against the said premises in respect to any mortgage or mortgages that may hereafter be placed against said premises, provided that the total principal due on all such mortgages, together with any mortgages now on said premises, shall not exceed the sum of Seventy Thousand Dollars, and that the recording of mortgage or mortgages not exceeding in the total, together with existing mortgages, said Seventy Thousand Dollars shall have preference and be superior and prior in lien to this lease, irrespective of the date of recording, and the said party of the second part hereby agrees to execute any such instrument which may be deemed necessary or proper to further effect subordination of this lease to any such mortgage or mortgages. 20 30

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals the day and year first above written. Executed in duplicate.

PHILIP BORNSTEIN (Seal)

NEWTON A. BORNSTEIN (Seal)

CARL WORMAN (Seal)

40

Signed, sealed and delivered
in the presence of

CHARLES M. MYERS.

Exhibit C-2.*(Check)*

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 115 Newark, N. J., 1/5 1919.

10 Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred and sixty-six and 66/100 Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To the

MERCHANTS NATIONAL BANK
55-7 Newark, N. J.

(Stub on left-hand side of check)

20

This check is issued in full payment of
items herewith. Endorsement hereon,
by payee or agent is acknowledgment
and receipt in full thereof. No other
receipt is required. If not correct,
return at once with explanation.

Rent for January.

(Endorsed on back)

30

P. & N. Bornstein
Union National Bank

5

1920 7 Jan
Newark, N. J.

Perforated stamp "P A I D."

40

Exhibit C-3.

THIS IS TO CERTIFY, that the undersigned citizens of the United States of America, do hereby associate themselves into a corporation, under and by virtue of the provisions of an act of Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names. 10

FIRST: The name of the corporation is LINCOLN FURNITURE CO.

SECOND: The location of the principal office in this State is at No. 47 Market Street, in the City of Newark, County of Essex. 20

The name of the statutory agent therein and in charge thereof, upon process against this corporation may be served is SAMUEL GOLDSTEIN.

THIRD: The objects for which this corporation is formed are:

(a) To carry on all or any of the businesses of manufacturers, merchants, wholesale and retail, importers, exporters, and generally without limitation as to class of products and merchandise but especially of furniture of every class and description. 30

(b) To manufacture, purchase or otherwise acquire, hold, own, mortgage, sell, assign, transfer, invest, trade, deal in and deal with goods, wares, and merchandise of every class and description.

(c) To purchase, lease, hire or otherwise acquire real and personal property, improved and 40

Complainant's Exhibit C-3.

unimproved, of every kind and description, and to sell, dispose of, lease, convey and mortgage said property or any part thereof. To acquire, hold, lease, manage, operate, develop, control, build, erect, maintain for the purposes of said company, 10 construct, re-construct or purchase either directly or through ownership of stock in any corporation, any lands, buildings, offices, stores, warehouses, mills, shops, factories, plants, gas houses, machinery, rights, easements, permits, privileges, franchises, licenses, and all other things which may at any time be necessary or convenient in the judgment of the Board of Directors for the purposes of the company. To sell, lease, hire or otherwise 20 dispose of the lands, buildings or other property of the company, or any part thereof.

The corporation shall have power to conduct its business in all its branches, have one or more offices, and unlimitedly to hold, purchase, mortgage and convey real and personal property in the State of New Jersey, and as well in all other States, and in all foreign countries.

FOURTH: The total authorized capital stock of this corporation is One Hundred and Twenty-five 30 Thousand Dollars (\$125,000), divided into Twelve Hundred and Fifty (1250) shares of the par value of One Hundred Dollars (\$100) each.

FIFTH: The names and post-office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscription being the amount of capital stock with which the company will commence business, are as follows:

40

Complainant's Exhibit C-3.

<i>Name</i>	<i>Post-Office Address</i>	<i>No. of Shares</i>
CARL WORMAN	180 Mott Street, New York City	6
JULIUS WORMAN	47 Market Street, Newark, N. J.	1
FRED J. STERNE	310 West 86th Street, New York City	2
SAMUEL GOLDSTEIN	1408 Sterling Place, Brooklyn, N. Y.	1

SIXTH: The period of existent of this company is to be perpetual.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this Tenth day of December A. D., 20
Nineteen Hundred and Nineteen.

CARL WORMAN (L. S.)
 JULIUS WORMAN (L. S.)
 FRED J. STERNE (L. S.)
 SAMUEL GOLDSTEIN (L. S.)

Signed, sealed and delivered
in the presence of

JACOB LUBETKIN.

30

Complainant's Exhibit C-3.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss. :

10 BE IT REMEMBERED, that on this 10th day of December, Nineteen Hundred and Nineteen, before me, an Attorney at Law of New Jersey, personally appeared CARL WORMAN, JULIUS WORMAN, FRED STERNE and SAMUEL GOLDSTEIN who, I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

20

JACOB LUBETKIN,
 An Attorney at Law of New Jersey.

Endorsed :

“RECEIVED in the Clerk’s Office of the County of Essex, on the 11” day of Dec. A. D. 1919: and recorded in Book 65 of Inc. Buss. Co’s. for said County, Page———

30

JOHN H. SCOTT
 Clerk.
 Per J N.”

“FILED AND RECORDED
 Dec 12 1919
 Thomas F. Martin
 Secretary of State.”

40

Complainant's Exhibit C-3.

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of the Certificate of Incorporation of Lincoln Furniture Co., and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twelfth day of December, A. D. 1919, and now remaining on file and of record therein. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Twelfth day of December, A. D. 1919. 20

(Seal)

THOS. F. MARTIN,
Secretary of State.

30

40

Exhibit C-4.

Eleven Checks.

(Check)

LINCOLN FURNITURE CO.

47 MARKET ST.

10 No. 172 Newark, N. J., Feb. 2, 1920.

Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred and sixty six and 66/100 Dollars

LINCOLN FURNITURE CO.

CARL WORMAN President

S. GOLDSTEIN Treasurer

To the

20 MERCHANTS NATIONAL BANK
55-7 Newark, N. J.

(Stub on left-hand side of check)

This check is issued in full payment of items herewith. Endorsement hereon, by payee or agent is acknowledgment and receipt in full thereof. No other receipt is required. If not correct, return at once with explanation.

30 Rent for Feb.

(Endorsed on back)

P. & N. Bornstein

Union National Bank

5

Feb 4 1920

Newark, N. J.

40 Perforated Stamp "PAID"

*Complainant's Exhibit C-4.**(Check)*

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 201 Newark, N. J., 3/1 1920. 10

Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred and sixty six and 66/100 Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To the

MERCHANTS NATIONAL BANK
55-7 Newark, N. J. 20

(Stub on left-hand side of check)

This check is issued in full payment of
items herewith. Endorsement hereon,
by payee or agent is acknowledgment
and receipt in full thereof. No other
receipt is required. If not correct,
return at once with explanation.

(Endorsed on back) 30

P. & N. Bornstein

Union National Bank

5

Mar 8 1920

Newark, N. J.

Perforated Stamp "PAID"

40

Complainant's Exhibit C-4.

(Check)

No. 14a Newark, N. J., 4/1 1920.

10 NATIONAL NEWARK AND ESSEX
BANKING CO. 55-1

Pay to the order of P. & N. Borenstein
Six hundred sixty-six and 66/100.....Dollars

\$666.66/100

LINCOLN FURNITURE CO.
CARL WORMAN Pres.
S. GOLDSTEIN Treas.

20

(Endorsed on back)

P. & N. Bornstein

Union National Bank

5

Apr 9 1920

Newark, N. J.

30

Perforated Stamp "PAID"

40

Complainant's Exhibit C-4.

(Check)

No. 179 Newark, N. J., May 1, 1920.

NATIONAL NEWARK AND ESSEX
BANKING CO. 55-1 10

Pay to the order of B. & J. Borenstein
Six hundred sixty-six 66/100.....Dollars
\$666.66/100

CARL WORMAN
S. GOLDSTEIN

(Printed on left-hand margin of check) 20

Lincoln Furniture Co.
47 Market Street
Newark, N. J.

(Endorsed on back)
for Rent in advance
\$666.66

Deposit for 30
P. & N. Bornstein

Union National Bank
5
May 3 1920
Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

10 No. 1024 Newark, N. J., June 1, 1920.
Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred sixty-six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN President
S. GOLDSTEIN Treasurer

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

20

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
In advance	
for June	
Amount of check	666.66

If incorrect please return

30

No receipt necessary

(Endorsed on back)

P. & N. Bornstein

Union National Bank

5

Jun 2 1920

Newark, N. J.

40

Perforated Stamp "PAID"

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1104 Newark, N. J., 7/1 1920. 10
Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred sixty-six and 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To
NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J. 20

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for July 1920	

If incorrect please return
No receipt necessary 30

(Endorsed on back)

Deposit for
P. & N. Bornstein

Union National Bank
5

Jul 3 1920
Newark, N. J.

Perforated Stamp "PAID" 40

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

10 No. 1184 Newark, N. J., August 2, 1920.
Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred sixty-six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To

NATIONAL NEWARK
& ESSEX BANKING CO.
20 55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Aug.	
Amount of check	666.66

If incorrect please return
No receipt necessary

30

(Endorsed on back)

Deposit for
P. & N. Bornstein

Union National Bank
5

Aug 3 1920
Newark, N. J.

40

Perforated Stamp "PAID"

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1257 Newark, N. J., 9/1, 1920. 10
Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred sixty-six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To
NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J. 20

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Advance rent for Sept. 1920	
If incorrect please return No receipt necessary	30

(Endorsed on back)

Deposit for
P. & N. Bornstein

Union National Bank
5
Sep 2 1920
Newark, N. J. 40

Perforated Stamp "PAID"

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1330 Newark, N. J., October 4, 1920.

10 Pay to the order of P. & N. Bornstein \$666.66/100
Six hundred sixty-six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To
NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

20 (Stub on left-hand side of check)

This check is in settlement of the following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of October	\$666.66
Total of invoices	666.66
30 Amount of check	666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein
Union National Bank
5
40 Oct 7 1920
Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1383 Newark, N. J., November 1, 1920.
Pay to the order of P. & N. Bornstein \$666.66/100 10
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN President
S. GOLDSTEIN Treasurer

To
NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check) 20

This check is in settlement of the following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		
November	666.66	
	<hr/>	
Total of invoices	666.66	
	<hr/>	
Amount of check	666.66	30

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein
Union National Bank

5
Nov 9 1920 40
Newark, N. J.

Perforated Stamp "PAID"

*Complainant's Exhibit C-4.**(Check)*

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 1442 Newark, N. J., November 30, 1920.

10 Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN President

To

NATIONAL NEWARK

& ESSEX BANKING CO.

55-1 Newark, N. J.

20

*(Stub on left-hand side of check)*This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of December 1920	666.66
Total of invoices	666.66

30

Amount of check 666.66

If incorrect please return
No receipt necessary*(Endorsed on back)*

Deposit for

P. & N. Bornstein

Union National Bank

5

40

Dec 7 1920

Newark, N. J.

Perforated Stamp "PAID"

Exhibit C-5.

Thirty-nine Checks.
(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1497 Newark, N. J., Jan. 3, 1921. 10

Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN
President

To
NATIONAL NEWARK 20
& ESSEX BANKING CO.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		30
month of		
January 1921	666.66	
	<hr/>	
Total of invoices	666.66	
	<hr/>	
Amount of check	666.66	

If incorrect please return
No receipt necessary

Complainant's Exhibit C-5.

(Endorsed on back)

Deposit for
P. & N. Bornstein

10

Pay to the order of
Any Bank, Banker or Trust Co.
Jan 17 1921
National Newark & Essex Banking Co.
55-1 Newark, N. J. 55-1

Fidelity Union Trust Co.

5

Jan 15 1921
Newark, N. J.

20

Perforated Stamp "PAID"

(Check)

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 1582 Newark, N. J., February 5, 1921.

30

Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN

President

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

40

*Complainant's Exhibit C-5.**(Stub on left-hand side of check)*

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		10
Mo. of Feb.		
1921	666.66	
	<hr/>	
Total of invoices	666.66	
	<hr/>	
Amount of check	666.66	

If incorrect please return
No receipt necessary

(Endorsed on back) 20

Deposit for
P. & N. Bornstein

Fidelity Union Trust Co.

5

Feb 9 1921

Newark, N. J.

Perforated Stamp "PAID" 30

40

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1637 Newark, N. J., March 1st, 1921.

10 Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN
President

To
NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

20 *(Stub on left-hand side of check)*

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of March	666.66
Total of invoices	<u>666.66</u>

30 Amount of check 666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein

Fidelity Union Trust Co.

5

40 Mar 9 1921
Newark, N. J.,

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 1697 Newark, N. J., April 18, 1921.

Pay to the order of P. & N. Bornstein \$666.66/100 10
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN

Treasurer

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.*(Stub on left-hand side of check)* 20This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for month of April 1921	666.66	
Total of invoices	666.66	
Amount of check	666.66	30

If incorrect please return
No receipt necessary*(Endorsed on back)*

P. & N. Bornstein

Fidelity Union Trust Co.

5

May 7 1921

Newark, N. J. 40

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

10 No. 1718 Newark, N. J., May 5th, 1921.

Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN
President

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

20

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of May 1921	666.66

30

Total of invoices 666.66

Amount of check 666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

P. & N. Bornstein
Fidelity Union Trust Co.

40

5
May 7 1921
Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1789 Newark, N. J., June 8th, 1921.

Pay to the order of P. & N. Bornstein \$666.66/100 10
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN
President

To
NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check) 20

This check is in settlement of the following invoices

<i>Date</i>	<i>Amount</i>	
Rent for month of June 1921	666.66	
	<hr/>	
Total of invoices	666.66	
	<hr/>	
Amount of check	666.66	30

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein
Fidelity Union Trust Co.

5 40
Jun 11 1921
Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1841 Newark, N. J., July 11th, 1921.

16 Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.
CARL WORMAN
President

To
NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

20 (Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of July 1921	666.66
Total of invoices	666.66
Amount of check	666.66

30

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein
Fidelity Union Trust Co.

40

5
Jul 13 1921
Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 1892 Newark, N. J., August 1, 1921.

Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six and 66/100.....Dollars

10

LINCOLN FURNITURE CO.

CARL WORMAN
President

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

20

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of August	666.66
Total of invoices	666.66
Amount of check	666.66

30

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein
Fidelity Union Trust Co.

5

40

Aug 2 1921
Newark, N. J.
Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 1953 Newark, N. J., September 7, 1921.
 10 Pay to the order of P. & N. Bornstein \$666.66/100
 Six Hundred Sixty Six 66/100.....Dollars

LINCOLN FURNITURE CO.

CARL WORMAN

To President
 NATIONAL NEWARK
 & ESSEX BANKING CO.
 55-1 Newark, N. J.

20 *(Stub on left-hand side of check)*

This check is in settlement of the following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of September	666.66
Total of invoices	666.66

30 Amount of check 666.66

If incorrect please return
 No receipt necessary

(Endorsed on back)

Deposit for
 P. & N. Bornstein

Fidelity Union Trust Co.

5

40 Sep 9 1921
 Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-4.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2049 Newark, N. J., October 6th, 1921. 10
Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Par in New York City through the Northern New
Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

NATIONAL NEWARK
& ESSEX BANKING Co. 20
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for month of Oct.	\$666.66	
Total of invoices	666.66	30
Amount of check	666.66	

If incorrect please return
No receipt necessary

(Endorsed on back)

Deposit for
P. & N. Bornstein
Fidelity Union Trust Co. 40
5
Oct 7 1921
Newark, N. J.

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

10 No. 2157 Newark, N. J., November 5, 1921.

Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Par in New York City through the Northern New
Jersey Clearing House

LINCOLN FURNITURE CO.

FRED J. STERNE
Treasurer

20

To

NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
30 Rent for month of Nov. 1921	666.66
Total of invoices	<u>666.66</u>
Amount of check	666.66

If incorrect please return
No receipt necessary

40

Complainant's Exhibit C-5.

(Endorsed on back)

P. & N. Bornstein
Deposit for
R. & N. Bornstein

10

Fidelity Union Trust Co.

5

Nov 12 1921

Newark, N. J.

Perforated Stamp "PAID"

(Check)

20

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 2234 Newark, N. J., December 3, 1921.

Pay to the order of P. & N. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Par in New York City through the Northern New
Jersey Clearing House

30

LINCOLN FURNITURE CO.

FRED J. STERNE

Treasurer

To

NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

40

Complainant's Exhibit C-5.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

10	<i>Date</i>	<i>Amount</i>
	Rent for month December, 1921.	

If incorrect please return
No receipt necessary

(Endorsed on back)

20	P. & N. Bornstein Rachel & N. A. Bornstein
	Fidelity Union Trust Co.
	5
	Dec 7 1921
	Newark, N. J.

Perforated Stamp "PAID"

30

40

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2309 Newark, N. J., January 10, 1922. 10

Pay to the

Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Par in New York City through the Northern New
Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN
President 20

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for month of January 1922	666.66	
Total of invoices	666.66	30
Amount of check	666.66	
If incorrect please return No receipt necessary		40

Complainant's Exhibit C-5.

(Endorsed on back)

Deposit for
Rachel & N. A. Bornstein

10 Fidelity Union Trust Co.
5
Jan 18 1922
Newark, N. J.

Perforated Stamp "PAID"

(Check)

20 LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2467 Newark, N. J., March 11, 1922.

Pay to the

Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

30 Par in New York City through the Northern New
Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN
President

To

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

40

*Complainant's Exhibit C-5.**(Stub on left-hand side of check)*

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for March	666.66	10
Total of invoices	666.66	
Amount of check	666.66	

If incorrect please return
No receipt necessary

(Endorsed on back)

Rachel & N. A. Bornstein 20

Received payment

Through the Newark Clearing House
Prior Endorsements Guaranteed

Mar 20 1922

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

30

40

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 2531 Newark, N. J., April 5, 1922.

10 Pay to the
 Order of Rachael & N. A. Bornstein \$666.66/100
 Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
 Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

20 NATIONAL NEWARK
 & ESSEX BANKING CO.
 55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
 following invoices

	<i>Date</i>	<i>Amount</i>
	Rent for mo. of April 1922	666.66
30	Total of invoices	666.66
	Amount of check	666.66

If incorrect please return
 No receipt necessary

(Endorsed on back)

Deposit for
 Rachel & N. A. Bornstein

40 Received payment
 Through the Newark Clearing House
 Prior Endorsements Guaranteed
 Apr 11 1922
 Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2601 Newark, N. J., May 1st, 1922. 10
Pay to the
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN
President

To NATIONAL NEWARK 20
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of May 1922	30

If incorrect please return
No receipt necessary

(Endorsed on back)

Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
May 2 1922
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID" 40

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2658 Newark, N. J., May 26, 1922.

10 Pay to the
Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

20 NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for June, 1922	666.66

30 Amount of check 666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

40 Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
May 27 1922

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2759 Newark, N. J., July 1st, 1922. 10
 Pay to the
 Order of Rachel & N. A. Bornstein \$666.66/100
 Six Hundred Sixty Six 66/100.....Dollars
 Payable in New York City through the
 Northern New Jersey Clearing House
 LINCOLN FURNITURE CO.
 CARL WORMAN
 To President
 NATIONAL NEWARK
 & ESSEX BANKING CO. 20
 55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for July 1922	666.66

If incorrect please return 30
No receipt necessary

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein
Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Jul 6 1922
Fidelity Union Trust Co. No. 5 40
Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 2821 Newark, N. J., August 1st, 1922.

10

Pay to the

Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To

President

20

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for	
August 1922	666.66

30

If incorrect please return
No receipt necessary

(Endorsed on back)

Rachel and N. A. Bornstein

Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Aug 9 1922

40

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 2886 Newark, N. J., September 2nd, 1922.

Pay to the 10
Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

NATIONAL NEWARK 20
& ESSEX BANKING CO.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		
Sept. 1922	666.66	
If incorrect please return		30
No receipt necessary		

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

Received payment
Through the Newark Clearing House.
Prior Endorsements Guaranteed
Sep 7 1922

Fidelity Union Trust Co. No. 5 40

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 2948 Newark, N. J., October 4th, 1922.

10

Pay to the

Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....DollarsPayable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To

President

20

NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.*(Stub on left-hand side of check)*This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of October, 1922	

30

If incorrect please return
No receipt necessary*(Endorsed on back)*For Deposit
Rachel and N. A. BornsteinReceived payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Oct 9 1922

40

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 3077 Newark, N. J., Nov. 3rd, 1922.

Pay to the 10

Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....DollarsPayable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

NATIONAL NEWARK

& ESSEX BANKING CO. 20

55-1 Newark, N. J.

*(Stub on left-hand side of check)*This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for the month of November 1922	666.66	30

If incorrect please return
No receipt necessary*(Endorsed on back)*Pay to the Order of
Fidelity Union Trust Co.
Newark, N. J.

Rachel and N. A. Bornstein

Received payment 40
Through the Newark Clearing House
Prior Endorsements Guaranteed
Nov 9 1922

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 3208 Newark, N. J., December 2nd, 1922.

10 Pay to the
Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

20 NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

	<i>Date</i>	<i>Amount</i>
	Rent for month of	
30	Dec. 1922	666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

40 Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Dec 6 1922

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE CO.
47 MARKET ST.

No. 3318 Newark, N. J., Jan. 3rd, 1923. 10
Pay to the
Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President 20
NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		
January 1923	666.66	
If incorrect please return		30
No receipt necessary		

(Endorsed on back)

Rachel & N. A. Bornstein

Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Jan 9 1923

Fidelity Union Trust Co. No. 5 40
Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE CO.

47 MARKET ST.

No. 3423 Newark, N. J., Feb. 3rd, 1923.

10 Pay to the
 Order of Rachel & N. A. Bornstein \$666.66/100
 Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
 Northern New Jersey Clearing House

LINCOLN FURNITURE CO.

CARL WORMAN

To President

20 NATIONAL NEWARK
 & ESSEX BANKING Co.
 55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
 following invoices

<i>Date</i>	<i>Amount</i>
Rent for	
February 1923	666.66

30 If incorrect please return
 No receipt necessary

(Endorsed on back)

For Deposit

Rachel & Newton A. Bornstein

Received payment

Through the Newark Clearing House

Prior Endorsements Guaranteed

Feb 9 1923

40 Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 3505 Newark, N. J., March 3rd, 1923. 10
Pay to the
Order of Rachel & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To President 20
NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		
month of		
March, 1923	666.66	30
If incorrect please return		
No receipt necessary		

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Mar 9 1923 40
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 3598 Newark, N. J., April 2nd, 1923.

10

Pay to the
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100..... Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To President

20

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

30

<i>Date</i>	<i>Amount</i>
Rent for month of April 1923	666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

40

Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Apr 7 1923
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE COMPANY

47 MARKET STREET

No. 3687 Newark, N. J., May 1st, 1923.

Pay to the

Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....DollarsPayable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To

President

NATIONAL NEWARK

& ESSEX BANKING CO.

55-1 Newark, N. J.

*(Stub on left-hand side of check)*This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for the month of May 1923	666.66	30
If incorrect please return No receipt necessary		

(Endorsed on back)

For Deposit

Rachel and N. A. Bornstein

Received payment

Through the Newark Clearing House

Prior Endorsements Guaranteed

May 8 1923

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 3755 Newark, N. J., June 1st, 1923.

10 Pay to the
Order of Racheal & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To President

20 NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

	<i>Date</i>	<i>Amount</i>
	Rent for	
	month of	
30	June, 1923	666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

40 Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Jun 8 1923

Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 3854 Newark, N. J., July 2nd, 1923. 10

Pay to the
Order of Racheal & N. A. Bornstein \$666.66 /100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To
NATIONAL NEWARK
& ESSEX BANKING CO. 20
55-1 Newark, N. J.

President

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for	
July 1923	666.66

If incorrect please return
No receipt necessary 30

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

Received payment
Through the Newark Clearing House
Prior Endorsements Guaranteed
Jul 10 1923

Fidelity Union Trust Co. No. 5 40

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 3954 Newark, N. J., August 1st, 1923.

10 Pay to the
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To President

20 NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

	<i>Date</i>	<i>Amount</i>
30	Rent for month of August, 1923	666.66

If incorrect please return

No receipt necessary

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

40 Received payment
Through the Newark Clearing House
Aug 8 1923

Prior Endorsements Guaranteed
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4087 Newark, N. J., Sept. 1st, 1923.

Pay to the 10
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To Pres.

NATIONAL NEWARK 20
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		
September 1923	666.66	
If incorrect please return		
No receipt necessary		30

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

Received payment
Through the Newark Clearing House
Sep 6 1923

Prior Endorsements Guaranteed
Fidelity Union Trust Co. No. 5 40

Perforated Stamp "PAID"

*Complainant's Exhibit C-5.**(Check)*

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4170 Newark, N. J., Oct. 1st, 1923.

10 Pay to the
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To Pres.

20 NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for	
October 1923	666.66

30 If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

Received payment
Through the Newark Clearing House
Oct 4 1923

40 Prior Endorsements Guaranteed
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4300 Newark, N. J., November 3rd, 1923.

Pay to the 10
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To Pres.

NATIONAL NEWARK 20
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for		
November, 1923	666.66	
If incorrect please return		30
No receipt necessary		

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

Received payment
Through the Newark Clearing House
Nov 8 1923

Prior Endorsements Guaranteed 40
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4369 Newark, N. J., December 1st, 1923.

10

Pay to the

Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

To

Pres.

20

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of December, 1923	666.66

30

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

Received payment
Through the Newark Clearing House
Dec 6 1923

40

Prior Endorsements Guaranteed
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4508 Newark, N. J., January 5th, 1924.

10

Pay to the

Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

CARL WORMAN

Pres.

To

NATIONAL NEWARK
& ESSEX BANKING CO.
55-1 Newark, N. J.

20

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>	
Rent for month of Feb. 1924	666.66	30

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

Received payment
Through the Newark Clearing House
Jan 12 1924 40

Prior Endorsements Guaranteed
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4571 Newark, N. J., February 2nd, 1924.

10

Pay to the

Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

FRED J. STERNE

To

Treas.

20

NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

30

<i>Date</i>	<i>Amount</i>
Rent for	
month of	
Feb. 1924	666.66

If incorrect please return
No receipt necessary

(Endorsed on back)

For Deposit
Rachel & N. A. Bornstein

40

Received payment
Through the Newark Clearing House
Feb 8 1924

Prior Endorsements Guaranteed
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

No. 4662 Newark, N. J., Mar. 1st, 1924. 10

Pay to the
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY
CARL WORMAN

To NATIONAL NEWARK
& ESSEX BANKING Co. 20
55-1 Newark, N. J.

(Stub on left-hand side of check)

This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for month of March 1924	30
If incorrect please return No receipt necessary	30

(Endorsed on back)

For Deposit
Rachel and N. A. Bornstein

Received payment
Through the Newark Clearing House
Mar 4 1924
Prior Endorsements Guaranteed 40
Fidelity Union Trust Co. No. 5

Perforated Stamp "PAID"

Complainant's Exhibit C-5.

(Check)

LINCOLN FURNITURE COMPANY
47 MARKET STREET

10 No. 4842 Newark, N. J., Apr. 1st, 1924.

Pay to the
Order of Rachael & N. A. Bornstein \$666.66/100
Six Hundred Sixty Six 66/100.....Dollars

Payable in New York City through the
Northern New Jersey Clearing House

LINCOLN FURNITURE COMPANY

J. W. FRANKEL
Mgr.

20 LOUIS RIVELLO
Bookkeeper

To
NATIONAL NEWARK
& ESSEX BANKING Co.
55-1 Newark, N. J.

(Stub on left-hand side of check)

30 This check is in settlement of the
following invoices

<i>Date</i>	<i>Amount</i>
Rent for the month of April 1924	666.66

If incorrect please return
No receipt necessary

Exhibit C-6.

MINUTE BOOK OF COMPLAINANT.

Minutes of Complainant's stockholders meeting relating to offer of Carl Worman to transfer business and lease to complainant and acceptance of said offer printed at page

10

Complainant's directors meeting authorizing acceptance of said offer and said offer printed at pages

Exhibit C-7.

Telephone Market 1778

N. A. BORNSTEIN, D.D.S.

20

942 Broad Street

Newark, N. J.

May 22, 1922.

Lincoln Furniture Co.

47 Market St.

Newark, N. J.

Attention Mr. Worman.

30

Dear Sir:

In order to meet taxes June 1st would ask you to send check for June rent, May 31 and greatly oblige

Yours very truly,

N. A. BORNSTEIN,
for Rachel & N. A. Bornstein.

40

Exhibit C-8.

May 26, 1922.

Mr. N. A. Bornstein,
942 Broad St.,
Newark, N. J.

10 My dear Mr. Bornstein:

Replying to your letter of recent date we are pleased to enclose herewith check for \$666.66, rent for the month of June. I am sure it is a pleasure for us to be able to help you out at this time.

Respectfully yours,

LINCOLN FURNITURE CO.

LR:AL
Enc. 1

20

Exhibit C-9.

Seven Letters.

July 8, 1922.

30 Rachel & N. A. Bornstein,
642 High St.,
Newark, N. J.

Dear Madam:

We are enclosing herewith letter received from The Schedule Rating Office of N. J. which is self-explanatory.

Very truly yours,

LINCOLN FURNITURE CO.

40 LR:AL

Complainant's Exhibit C-9.

Aug. 5th, 1922.

Mr. Philip Bornstein,
642 High St.,
Newark, N. J.

Dear Sir:

10

Enclosed please find check for \$666.66, drawn to Rachel & N. A. Bornstein for rent for the month of August 1922.

This in accordance with his advice of June 22nd, 1922.

Yours very truly,

LINCOLN FURNITURE CO.

LR:LR

20

Oct. 4, 1922.

Mr. Philip Bornstein,
642 High St.,
Newark, N. J.

Dear Sir:

Enclosed please find check for \$666.66 rent for month of October, 1922.

30

Very truly yours,

LINCOLN FURNITURE CO.

AL:AL

Enc. 1

40

Complainant's Exhibit C-9.

Newark, N. J., Jan. 11, 1924.

Lincoln Furniture Co.

Gentlemen:

Kindly mail checks for rent to Mrs. Ph. Bornstein, 77 Goldsmith Ave., Newark. 642 High Str. is the old address.

10

Resp yours,

PH. BORNSTEIN.

 March 1, 1924.

20

Mr. P. Bornstein,
77 Goldsmith Ave.,
Newark, N. J.

Dear Sir:

Enclosed please find check for rent for month of March, 1924. Kindly send receipt, and oblige

Yours truly,

30

LINCOLN FURNITURE CO.

Enc.

40

Complainant's Exhibit C-9.

Telephone Market 1778

N. A. BORNSTEIN, D.D.S.

942 Broad Street

Newark, N. J.

10

April 3, 1924.

Lincoln Furniture Company,

47 Market St.,

Newark, N. J.

Gentlemen,

20 We are in receipt of a check dated April 1, 1924,
for \$666.66, signed Lincoln Furniture Company,
by J. W. Frankel Manager and Louis Rivello,
bookkeeper, which check we are herewith return-
ing, as we do not recognize the Lincoln Furniture
Company as our tenants.

The lease which we hold contains a provision
that the lessee shall not re-let or assign the lease
without our written consent, which has not been
asked for or given.

30 Yours very truly,

RACHEL & N. A. BORNSTEIN

by N. A. BORNSTEIN.

40

Exhibit C-11.*Assignment.*

IN CONSIDERATION of the sum of One Dollar by the Lincoln Furniture Co., a corporation organized under the laws of the state of New Jersey, to me, Carl Worman, of the City of New York, in hand paid, receipt whereof is hereby acknowledged, the lessee in the within lease from Philip Bornstein and Newton A. Bornstein, of the City of Newark, New Jersey, dated December 8, 1919, of premises 47 Market Street, Newark, New Jersey, I DO HEREBY assign, transfer and set over to the said Lincoln Furniture Co. the said lease to the premises hereby demised, and all right, title and interest in and under the same, and the said assignee, by the acceptance hereof, hereby agrees that it will pay the rent in the within lease provided, and according to the terms of said lease, and perform the covenants and stipulations in said lease contained, which are to be performed by the lessee.

This assignment is confirmatory of a certain assignment of said lease heretofore made by me on the 15th day of December, 1919.

IN WITNESS WHEREOF I have hereunto set my hand and seal, as of the 29th day of February, 1924.

CARL WORMAN (LS)

In presence of:

H. STIEGLITZ.

STATE AND COUNTY OF NEW YORK, SS.:

BE IT REMEMBERED that on this 4th day of March, 1924, before me, the subscriber, a Notary Public in and for the County of New York, personally appeared Carl Worman, who, I am satisfied, is the person named in and who executed the foregoing

Complainant's Exhibit C-11.

assignment, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed.

10

H. STIEGLITZ,

H. Stieglitz,

Notary Public, Kings County.

Kings Co. Clerk's No. 381.

Kings Co. Register's No. 4442.

Cert. filed in New York County.

New York Co. Clerk's No. 1204.

New York Register's No. 4132A.

Commission expires March 30, 1924.

ACCEPTED—as of February 29, 1924.

20

LINCOLN FURNITURE CO.,

By HEDWIG STERNE,

Vice Pres.

(Seal)

Exhibit D-1.

30

We hereby give to Carl Worman of the City of New York the option of renting the property at 47 Market Street, Newark, New Jersey for a period of ten years from January 1, 1920 at the yearly rental of \$8,000, with the privilege of five additional years at a yearly sum that will net us 5½% on the then appraised value of said property, which said yearly rental will not be less than \$10,000. This option is made subject to the purchase by Carl Worman of the Crown business and the assignment of the lease held by the Crown Company on said property.

Dec. 1, 1919.

40

PHILIP BORNSTEIN.

NEWTON A. BORNSTEIN.

Witness

CHARLES M. MYERS.

Exhibit.

Deed from Rachel Bornstein and Philip Bornstein, her husband, and Newton A. Bornstein and Margaret Bornstein, his wife, to Albert Fried, dated July 25, 1924, and recorded same date in Book D-71, page 33, conveying premises No. 47 Market Street, Newark, N. J. 10

20

30

40

