

## I N D E X

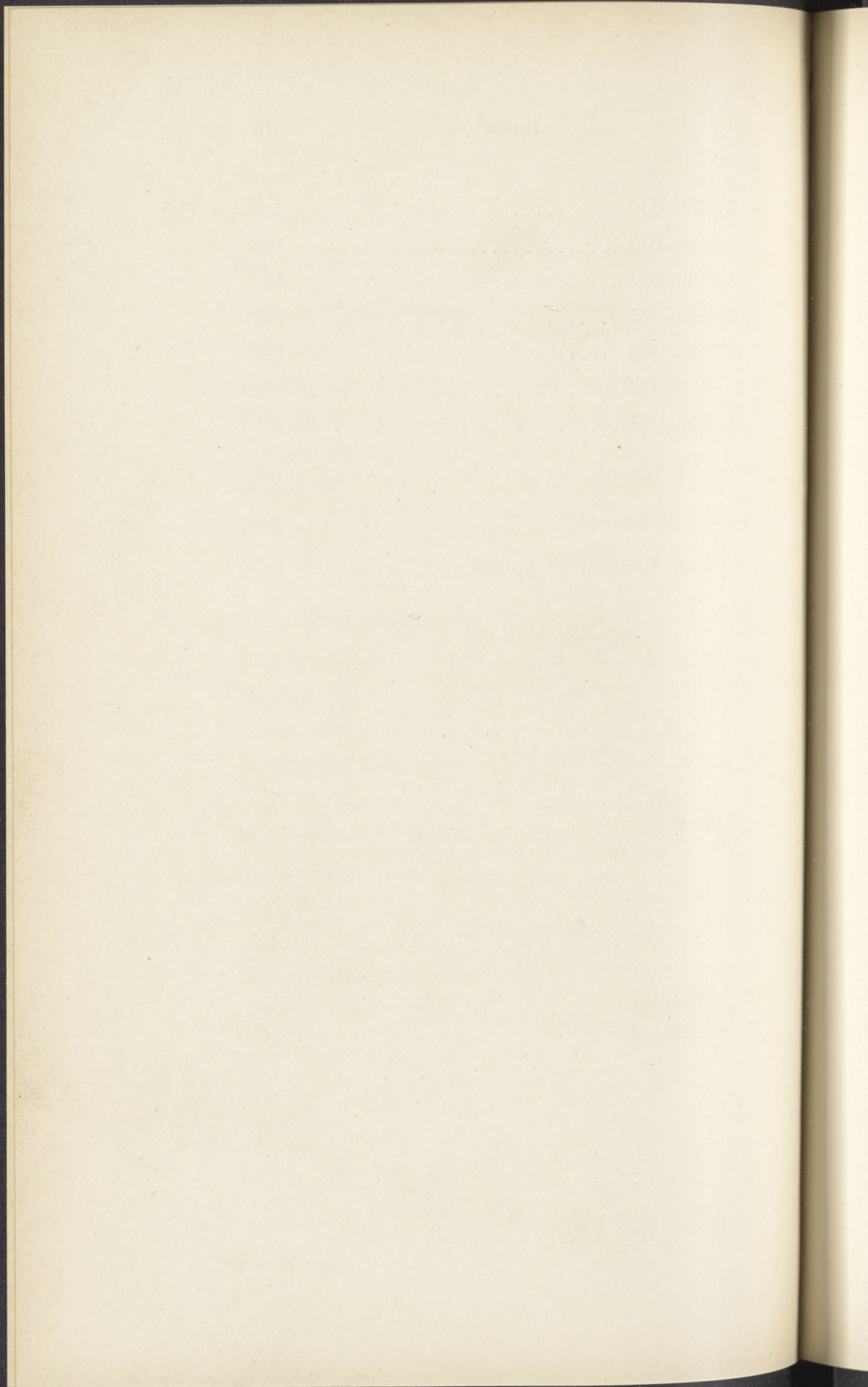
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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

The complainant, C. Berenda Weinberg Clinic and 10  
Research Laboratories, Inc., a corporation, respect-  
fully shows that:

1. It is a corporation duly organized under the  
laws of the State of New Jersey, and conducts its  
business on the premises located at 109 South Iowa  
Avenue, Atlantic City, New Jersey.

2. Said corporation owns and, prior to the date 20  
hereinafter to be named, was the title holder of the  
premises 109 South Iowa Avenue (together with  
certain personal property therein contained), and  
which premises are described as follows:

ALL that land and premises situate in the  
City of Atlantic City, County of Atlantic and  
State of New Jersey, bounded and described  
as follows: BEGINNING in the easterly line  
of Iowa Avenue, 85 feet south of Pacific Avenue  
and extending thence (1) Southwardly along  
Iowa Avenue 63 feet; thence (2) Eastwardly 30  
parallel with Pacific Avenue 65.62 feet; thence  
(3) Northwardly and parallel with Iowa Ave-  
nue 63 feet; thence (4) Westwardly and  
parallel with Pacific Avenue 65.62 feet to the  
place of beginning.

3. On or about the 4th day of March, 1927, by deed purporting to be executed by C. Berenda Weinberg Clinic and Research Laboratories, Inc., complainant herein, the said premises were conveyed to C. Berenda Weinberg and Sadie Weinberg, his wife, and the deed has been recorded in the clerk's office of the County of Atlantic and State of New Jersey. Said deed was signed by said C. Berenda Weinberg, who is the president of said corporation,  
10 but it was made without any consideration passing to complainant and without any authority whatever by said corporation to the said Weinberg, and it was only within a few days that said complainant was informed and advised of said conveyance.

4. Complainant is informed and believes and therefore avers that sometime in March, 1925, the Bankers Trust Company, a corporation of New Jersey, recovered a judgment in one of the courts of  
20 New Jersey against C. Berenda Weinberg for the sum of \$1,058.50, and that on or about December 29, 1925, said judgment was assigned to Julius B. Press.

5. On or about April 4, 1927, National Savings & Trust Co., executor of the estate of Blain Elkins, deceased, recovered a judgment in one of the courts of New Jersey against C. Berenda Weinberg and Sadie Weinberg, his wife, for the sum of \$6,165.99.  
30

6. On or about March 17, 1927, Henry Eppsteiner recovered a judgment in one of the courts of New Jersey against C. Berenda Weinberg for the sum of \$481.80.

All of said judgments are a lien upon the lands and premises herein described.

7. Said National Savings & Trust Company has issued writ of execution upon its judgment and the sheriff of Atlantic County has advertised under said execution to sell the lands and premises described in the bill.

8. Neither the said C. Berenda Weinberg nor Sadie Weinberg, his wife, have any interest in the lands and premises described or in the personal property therein used in connection with the clinic and laboratories of complainant. 10

Complainant did not contract any of the debts upon which the respective judgments were entered and is in no way liable for the payment thereof.

Complainant is without adequate remedy in the courts of law, and therefore prays: 20

(1) That C. Berenda Weinberg, Sadie Weinberg, his wife, Bankers Trust Company, a corporation, &c., National Savings & Trust Co., executor of the estate of Blaine Elkins, deceased, Julius B. Press, Henry Eppsteiner, who are the defendants to this suit, may answer this bill of complaint, without oath, and each statement therein made;

(2) That it be decreed that the pretended deed from itself to said C. Berenda Weinberg and wife was not its act, that said C. Berenda Weinberg executed the same, using the name of complainant without any right or authority and in fraud of complainant and its stockholders; that they be decreed to reconvey the premises to complainant; 30

(3) That it be decreed that the said judgment creditors of the said Weinbergs have no claim against the complainant nor the premises and that said judgments are no lien upon said premises; that the said Weinbergs be enjoined from executing any transfer of the premises or encumbering the same, and said judgment creditors be enjoined from taking any action looking to the sale of the premises referred to in the bill, and from any further action looking to the sale of the property under execution issued; and that the sheriff be enjoined from selling same, and that complainant have other and further relief as may be agreeable to equity.

(4) That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

COLE & COLE,

20

*Solicitors and of Counsel with Complainant.*

30

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.

SOLTON ENGEL, being first duly sworn according to law, upon his oath deposes and says:

I am a director of C. Berenda Weinberg Clinic and Research Laboratories, Inc., a corporation of New Jersey, and its vice-president. The other directors are C. Berenda Weinberg and Robert C. Gray; Weinberg is president and Gray is secretary. 10

I have read the attached bill of complaint and say that insofar as the matters therein set forth are within my personal knowledge, they are true; otherwise, I believe them to be true.

It is true that the complainant owns and held the legal title to the premises described in the bill and that it never authorized a conveyance of the premises to Weinberg and wife; that it never received any consideration for such conveyance and that there was never any action of the directors of the corporation authorizing the transfer. 20

Said Weinberg and wife have no interest in the premises described in the bill, and never had.

Complainant did not contract the debts upon which the judgments against the Weinbergs are grounded and never owed any one of the judgment creditors anything.

The pretended act of Weinberg in executing the deed to himself and wife was in fraud of complainant and its stockholders. 30

SOLTON ENGEL.

Sworn and subscribed to before me this 27th day of September, 1927.

WM. M. CLEVINGER,  
M. C. C.

AMENDMENT TO BILL.  
65-512.

IN CHANCERY OF NEW JERSEY.

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10	Between	C. BERENDA WEINBERG CLINIC AND RESEARCH LABORATORIES, INC., a corp., &c., <i>Complainant,</i> and C. BERENDA WEINBERG, <i>et ux., et al.,</i> <i>Defendants.</i>	} On Bill, &c. Amendment to Bill.
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Complainant, before subpoenas issue, amends its bill by adding paragraph 7a, as follows:

On March 25, 1926, there was recorded in the clerk's office of Atlantic County a pretended mortgage executed by complainant to Morris Berenstein to secure the payment of twenty thousand dollars, in which mortgage the lands and premises described

30 in the bill are described.

On the 31st day of said March, there was recorded in said clerk's office a pretended mortgage from complainant to Atlantic Amortization Mortgage Company to secure the payment of the sum of twenty-five hundred seventy-five dollars.

On February 25, 1927, there was recorded in said

clerk's office a pretended mortgage from C. Berenda Weinberg and Sadie, his wife, defendants herein, to William I. Schloss, to secure the payment of sixty-five hundred dollars.

On March 11, 1927, there was recorded in said clerk's office a pretended mortgage from C. Berenda Weinberg and Sadie, his wife, to Irving E. Schloss and Mildred Klein, executors under the will of William I. Schloss, deceased, to secure the payment of the sum of sixty-five hundred dollars, all of which mortgages cover the premises described in the bill. 10

Complainant did not authorize the mortgage recorded March 25, 1926, did not execute the same, and received no consideration therefor. It has been informed and believes and therefore avers that it was executed by C. Berenda Weinberg with knowledge that he had no authority to act for complainant. The same is true with respect to the mortgage recorded March 31, 1926, to Atlantic Amortization Mortgage Company. 20

Complainant never conveyed the mortgaged premises to C. Berenda Weinberg and wife; therefore, they had no authority to execute the mortgage recorded February 25, 1927, to William I. Schloss, nor the one recorded March 11, 1927, to Irving E. Schloss and others, to secure the payment of sixty-five hundred dollars, nor for either of which did complainant receive any consideration.

Complainant further amends its bill by making 30  
Morris Berenstein, Atlantic Amortization Mortgage Company, a corp., &c., Irving E. Schloss and Mildred Klein, executors under the will of William I. Schloss, deceased, defendants, and further amends the prayer of the bill for a decree that it be decreed that said mortgages are not a lien on complainant's

property, and that they be surrendered for cancellation, and further relief as may be just.

COLE & COLE,  
*Solicitors for Complainants.*

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## ANSWER OF MORRIS BERENSTEIN.

## IN CHANCERY OF NEW JERSEY.

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Between

C. BERENDA WEINBERG  
CLINIC AND RESEARCH  
LABORATORIES, INC., a  
corporation,

*Complainant,*  
and

C. BERENDA WEINBERG,  
*et ux., et al.,*  
*Defendants.*

On Bill, &c.  
Answer of Morris  
Berenstein.

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Defendant, Morris Berenstein, answering complainant's bill of complaint, says:

1. He admits the allegations contained in paragraph 1.

2. He admits the allegations contained in paragraph 2.

3. He neither admits nor denies the allegations contained in paragraph 3, and leaves complainant to prove the same.

4. He admits the allegations contained in paragraph 4.

5. He admits the allegations contained in paragraph 5.

6. He admits the allegations contained in paragraph 6, except that this defendant neither admits nor denies that said judgments are a lien upon the land and premises described in said bill of complaint, and leaves complainant to prove the same. 10

7. He admits the allegations contained in paragraph 7.

8. He neither admits nor denies the allegations contained in paragraph 8, and leaves complainant to prove the same. 20

As to the amendment to bill, this defendant says:

He admits that on March 25th, 1926, there was recorded in the clerk's office of Atlantic County a mortgage executed by complainant to this defendant, to secure the payment of the sum of twenty thousand dollars (\$20,000), on the lands and premises described in the bill of complaint; but denies that it was a pretended mortgage, and says that it was a valid mortgage, given for a bona fide consideration of twenty thousand dollars (\$20,000) in cash. 30

He neither admits nor denies the allegation that on March 31st, there was recorded in the Atlantic

County Clerk's Office a mortgage from complainant to Atlantic Amortization Mortgage Company, to secure the payment of the sum of twenty-five hundred seventy-five dollars (\$2,575), and leaves complainant to prove the same.

10 He neither admits nor denies the allegation that on February 25th, 1927, there was recorded in the Atlantic County Clerk's Office a mortgage from C. Berenda Weinberg and Sadie, his wife, to William I. Schloss, to secure the payment of sixty-five hundred dollars (\$6500), and leaves complainant to prove the same.

20 He neither admits nor denies the allegation that on March 11th, 1927, there was recorded in the Atlantic County Clerk's Office a mortgage from C. Berenda Weinberg and Sadie, his wife, to Irving E. Schloss and Mildred Klein, executors under the will of William I. Schloss, deceased, to secure the payment of the sum of sixty-five hundred dollars (\$6500), and leaves complainant to prove the same.

This defendant, answering the paragraph which alleges that complainant did not authorize the mortgage recorded March 25th, 1926, and did not execute the same, and received no consideration therefor, says that said mortgage was duly authorized, as appears from the face thereof, and that complainant did receive the full consideration of said mortgage, to wit, the sum of twenty thousand dollars (\$20,000).

MORRIS BLOOM,

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*Solicitor for and of Counsel  
with Morris Berenstein.*

ANSWERS OF C. BERENDA WEINBERG  
AND SADIE WEINBERG.

IN CHANCERY OF NEW JERSEY.

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Between		10
C. BERENDA WEINBERG CLINIC RESEARCH LAB- ORATORIES, INC., a cor- poration, etc., <i>Complainant,</i> and C. BERENDA WEINBERG, <i>et ux., et al.,</i> <i>Defendants.</i>	} On Bill, etc. Answers of C. Ber- enda Weinberg and Sadie Weinberg.	20

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Defendants, C. Berenda Weinberg and Sadie Weinberg, of the City of Atlantic City, County of Atlantic and State of New Jersey, answering the bill of complaint and the amended bill of complaint, say:

1. They admit paragraph 1. 30
2. They admit paragraph 2, except as may hereinafter appear.
3. They admit paragraph 3, except that they deny that the execution of said deed was without author-

12      *Answers of C. Berenda Weinberg and  
Sadie Weinberg*

ity from the corporation or without consideration to the complainant for said execution.

4. They admit paragraph 4.
5. They admit paragraph 5.
6. They admit paragraph 6.
- 10      7. They admit paragraph 7.
8. They deny paragraph 8.
9. They admit paragraph without number, presumably paragraph 9.
- 10      10. They admit the first sub-paragraph of paragraph 7a.
- 20      11. They admit the second, third and fourth sub-paragraphs of paragraph 7a.
12. They deny the 5th sub-paragraph of paragraph 7a.
13. They deny the 6th sub-paragraph of paragraph 7a.
- 30

DEFENSES.

1. Defendant, Sadie Weinberg, says that she knew nothing of the affairs of the corporation or of her husband, and that whatever she did was under the

direction of her husband and in the belief that her course of conduct was right and honest.

2. Defendant, C. Berenda Weinberg, says that his real dealings were with one Stettenheim, who either himself or by his agents and servants represented the other shares of stock in the company not held by C. Berenda Weinberg.

10

3. That it was understood and agreed between defendant, C. Berenda Weinberg, and said Stettenheim, that defendant could do as he saw fit with said company, including the electing of officers and making such conveyances and mortgages as he saw fit, and defendant has so done.

4. That all of which was known to said Stettenheim and unobjected to by him until the institution of this suit, at which time defendant had quarreled with said Stettenheim.

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WILLIAM CHARLTON,  
*Solicitor of C. Berenda  
Weinberg and Sadie  
Weinberg.*

30

TESTIMONY.  
IN CHANCERY OF NEW JERSEY.

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10	Between C. BERENDA WEINBERG CLINIC & RESEARCH LABORATORY, <i>Complainant,</i> and C. BERENDA WEINBERG, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, etc. Final Hearing.
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Atlantic City, N. J., November 22, 1928.

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TESTIMONY.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

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APPEARANCES:

For the complainant: MESSRS. COLE & COLE.

For the defendants: MESSRS. BOURGEOIS & COULOMB, MORRIS BLOOM, ESQ., ALBERT C. ABBOTT, ESQ., and MESSRS. BOLTE & TRIPICIAN.

The Court: I show counsel a certificate, not sworn to, that Weinberg is under the care of Dr. McGivern, and advised him to remain in the house and in bed, not consented to, and that Mr. Charlton says he has withdrawn his answer and no longer appears in the matter.

Mr. Coulomb: If your Honor please, I simply want to file the witness subpoena which I had served on Dr. Weinberg either last Tuesday or the following day, at least I issued it, and it was served, and after that our office was in telephonic communication with Dr. Weinberg, and the information that we had was that he would have been on last Friday to consult in regard to the matter, and then again this morning. Personally I do not think we have heard from him as to his illness, if he is really ill. I think we should have his testimony, because I think it is important to us. I understand that Judge Cole feels it is not, but we think that it is. We are ready here to go ahead with the case. I expected maybe Dr. Weinberg would not care to come to our office and consult, but he would come in court in obedience to the subpoena, and we could put him on the stand without the benefit of a consultation with him.

The Court: If you desire, you may proceed to cite him for contempt. The certificate is insufficient.

Mr. Coulomb: I would like to find out if he really is sick, as the certificate indicates, over Dr. McGivern's signature. Of course, that, I suppose, at least is a good defense to his not appearing.

The Court: It simply goes to the extent that Dr.

McGivern has advised him to stay at home and in bed. I have been here holding court a good many days when I have had that advice.

Mr. Cole: I have been advised to go away for two months.

Mr. Abbott: Your Honor, I talked with Dr. Weinberg on the 'phone, or some one who said it was him, and sounded like his voice, as late as five o'clock  
10 yesterday afternoon, and he said he would be here.

Mr. Cole: We had what I think is a fairly authentic report that at the last session he was supposed to be over in New York with his wife, or his wife was over there, he was at the hotel the night before.

Mr. Coulomb: I have heard stories about that,  
20 too.

Mr. Cole: I don't know whether that is true or not.

Mr. Coulomb: I don't either, but I do know we have tried to get him, if he is really away because of some physical trouble I think we should have the opportunity of putting his testimony in, and if he is staying away in absolute disregard of the subpoena,  
30 then I think when we have an opportunity to investigate, that he should be attached for contempt.

The Court: Now, however, today can we proceed?

Mr. Cole: I think we ought to proceed with what we have.

The Court: If it becomes necessary to have his testimony —

Mr. Coulomb: It may be when we get through we won't need it. I think it will be, but it may not be.

The Court: We will meet that when we come to it.

Mr. Cole: I want to make this statement on the record, since the filing of the bill in this cause the first mortgage on the premises described in the bill, and which mortgage existed at the time this complainant took title, has been foreclosed and a surplus was created of approximately somewhere between sixteen and eighteen thousand dollars. As the result of that foreclosure all parties in interest are eliminated except Mr. Braunstein who held the subsequent mortgage of \$20,000, so that the contest now is really between the corporation owner, the filer of this bill, and Mr. Braunstein.

10

20

Mr. Coulomb: I think that correctly states the legal situation with respect to the issue. I suppose you have going to have proof as to the exact amount of the surplus?

Mr. Cole: Yes, or agree on it. It is a matter of figures.

I want to offer in evidence the minute books of the corporation.

30

(Minute books received in evidence and marked Exhibits C1 and C2).

Mr. Cole: By agreement we are to use the testimony of Mr. Gray that was taken on the order to show cause that has been transcribed.

(The following is testimony of Robert G. Gray taken on the order to show cause on January 3rd, 1928.)

IN CHANCERY OF NEW JERSEY.

10 Between:

C. BERENDA WEINBERG  
CLINIC and RESEARCH  
LABORATORY, INC.,

*Complainant,*

and

C. BERENDA WEINBERG,  
*et als.,*

*Defendants.*

On Bill, &c.  
On Order to Show  
Cause.

20

Atlantic City, N. J., January 3, 1928.

TESTIMONY.

Before HON. R. H. INGERSOLL, Vice-Chancellor.

30

APPEARANCES:

For complainant, MESSRS. COLE & COLE.

For defendants, MORRIS BLOOM, ESQ., and MESSRS.  
BOURGEOIS & COULOMB.

ROBERT G. GREY, SWORN.

Direct examination.

By Mr. Cole:

Q. Do you hold an official position with the C. Berenda Weinberg Clinic and Research Laboratories, a corporation? 10

A. Yes, I am secretary.

Q. How long have you been secretary?

A. Since the beginning.

Q. Do you have the minutes of the company with you?

A. Yes, I have.

Q. Where are they? Produce them, please.

(Minute book produced).

20

Q. Will you state the first meeting of the corporation?

A. You mean the stockholders' meeting and directors' meeting?

Q. Yes.

A. First meeting of the corporation was held on the twenty-third day of March, 1922, 17 Cedar Street, New York, pursuant to written waiver of notice signed by all the incorporators fixing said time and place.

30

Q. Did you keep all the minutes?

A. Yes, sir, all the minutes.

Q. Are you a director?

A. Yes.

Q. Did you attend the meetings?

A. Yes.

Q. Will you tell me first whether there was a resolution passed at that meeting touching the right or lack of right and power in anyone to burden the corporation with a debt?

A. Yes, at that meeting there was a resolution passed taking away from any of the officers —

Q. Read it, please.

A. "Resolved that the by-laws be amended to read as follows; neither the president nor any other officer or director may contract either on behalf of  
10 the corporation or sell, assign or transfer any property, real or personal, belonging to the corporation, without the sanction of the entire board at a regular or special meeting."

Q. Now it appears that on the seventeenth day of March, 1926, a mortgage, purporting to be made by C. Berenda Weinberg Clinic and Research Laboratories, corporation to Morris Bernstein for \$20,000, and I ask you whether there is any authority ever  
20 given by the directors to make that mortgage?

A. No.

Q. It also appears and is claimed that that mortgage of \$20,000 was given in lieu of three preceding mortgages aggregating about that sum. Is there any authority by the directors authorizing the making of any one of those three mortgages?

A. No.

Q. Is there any authority in the minutes from the directors authorizing Mr. Weinberg, C. Berenda  
30 Weinberg, the president, to either sell or mortgage the property?

A. No, there is no authority.

Q. Do you know when it was that it came to the notice of any of the officers of this corporation that Dr. Weinberg had attempted to either sell or mortgage the company's property?

A. Yes, the middle of September this year he called me up one day from Atlantic City and asked me to send a telegram to his attorney authorizing him to, authorizing the corporation to sue him to have these mortgages or whatever else he may have done set aside. That is the first that was heard of it by anybody.

Mr. Bourgeois: Have you that telegram, Mr. Grey? 10

A. I didn't say that. I said he telephoned up and asked me to send a telegram down.

Q. Did you send such a telegram?

A. No, I sent no telegram.

Q. Now, in consequence of that telephone message from him, did the corporation retain counsel to make an investigation of what he had in fact done and take care of its interest?

A. Yes, immediately. 20

Q. And since then has any action been taken, so far as Mr. Weinberg's relation with the corporation is concerned?

A. Yes, there was a resolution passed asking him to resign as president.

Mr. Coulomb: If your Honor please, I think that is objectionable. That is after the fact.

Mr. Cole: I don't think it is important. If you 30 object to it, I won't press it.

The Court: Sustain the objection.

Cross-examination.

By Mr. Coulomb:

Q. Mr. Grey, when did you say this corporation was formed?

A. 1922.

Q. How many meetings have you had since 1922 down to the present time?

10 A. I don't know the number.

Q. How many?

Mr. Cole: May I introduce the minute book, please.

The Court: Yes.

Mr. Cole: How many minute books are there?

20 A. Two.

Mr. Cole: I offer them.

(Two minute books received in evidence and marked Exhibit C1).

Q. When was the first election held of your officers?

A. First date I presume; tell you in a minute.

30 Q. Don't you know?

A. In March 1922, first meeting.

Q. Who were elected at that time?

A. Weinberg was elected president and treasurer, Mr. Engle was elected vice-president and I was elected secretary.

Q. Who were the directors?

A. The same three.

Q. Was any report of that filed in the Secretary of State's office of New Jersey?

A. Of what?

Q. Of the election of officers?

A. Yes, must have been.

Q. Well, were there? Do you know whether there were or not?

A. Yes.

Q. Do your minutes show that there were? 10

A. I don't see that the minutes of that meeting were filed but the certificate of incorporation was filed, of which we have a copy here.

Q. I am not asking about the copy; I am asking about the report showing the election of officers and directors.

A. I don't see the report here.

Q. When did the next election of officers and directors of your corporation follow?

A. The following year. 20

Q. Where?

A. Atlantic City.

Q. Who were present at that time?

A. Dr. Weinberg and the other two directors, by proxy.

Q. Who was elected then, do your minutes show?

A. Same ones, yes.

Q. Who prepared the minutes of that meeting?

A. What do you mean, who prepared them?

Q. Who prepared them, who took the minutes of the meeting which was held in Atlantic City when Dr. Weinberg was the only person who was present in person? 30

A. Well, he signed the minutes there; is that what you mean?

Q. Yes, correct; when was the next meeting of your corporation held?

A. Do you mean the next meeting at which there were elections?

Q. At which officers were elected?

A. The following year.

Q. Who signed that?

A. Also Weinberg.

Q. Dr. Weinberg?

A. Yes.

Q. When was the next one held after that?

10 A. Following year.

Q. Dr. Weinberg signed that, did he?

A. Yes.

Q. When was the next one held?

A. Following year.

Q. Who signed that?

A. Dr. Weinberg.

Q. When was the next one held?

A. Following year.

Q. What year would be the following year?

20 A. Well, 1922, next one 1923, 1924, 1925, 1926.

Q. Have you had a meeting in 1927 as yet?

A. Yes, we have had several of them.

Q. Now what meeting did you elect officers in 1927?

A. Yes, we had a meeting in 1927.

Q. You elected officers at that meeting?

A. Yes.

Q. Dr. Weinberg was the only person present in person at that meeting, was he not?

30 A. That is right.

Q. This property owned by this corporation consisted of a plot of real estate on Iowa avenue in Atlantic City, did it not?

A. Yes, sir.

Q. Did the directors ever authorize the taxes to be paid on that property?

A. Yes. I have a receipt here.

Q. I ask you did they ever authorize them to be paid by any resolution?

A. No; I don't think so.

Q. There was a first mortgage on that property too, was there not, owned by Mrs. Lippincott?

A. Yes.

Q. Was there any authorization ever made to pay the interest on that mortgage?

A. No, there was no resolution passed but it was understood — 10

Q. Who paid it?

A. Dr. Weinberg.

Q. Out of the funds that he had as treasurer?

A. Well, I don't know.

Q. Did he have any funds as treasurer of this corporation?

A. Yes.

Q. Where were they kept, in what bank?

A. Originally at the Chelsea National Bank. 20

Q. For how long were they kept there?

A. I can't tell you because the fund was originally established to buy that property and the stockholders had no interest in his personal affairs, medical affairs other than to see that they got, that the property wasn't sold and also to see that they got the six per cent dividend that had been agreed upon at the beginning; they got that and the taxes were paid.

Q. They got their six per cent dividend, did they? 30

A. Yes.

Q. Every year?

A. Every year.

Q. On how much? What was the capital stock?

A. Twenty-five thousand dollars.

Q. Where did the profit come from, Mr. Grey, out of which the dividends were paid?

A. What do you mean where did the profit come from?

Q. You know you can't pay dividends without making money, don't you?

A. Well, Weinberg was to pay that in himself, he was to put in enough to —

Q. He was to pay the interest on \$25,000 so as to produce a fund of six per cent each year for the persons who invested?

10 A. He was to put enough into the corporation to pay that interest on the mortgage, to pay the taxes and to give the stockholders six per cent.

Q. And he did that straight along for six or seven years?

A. Yes.

Q. Up until the present time?

A. That is right.

By Mr. Cole:

20 Q. Have you the stock book of the corporation here?

A. Yes, sir.

Q. Give me the names of the stockholders and how the shares are held?

A. Share No. 1 issued to C. Berenda Weinberg, Atlantic City, New Jersey, March 21, 1922; Share No. 2 issued to Solton Engle March 21, 1922; share No. 3, certificate No. 3, 38 shares issued to Robert G. Grey March 21, 1922; certificate No. 4, 340 shares, issued to Robert G. Grey March 28, 1922; certificate No. 5, 120 shares, issued to Robert G. Grey April 20, 1922.

30 Q. You didn't give the number of shares certificate numbers one and two, of Dr. Weinberg.

A. Certificate No. 2 was one share to Dr. Weinberg, C. Berenda Weinberg, Atlantic City.

The Court: How is that?

A. Number one —

Q. Was for one share?

A. Yes, C. Berenda Weinberg, Atlantic City, N. J.

Q. Number two?

A. Number two is one share to Solton Engle, certificate 3, 38 shares Robert G. Grey, certificate 4, 340 shares Robert G. Grey, certificate 5, 120 shares to Robert G. Grey. 10

Q. Is that the way the stock now stands?

A. That is the way it stands now.

(Stock book offered, received in evidence and marked Exhibit C3).

By Mr. Coulomb:

Q. Mr. Grey, did you advance the money on that stock to pay that into the corporation? 20

A. Did I personally?

Q. Yes.

A. No, sir.

Q. Who did?

A. My employer, rather his wife.

Q. Who is he?

A. My employer or his wife.

Q. Which one advanced the money?

A. His wife.

Q. To whom was the money paid? 30

A. To the corporation for the stock.

By Mr. Cole:

Q. What is the name of the wife?

A. Mrs. Flora R. Stettenheim.

Q. Have you the checks?

A. Yes, sir.

Q. Produce the original checks.

(Checks produced).

Q. Do you produce the checks that paid for that stock?

A. Yes.

10

(Checks produced, offered, received in evidence and marked Exhibits C4, 5 and 6).

Q. One check No. 279 on the United States Mortgage and Trust Company dated May 4, 1923, to the order of the C. Berenda Weinberg Clinic and Research Laboratories for \$2,000, signed F. R. Stettenheim, appears to have been endorsed by C. Berenda Weinberg Clinic and Research Laboratories, Inc., C.

20 Berenda Weinberg, Treasurer.

Check No. 682 on Hamlin & Co., New York, dated March 27, 1922, to the order of The C. Berenda Weinberg Clinic and Research Laboratories for \$17,000, that is the check of Hamlin & Co., Inc., signed by I. N. Stettenheim.

A. Yes, that is the husband of Mrs. Stettenheim. He is president of the company.

30 Q. It is endorsed "in full payment of 340 shares, C. Berenda Weinberg Clinic, &c., \$50 per share, name of Robert G. Grey." It is endorsed C. Berenda Weinberg Clinic and Research Laboratories, C. Berenda Weinberg, President and Treasurer.

Next check 691 on Hamlin & Co., New York, April 20, 1922 for \$6,000 to the order of C. Berenda Weinberg Clinic and it is marked on the back "in payment of 120 shares of stock issued to Robert G. Grey

for account of whom it may concern” and that is endorsed C. Berenda Weinberg, Treasurer.

M. Cole: I offer bond dated the 17th day of March, 1926, purporting to have been made by C. Barend Weinberg Clinic and Research Laboratories, Inc., to Morris Braunstein, in the just sum of \$20,000 payable within one year from date.

(Bond received in evidence and marked Exhibit 10 C3).

I also offer the mortgage given to secure that bond of like date, and sworn to by Sadie Weinberg, purporting to be secretary of that company, and recorded in Book 392 of Mortgages, page 257.

(Mortgage received in evidence and marked Exhibit C4).

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ROBERT G. GREY, SWORN.

Direct examination.

By Mr. Cole:

Q. Do you hold a position with the complainant company, the Weinberg Clinic and Research Laboratories? 30

A. Yes, sir.

Q. What?

A. Secretary.

Q. How long have you been its secretary?

A. Ever since it started.

Q. Was Sadie Weinberg ever secretary of the company?

A. No.

Q. Where has the seal, the official seal of the corporation been since it was incorporated, in whose possession?

A. In my possession in New York.

Cross-examination.

10

By Mr. Coulomb:

Q. When were you elected secretary, Mr. Grey?

A. Every annual meeting.

Q. When were the annual meetings held?

A. When?

Q. Yes.

A. In April, April 1st.

20 17, 1926?

A. April 1st, 1925.

Q. Where was that meeting held?

A. In Atlantic City?

Q. Who were present at it?

A. Dr. Weinberg.

Q. He was the only one present?

A. Yes, sir.

Q. When was the meeting held prior to April, 1926, I mean April, 1925?

30 A. Prior to April, 1925; April, 1924.

Q. Where was that meeting held?

A. Atlantic City.

Q. Who was present at that meeting?

A. Dr. Weinberg.

Q. Where was the meeting held in 1923, April of 1923?

A. Atlantic City.

Q. Was that—who were present at that meeting?

A. Dr. Weinberg.

Q. Is the same true of the meeting of 1922?

A. Well, there was no meeting in April, 1922.

Q. When was the Berenda Weinberg Clinic incorporated?

A. In March.

Q. Of 1922?

A. Yes.

10

Q. Where were those meetings held in Atlantic City, 109 South Iowa Avenue?

A. Yes, sir.

Q. What other meeting did you have other than these annual meetings?

A. Just had monthly meetings in New York.

Q. Who was present at those meetings?

A. Mr. Engle and myself.

Q. Who was Mr. Engle?

A. He was the vice-president.

20

Q. Did you have the same officers throughout the life of this corporation from its incorporation down to the present time?

A. Yes, sir.

Q. Who were those officers?

A. Dr. Weinberg was president and treasurer, Mr. Engle was vice-president and I was secretary.

Mr. Cole: Give the directors.

30

Q. Give the directors.

A. They are the same.

Q. That is, Dr. Weinberg, Mr. Engle and Mr. Grey, yourself?

A. That is right.

Q. No report was ever filed with the Secretary of

State, either initially after your first meeting and election or any other time showing who the officers were, was there?

A. I presume there were, because Dr. Weinberg was to take care of the filing at the time.

Q. I am not speaking—he was to have charge of all that part of it?

A. Well, at the time the incorporation was started, he said he would take care of all the filing.

10 Q. But you were secretary from thence on?

A. I beg pardon?

Q. But you were secretary from thence on?

A. Yes, sir.

Q. And you filed no annual report of the election of officers or the amount of capital stock?

A. No, I did not.

Q. Or any of that thing required by the Corporation Act?

20 A. No, I didn't. I assumed that Dr. Weinberg would because he had the lawyer —

Mr. Coulomb: I ask that be stricken out.

The Court: Yes, that is not responsive.

Mr. Cole: The question is whether you did and you say you didn't?

30 A. No, I didn't.

By Mr. Cole:

Q. Of course the minutes, Mr. Grey, will speak for themselves, but I will ask you the question, was there ever any authority given by the directors of stock-

holders to Dr. Weinberg to either mortgage or convey this company's property?

A. No.

By the Court:

Q. These meetings, the annual meeting, you say Dr. Weinberg was the only one present?

A. Yes.

Q. You were not present as secretary? 10

A. No.

By Mr. Cole:

Q. He have proxies?

A. Yes.

By Mr. Coulomb:

Q. Have you those proxies? 20

A. They are in the minute book.

Q. Will you turn to the minutes of the last meeting at the meeting of April, 1925, I think that was the one that you said was the last annual meeting before the making of this mortgage?

A. Yes, must have been if it was given in 1925. When was the mortgage given?

Q. Mortgage was given March 17, 1926, you said the last annual meeting?

A. Yes. 30

Q. Now, was there an annual meeting, first turn to the annual meeting held in April, 1925, and read from the minutes as to what took place at that meeting.

A. The annual directors' meeting on this April 1st, 1925, the Annual Directors' Meeting was held

this day in the office of the company in Atlantic City, being present C. Berenda Weinberg, Solton Engle by proxy, Robert G. Grey by proxy. It was moved that the reading of the minutes of the last meeting be dispensed with. This was accordingly done. The following were unanimously chosen officers of the company to serve for one year and until their successors are chosen and qualified: President and Treasurer, C. Berenda Weinberg. Vice-President, 10 Solton Engle. Secretary, Robert G. Grey. There being no further business, the meeting adjourned. Signed, C. Berenda Weinberg, President and Treasurer." That was the Directors' Meeting. Then there is the Stockholders' Meeting electing directors on the same day.

Q. What does the Stockholders' Meeting show, minutes of the Stockholders' Meeting held April, 1925?

A. "The Annual Stockholders' Meeting of the C. 20 Berenda Weinberg Clinic and Research Laboratories was held this day in the office of the company in Atlantic City, New Jersey. Present C. Berenda Weinberg, Solton Engle by proxy, Robert G. Grey by proxy. It was moved that the minutes of the previous meeting be dispensed which were accordingly done. The following were unanimously chosen as the Directors of the company to serve for one year and until their successors are elected. C. Berenda Weinberg, Solton Engle, Robert 30 G. Grey. There being no further business the meeting on motion was adjourned. C. Berenda Weinberg, President and Treasure."

Q. Have you the proxies there?

A. Yes.

Q. Will you read the one which was given by you to Dr. Weinberg?

A. That is, they were both, I mean the same one.

Q. Same one signed by both you and Mr. Engle?

A. Yes.

Q. Will you read it, please?

A. "March 10, 1925, We, Solton Engle and Robert G. Grey, stockholders of the C. Berenda Weinberg Clinic and Research Laboratories, do hereby authorize and empower Dr. C. Berenda Weinberg to represent us at the Annual Stockholders' Meeting and at the Annual Directors' Meeting of the above corporation to be held on April 1st, 1925. Witness our hands and seals this 10th day of March, 1925. Signed Solton Engle and Robert G. Grey." 10

Q. Now, was there any meeting held in April, 1927?

A. I believe so. April, 1927—wait one moment. An annual meeting?

Q. I am not clear—when did you have your next meeting?

A. April 1st, 1927. 20

Q. That was the next meeting after April 1st, 1926?

A. It wasn't the next meeting, no.

Q. Was the next meeting as shown by your minutes?

A. No, that is not the next meeting. We held a meeting every month.

Q. Take your next meeting, April 1st, that was your next annual meeting, 1927?

A. Yes. 30

Q. Will you just read the minute of the meeting of the directors?

A. The annual directors'?

Q. Yes.

A. "The Annual Directors' Meeting was held in Atlantic City, New Jersey, the following directors

were present, C. Berenda Weinberg, Solton Engle and Robert G. Grey. The reading of the minutes of the previous meeting was dispensed with. Following were unanimously chosen officers of the company to serve for one year and until their successors are chosen and qualified; President, and Treasurer, C. Berenda Weinberg; Vice-President, Solton Engle; Secretary, Robert G. Grey. There being no further business the meeting adjourned."

10 Q. Taking those two meetings, in whose handwriting does the minutes appear?

A. They are typed.

Q. Who typed them?

A. They were typed, here is the way the minutes were typed, they were typed in our office, one draft sent to Dr. Weinberg to hold the meeting and sign and send back to New York.

20 Q. So that all you know so far as what happened at that meeting was what you had previously written?

A. Yes, and looked to see, read this over when it came back.

Q. And that was true of every annual meeting that you had?

A. Yes, sir, every annual meeting.

Q. You prepared the minute in Atlantic City and sent down the minute together with the proxy?

30 A. Prepared a draft. If he had wanted to retype it or rewrite it and send it back then to New York above his signature, why, I would have looked it over and if there had been anything that wasn't right about it we would have gone into the matter.

By the Court:

Q. I notice in the minute of April 1st, 1927, it

states that the three of you were present. Were you present?

A. No, proxy, the proxy is here.

Q. There is no statement in that meeting of being present by proxy as was in the one previous that you read.

A. Here is the proxy.

By Mr. Coulomb:

10

Q. You were in effect present by proxy at the meeting?

A. Yes, all annual meetings.

Q. Both directors' and stockholders'?

A. Yes, sir, all meetings.

Q. Mr. Grey, I show you a letter which is attached to the minutes under date of January 4th, 1927; you familiar with Dr. Weinberg's signature?

20

A. Yes, sir.

Q. Is that his signature to that letter?

A. That is his signature.

Q. And that was received by Mr. Stentenheim?

A. Yes.

Q. How did it come to be put in the minutes, attached to the minutes?

A. He just told me to save it, I didn't want to lose it; that is all. I mean it is no part of the minutes.

30

Mr. Coulomb: I would like to have it marked for identification.

(Letter marked D1 for identification).

By Mr. Cole:

Q. Did any letter of instructions from Mr. Weinberg accompany the power of attorney that was sent from time to time?

A. You mean the proxy?

Q. Yes, with the proxy.

A. I don't remember whether I wrote a letter with them or not, because the —

10 Q. Just a moment.

By Mr. Coulomb:

Q. Was there any letter written in response to it, do you know, this letter of January 4, 1927, written by Dr. Weinberg to Mr. Stetenheim?

A. I have no idea.

Q. I beg pardon?

20 A. I don't know.

Q. Who handed you the letter?

A. Mr. Stetenheim.

Q. Was Mr. Stetenheim a stockholder?

A. No. In this company?

Q. Yes.

A. Well, as I said, the only stockholders were myself, Mr. Engle and Mr. Weinberg, according to the books.

30 Q. But Mr. Stetenheim was the real owner, wasn't he, of this stock?

Mr. Cole: I object. How could he say?

The Court: If he doesn't know he may say so.

Mr. Cole: It must be hearsay.

Q. Do you actually know or are you simply going to testify from hearsay?

A. I know that the stock certificates there are transferred to the Home for Hebrew Infants, so I guess he is not the real owner.

COMPLAINANT RESTS.

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DEFENDANT'S TESTIMONY.

Mr. Coulomb: If your Honor please, I desire to offer in evidence first certificate from the Secretary of State's office.

(Certificate received in evidence and marked Exhibit D2).

20

Mr. Cole: I think I should object on the ground it is not relevant, although it makes no difference.

The Court: I will admit it.

Mr. Coulomb: I also desire to offer in evidence a certificate copy of the certificate of incorporation.

(Certificate received in evidence and marked Exhibit D3).

30

STEPHEN BARTHA, SWORN.

Direct examination.

By Mr. Coulomb:

10 Mr. Coulomb: Judge Cole, I suppose you have no objection to my showing the course of this title from the abstracts of the Title Company?

Mr. Cole: No, I have no objection to that, but I am going to object, and I suppose I may do it now, I am going to make a general objection to any proof as to the action of the Title Company in respect to this mortgage. The only question involved here is whether or not there was authority on the part of Mrs. Weinberg to transfer the property or make mortgages. That is the sole question.

20 Mr. Coulomb: If your Honor please, that may be the sole question, but the deeper question than that, because, even if Mr. Weinberg did not have the authority to do what he did do, if any benefit went to this corporation it seems to me that they are bound by it to the extent of that benefit.

The Court: I will permit the testimony.

30 Q. Mr. Bartha, beginning with the purchase of this property by the Barendia Weinberg Clinic Company, will you produce the abstract of that?

A. Yes, sir.

Q. What was the date of the deed?

A. It is dated March 30th, 1922.

Q. Shows a conveyance by whom to whom?

A. It shows a conveyance by Seraph F. Lillig and Amsa, his wife, to C. Barendra Weinberg Clinic and Research Laboratory, Incorporated, a corporation of New Jersey.

Q. What was the consideration as shown by the deed?

A. As shown by the deed the consideration was \$1,000, but there are revenue stamps affixed in the amount of \$17.50.

Q. What would those revenue stamps indicate the purchase price was? 10

A. It would indicate the purchase price would have been \$17,500.

Q. Does the conveyance show whether it was subject to any mortgage at the time of its making, the abstract, I mean, that you have?

A. It does.

Q. What was the amount of the mortgage?

A. The abstract shows that there was a mortgage in the amount of \$22,000. 20

Q. I will get the record of that deed, recorded when and where?

A. The recording was April 17, 1922, in the Clerk's Office.

Q. In Book what?

A. In Book 676, page 343 and 344, in the County Clerk's Office at Mays Landing.

Q. What is the next conveyance either by way of deed or mortgage touching that property?

A. The next instrument is a mortgage made by C. Barendra Weinberg Clinic and Research Laboratories, Incorporated, to Anna Morosca. 30

Q. What is the date of that mortgage?

A. It is dated February the 16th, 1925.

Q. To secure how much?

A. To secure the amount of \$2200.

Q. When was it recorded?

A. It was recorded February the 17, 1925, in book 328, page 48.

Q. Does it appear from your abstract who it was that signed the mortgage on behalf of the C. Barend Weinberg Clinical Laboratory?

A. It does.

Q. By whom was it signed?

A. It is signed by C. Barend Weinberg, President, attest Sadie Weinberg, Secretary.

10 Q. Does the abstract show what became of that mortgage so far as its cancellation or satisfaction is concerned?

A. There was an assignment of that mortgage to Anthony Siracusa, Jr., et als., which was recorded February 17th, 1925, and it was subsequently cancelled on March 25, 1925.

Q. What is the next instrument of record affecting the title to this property?

20 A. The next instrument is a mortgage made by C. Barend Weinberg Clinic and Research Laboratories, Incorporated, a corporation of New Jersey, to Morris Berenstein, dated March 20th, 1925, and recorded March 25th, 1925. The amount is \$7,000. The recording is in book 331, page 125.

Q. What, if any, record appears upon your abstract showing either the cancellation or satisfaction of the mortgage, if any?

A. The mortgage was cancelled March the 25th, 1926.

30 Q. What is the next instrument of record that you have—let me ask you, who signed that mortgage, the one to Mr. Bernstein of March, 1925?

A. It was signed by C. Barend Weinberg as President and attested Sadie Weinberg as secretary.

Q. Now, the next instrument, if you please.

A. The next instrument is a mortgage given by C. Barendina Weinberg Clinic and Research Laboratories, Incorporated, corporation of New Jersey, to Maurice B. Peikin. That mortgage is dated April 24, 1925, recorded April 25, 1925, in Book 330, page 383. Principal of the mortgage was \$3000.

Q. Who signed that mortgage?

A. That was signed by C. Barendina Weinberg, President; attest, Sadie Weinberg, secretary.

Q. Will you give us the book and page of the 10 record?

A. It is Book 330, page 383 and 385.

Q. What became of that mortgage as disclosed by your abstract?

A. You mean this last one?

Q. Yes.

A. It was cancelled on September the 18th, 1925.

Q. What is the next instrument of record that you have affecting the title to the Weinberg property?

A. The next instrument is a mortgage given by C. Barendina Weinberg Clinic and Research Laboratories, Incorporated, corporation of New Jersey, to Morris Bernstein. This mortgage is in the amount of \$5,000. It was dated September the 16th, 1925, and recorded September 18, 1925. 20

Q. Book and page?

A. The book and page I don't have on this abstract. It was signed by C. Barendina Weinberg as president; attest, Sadie Weinberg, secretary, and was cancelled in March 25th, 1926. 30

Q. What is the next instrument you have affecting the title to the property?

A. The next instrument is a mortgage given by C. Barendina Weinberg Clinic and Research Laboratories, Incorporated, a corporation of New Jersey, to Maurice B. Peikin. The amount of that mortgage

is \$2600. It was dated August 27th, 1925, recorded September 19, 1925. I don't have the book and page of this instrument, either. It was signed by C. Barendina Weinberg, president; attest, Sadie Weinberg, secretary. It was cancelled on March 25th, 1926.

Q. Were there any assignments of that mortgage?

A. There was not.

Q. What is the next instrument?

- A. The next instrument was a mortgage from C. Barendina Weinberg Clinic and Research Laboratories, Incorporated, corporation of New Jersey, to Atlantic Amortization Mortgage Company, a corporation of New Jersey. This mortgage was in the amount of \$1522.50. It was dated January 6th, 1926, recorded January 11, 1926. I don't have the book and page of this. It was signed by C. Barendina Weinberg, president; attest, Sadie Weinberg, secretary. It was cancelled March 25, 1926.

- 20 Q. What is the next instrument you have affecting the title to this property?

A. The next instrument is a mortgage from C. Barendina Weinberg Clinic and Research Laboratories, Incorporated, a corporation of New Jersey, to Morris Bernstein, in the amount of \$20,000. This mortgage is dated March 17, 1926, recorded March 25, 1926. It was signed by C. Barendina Weinberg, president; attest, Sadie Weinberg, Secretary.

- 30 Q. Does your record show what became of that mortgage either by way of satisfaction or cancellation, or is it still alive so far as your record shows?

A. The records don't show any cancellation of that mortgage. There is a memo there that was cut out.

Q. What was the next instrument of record?

A. The next instrument is a mortgage made by C. Barendina Weinberg Clinic and Research Labora-

tories, Incorporated, a corporation of New Jersey, to Maurice B. Peikin. That mortgage is in the amount of \$2600. It is dated March 17th, 1926, recorded March 26th, 1926. It was signed by C. Barendina Weinberg, president; attest, Sadie Weinberg, secretary, and it was cancelled on April the 7th, 1927.

Q. Cancelled on what date?

A. April 7th, 1927.

Q. What is the next instrument of record affecting the title? 10

A. The next is a mortgage given by C. Barendina Weinberg Clinic and Research Laboratories, Incorporated, a corporation of New Jersey, to the Atlantic Amortization Mortgage Company, also a corporation of New Jersey. The amount of this mortgage is \$2575, dated March 30th, 1926, recorded March 31st, 1926. It was signed by C. Barendina Weinberg, president; attest, Sadie Weinberg, secretary.

Q. Is it still of record or was it cancelled or satisfied? 20

A. This mortgage is cut out.

Q. What do you mean by "cut out," by the foreclosure proceedings?

A. By foreclosure.

Q. But it was never paid or satisfied, so far as the record shows?

A. Not in so far as the records show.

Q. Have you any other instrument of record affecting the title? 30

A. Yes, there is another mortgage from C. Barendina Weinberg and Sadie, his wife —

Q. Not purporting to be made by the corporation?

A. No.

Q. To whom?

A. It was made to William I. Schloss.

Q. Dated when?

A. It was dated July 7, 1926. Want the other data?

Q. Yes, please.

A. It was recorded February 25th, 1927. The principal of this mortgage was \$6500.

Q. That mortgage purports to cover the promises described in the other mortgages which you have named?

10 A. That is correct.

Q. That is 109 South Iowa Avenue?

A. That is right.

By Mr. Cole:

Q. Mrs. Weinberg made the affidavit?

A. I beg pardon?

20 Q. Mrs. Weinberg made the affidavit as in the other cases, as secretary?

A. No, this was made by individuals.

Q. Have you given the conveyance into Mr. and Mrs. Weinberg?

A. I have not.

By Mr. Coulomb:

Q. Are there any other instruments of record affecting the title?

30 A. Yes. Do you mean the instruments to date?

Q. Down to date.

A. I am following these right in sequence.

Q. I will tell you when to stop, then.

A. The next instrument is —

The Court: Let me understand, is there any

instrument conveying the title to Weinberg prior to the date of this mortgage?

A. There is not, your Honor.

Mr. Cole: You mean the mortgage in question?

The Court: No, the mortgage just spoken of.

A. The next instrument is a deed from C. Barendra Weinberg Clinic and Research Laboratories, Incorporated, corporation of New Jersey, to C. Barendra Weinberg and Sadie, his wife, of Atlantic City. This deed is dated March 4th, 1927. 10

Q. Is that the same date as the mortgage that you just read?

A. It is not.

Q. March 4th?

A. 1927, recorded March 11th, 1927. The deed was signed by the corporation, C. Barendra Weinberg signing as president, attest Sadie Weinberg, secretary. 20

Q. What was the expressed consideration in that deed?

A. One dollar.

Q. Were there any revenue stamps on it?

A. There are no stamps. I might add by way of explanation, Mr. Coulomb, at the time this property was conveyed under this deed, that the law affecting that had been repealed. 30

Q. What is the next instrument you have affecting the title to the property? Let me ask you a question, so it may be cleared up on the record, how does the date of record of the deed you have just read compare with the date of record of the mortgage from Weinberg and his wife individually?

A. The date of record of the deed conveying the premises into Weinberg is March 11, 1927. The date of record of the mortgage made by C. Barendra Weinberg and his wife to William J. Schloss is February 25, 1927.

Q. All right, Mr. Bartha, if you will give us the next instrument of record after the deed into Weinberg.

10 A. The next instrument is a mortgage given by C. Barendra Weinberg and Sadie, his wife, to Irving E. Schloss and Mildred Klein, executors, and so forth. This mortgage is dated March 4, 1927, recorded March 11th, 1927, and the principal is \$6500.

Q. Was that mortgage paid or satisfied, so far as the record shows?

A. There is no cancellation or satisfaction on the records.

Q. What is the next transaction?

20 A. The next instrument is a subrogation of mortgage. This was by the Atlantic Amortization Mortgage Company, a corporation of New Jersey, and Irving E. Schloss and Mildred Klein, executors, and so forth. The subrogation agreement is dated March 30th, 1927, and recorded April 7th, 1927.

Q. And, briefly, provides for what?

30 A. Briefly, it provides that the Atlantic Amortization agrees with Irving E. Schloss and Mildred Klein that the mortgage given by C. Barendra Weinberg and Sadie, his wife, to Irving E. Schloss, in the amount of \$6500 on March 4th, 1927, become a separate and prior lien on the premises as described in the mortgage given by C. Barendra Weinberg Clinic and Research Laboratories, Incorporated, to the Atlantic Amortization Company, under date of March 30th, 1926.

Q. What is the next instrument you have affecting the title?

A. The next instrument is the filing of a lis pendens, C. Barendra Weinberg Clinic and Research Laboratories, Incorporated, complainant, and—do you want the name of all the defendants?

Q. No, just briefly.

A. C. Barendra Weinberg et als. It was recorded and filed November 5th, 1927. The date is November 4th, 1927, Cole and Cole are the solicitors. The object of the suit is to have it declared that the mortgages and judgments referred to in the bill are not a lien against the premises and that they be cancelled of record so far as the said premises are concerned, and that C. Barendra Weinberg and Sadie Weinberg have no interest in the premises. 10

Q. That was November 27th?

A. No.

Q. November, 1927?

A. Yes, November, 1927.

Q. What is the next instrument?

A. The next instrument is a sheriff's deed by James Cimino, Sheriff, defendant C. Barendra Weinberg, et ux, et als. The grantee is Morris Bernstein of Atlantic City. The deed is dated January 12, 1928. It is recorded January 20th, 1928, Book 889, page 20. The consideration is \$42,500.

Q. That is the deed arising out of the foreclosure sale?

A. That is right.

Q. Now, Mr. Bartha, referring to the \$20,000 mortgage dated March 17, 1926, where did the settlement for that mortgage take place, if you know? 30

A. That settlement took place in the office the Chelsea Title and Guarantee Company, Atlantic City.

Q. By whom or through what company was the funds disbursed?

A. By that company.

Q. Will you refer to your file concerning that settlement?

A. Yes, sir.

Q. With respect to that settlement, have you on file any resolutions concerning the authority to make this mortgage in question, the \$20,000 mortgage?

(Paper produced).

10

Q. Witness is shown a paper and asked what the paper is, just generally what it is.

A. This is a certified, was tendered to us as a certified copy of a resolution to execute a mortgage by the C. Barendra Weinberg Clinic and Research Laboratories, to Morris Bernstein, in the amount of \$20,000.

Q. Signed by whom?

20 A. Signed by C. Barendra Weinberg, president and treasurer, and Sadie Weinberg, secretary.

(Certified copy of resolution offered, received in evidence and marked Exhibit D4, and photostatic copy used in place of original).

Q. Will you read that into the record?

30 A. "It is hereby certified that at a meeting of the Directors of C. Barendra Weinberg Clinic and Research Laboratories, a corporation of New Jersey, held on March 10th, 1926, the president and secretary of the company were authorized in behalf of the company to execute a bond and mortgage unto Morris Bernstein in the amount of \$20,000, payable within one year from date of settlement, to bear interest at six per cent. per annum, to be secured by the company's premises in Atlantic City, New

Jersey, on the easterly side of Iowa Avenue, 85 feet southwardly from the southerly line of Pacific Avenue, extending 65.63 feet by 60 feet. C. Barendra Weinberg Clinic and Research Laboratories, a corporation of New Jersey, signed C. Barendra Weinberg, president and treasurer, and Sadie Weinberg, secretary, and the written scroll."

Q. When did the settlement take place in your office?

10

Mr. Cole: I note on this paper you have read there were the words and figures, March 10, 1926, there is a line written across, was that there when it was handed to you or your company?

A. The resolution was not tendered to me, and I am unable to answer as to that.

Q. When do you say the settlement was had, the date of it?

A. The settlement was made on March the 17th, 20 1926.

Q. Does your settlement sheet show how the moneys were disbursed by your company?

A. It does.

Q. Have you the checks or the returned checks showing the disbursal of the money?

A. I have.

Q. Will you just read from that settlement sheet how that money was disbursed and then produce the checks showing the disbursal of the principal amount 30 of money that you refer to?

A. There was disbursed from the funds a sum of \$145.30 for title insurance fees and recording charges and so forth, to Chelsea Title Company.

Q. Have you that check?

A. This is the original of the check I just referred to.

(Check offered, received in evidence and marked Exhibit D5, and photostatic copy substituted in place of original.)

Q. What is the next one?

A. The next is a check to the order of Morris Bernstein in payment for interest on two mortgages in the amount of \$360.

Q. Produce that check, please.

10 A. You wish me to detach that from the book?

The Court: No, just have it marked.

Mr. Cole: You needn't detach them so far as I am concerned.

(Check received in evidence and marked Exhibit D6, and photostatic copy substituted in place of original.)

20

Q. Do you know upon what date mortgage interest item which you have just referred to was made?

A. There were two mortgages, one in the amount of seven thousand and one in the amount of five thousand dollars, that were tendered at the time of settlement, to be cancelled.

Q. And this check which has just been offered in evidence for \$360 represents the accrued interest on those two mortgages?

30

A. On those two mortgages.

Q. What is the next item that you have?

A. The next item is a check to the order of Myer Bernstein for commission and fire insurance, and the amount of that is \$2,077.97, this is the check and here is the photostatic copy.

(Check offered, received in evidence and marked Exhibit D7, and photostatic copy substituted in place of original.)

Q. What is the next item?

A. The next item is a check in the amount of \$1522.30, to the order of the Atlantic Amortization Company, satisfying a mortgage of that company, of which this is the original check and this is the photostatic copy. 10

(Check offered, received in evidence and marked Exhibit D8, and photostatic copy substituted in place of original.)

Q. What is the next item?

A. The next item is a check for the proceeds of the loan in the amount of \$3894.23.

Q. Made payable to whom? 20

A. To the order of C. Barend Weinberg Clinic and Research Laboratories.

This is the original check endorsed, and this is the photostatic copy.

(Check offered, received in evidence and marked Exhibit D9, and photostatic copy substituted in place of original.)

Q. This check, of course, speaks for itself, but it has the endorsement of whom on it? 30

A. It has the endorsement of C. Barend Weinberg Clinic and Research Laboratory, and the endorsement of C. Barend Weinberg as president and treasurer, under that is the endorsement of C. Barend Weinberg.

Q. Does that show in which bank it was deposited the endorsement on the check?

A. Deposited in the Atlantic City National Bank, March 19th, 1926.

Cross-examination.

By Mr. Cole:

10 Q. Did you have anything to do with the settlement about which you have testified and on account of which those checks were given?

A. I did not.

Q. And you say you can't presently recall about the word "March 10, 1926," have been written over, or, rather, lined over, you don't know whether that was there when the resolution came to you or not?

A. I couldn't answer as to that.

20 By the Court:

Q. This was a settlement, as I understand, of the \$20,000 mortgage?

Mr. Coulomb: Yes.

The Court: And the figures show \$7,000, don't they?

30 Mr. Coulomb: I thought your Honor caught just exactly what went on, but I guess we did slip over that hurriedly through the balance.

By Mr. Coulomb:

Q. How much money was disbursed at that settlement?

A. \$8,000 in cash.

Q. To everybody?

A. Yes.

Q. Is that the aggregate of the checks which you have just mentioned?

A. Yes.

Q. How was the balance made up?

A. The balance was made up by tendering two mortgages for cancellation.

Q. Do you know what two mortgages they were? 10

A. Yes, sir, one was in the amount of \$5,000, and the other was in the amount of \$7,000, that I have referred to in my previous testimony.

The Court: Which ones were they? One was March 20th, 1925, and the other was September the 16th, 1925?

A. The \$7,000 mortgage was the one given by the C. Barends Weinberg Clinic and Research Labora- 20  
tories, dated March 20th, 1925, and the \$5,000 mortgage was September 16, 1925, also held by Morris Bernstein. That made up the \$12,000.

The Court: And the check for \$360 which went to Morris Bernstein was interest on these two mortgages to date, as was endorsed thereon?

A. Yes, sir.

FRANK J. SIRACUSA, SWORN.

Direct examination.

By Mr. Coulomb:

Q. Mr. Siracusa, did you ever have any dealing  
with the C. Barendra Weinberg Clinic and Research  
10 Laboratory through their president, Mr. C. Barendra  
Weinberg?

A. I did.

Q. What was the nature of that transaction?

A. I negotiated a mortgage —

Mr. Cole: I object to this, not being binding on  
this company.

20 The Court: I will permit it.

A. I negotiated a mortgage for the Atlantic  
Amortization Mortgage Company with the C. Bar-  
enda Clinic and Research Laboratories, Incorpo-  
rated.

Q. What was the date of that mortgage?

A. That mortgage is dated about January the 9th,  
1926.

Q. And where was the settlement had?

A. In our office.

30 Q. Do you know by whom the mortgage was  
signed?

Mr. Cole: Let's have it.

Q. Have you the mortgage?

A. No, that mortgage was cancelled at a later date.

Q. Who was present at the time of the settlement in your office?

A. Mrs. Weinberg, who acted as secretary for the mortgagor, and my stenographer and bookkeeper was present.

Q. Was Dr. Weinberg present?

A. Yes, he was present.

Q. In what capacity was he acting?

A. He executed the mortgage as president of the C. Barendra Weinberg Corporation.

Q. Did you have any other transactions with C. Barendra Weinberg Company other than the one you have just mentioned?

A. There was a prior transaction.

Q. Through your firm?

A. Through our firm, yes, but I don't think that I negotiated that loan. I think some other member of my firm did.

Q. Are you familiar with the details of that transaction?

A. I only heard them here in the court room, I believe for the first time. And there was a later transaction also.

Q. Did you have anything to do with the later transaction?

A. Not personally, no, but the same company that I am president of.

Q. In either of these two other transactions to which you have referred, with which you had nothing to do personally, did you come in contact with any person representing this party, an officer of the corporation?

Mr. Cole: I object, in the first place he said he didn't have anything to do with them.

The Court: Yes, that is true as the testimony now stands.

Q. Who did you disburse the moneys through in all these transactions?

A. In the transaction that I handled the money was disbursed to C. Barendra Weinberg Clinic and Research Laboratory in two checks.

Q. By checks or otherwise?

10 A. In two checks.

Q. Have you the checks?

A. Yes.

Q. Will you produce them, please?

(Checks produced.)

Q. What are the dates, take the first check you have in your hand, what is the date of that check?

20 A. The first check is dated January the 9th, 1925.

Q. Drawn on what bank?

A. Drawn on the Guarantee Trust Company.

Q. To whom is it made payable?

A. Payable to the order of C. Barendra Weinberg Clinic and Research Laboratories.

Q. For how much?

A. \$750.

Q. Is that your firm's check?

A. That is the check of the Atlantic Amortization Mortgage Company of which I am president.

30 Q. How was the check endorsed?

A. It was endorsed by C. Berenda Weinberg Clinic and Research Laboratories, and below with C. Berenda Weinberg, president, and below that Sadie Weinberg, and below that is the stamp of the bank collecting the check.

Q. What bank is it that collected it?

A. Seaside Trust Company.

Q. What is the next check that you have?

A. The next check is January the 9th, 1925, on the Guarantee Trust Company, payable to the order of C. Berenda Weinberg Clinic and Research Laboratories, in the amount of \$600, made by the Atlantic Amortization Mortgage Company, endorsed by C. Berenda Weinberg Clinic and Research Laboratory, and below that C. Berenda Weinberg, president, and below that is the stamp of the bank collecting the check. One check reads "On account of loan", and the other check reads "Balance of loan". 10

Q. Do you know why the checks were divided into two parts? The amount represented by the two checks divided?

A. No, I don't.

Q. On the check for \$600 made, is the endorsement of C. Berenda Weinberg individually, or what are the endorsements on it again, to have it clear?

A. Which check was that, the six hundred? 20

Q. Six hundred.

A. On the \$600 check the only endorsement is C. Berenda Weinberg Clinic and Research Laboratory, and below that C. Berenda Weinberg, president, and collected by the Atlantic City National Bank.

(Checks offered, received in evidence and marked Exhibits D10 and D11.)

Q. Have you any checks showing any of the other transactions which you have mentioned? 30

A. Not with me, no.

Cross-examination.

By Mr. Cole:

Q. What were the transactions represented by these two checks?

A. The Atlantic Amortization Mortgage Company took a mortgage from the C. Berenda Weinberg Clinic and Research Laboratory on the property on  
10 South Iowa Avenue, and those checks were in settlement of that mortgage.

Q. What was the amount of the mortgage?

A. The mortgage was the amount of \$1500.

Q. And \$1300 was paid?

A. Thirteen hundred was the balance at the settlement \$1350.

Q. What do you mean by the balance?

A. In connection with the loan there was expenses and this was the net amount.

20 Q. Did you make any inquiry from Mrs. Weinberg whether she was the secretary of the company or not?

A. Oh, yes.

Q. Did she give you any paper showing that she was the secretary?

A. No.

Q. Was that the first transaction you had ever had with Mr. and Mrs. Weinberg?

A. That is the first transaction that I recall having personally, but the office had another one.

30 Q. Did you take Mrs. Weinberg's word for it that she was the secretary of the company?

A. Yes.

Mr. Coulomb: If your Honor pleases, there is only one other witness I think we would have, if he were here, and that is Dr. Weinberg. I have not had, as your Honor well realizes, any opportunity of checking up upon his reported illness and until I do so I certainly would not want to do anything drastic to punish him for not being here.

The Court: I am not sure it is not your duty so to do. There is not even an attempt to comply with any of the rules of court. Here is simply a certificate of a physician, not even sworn to, and does not even say that in anyway it would be injurious to his health to be present, and seems to be nothing at all that complies with any of the necessities of excusing a man for failure to appear. This case has been continued once or twice.

Mr. Coulomb: Yes, I understand we have made every effort to get Mr. Weinberg both to our office for the purpose of consulting with him, that is, to go into the case with him and have failed. Of course, we can't compel him to come there, we were only requesting, but when he failed to be here last Tuesday, and I issued this subpoena, as I told your Honor I would, and I think it was served within a day or two.

The Court: Not endorsed, and there is no affidavit. Served on Friday.

Mr. Coulomb: And this testimony is important. It may be.

The Court: Is there any reason that can't be ascertained before two o'clock as to his condition?

Mr. Cole: I was going to say it might be well to telephone.

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10 SOLTON ENGLE, SWORN.

Direct examination.

By Mr. Cole:

Q. Are you the Mr. Engle referred to in the minute book of this corporation as a director?

A. I am.

Q. Have you been a director since it was organized?

20 A. I have been.

Q. Have you been in court during this trial this morning?

A. I have been here all morning.

Q. Did you hear the testimony of Mr. Bartha concerning the deeds and the mortgages purporting to have been made with this corporation?

A. I did.

30 Q. When did you personally get your first information that Mr. Weinberg and Mrs. Weinberg had been executing papers, mortgaging and transferring this company's property?

A. It seems to me that in the fall of this—yes, it was in the fall of last year.

Q. Do you recall how the information came to you?

A. Dr. Weinberg telephoned, I think it was Mr.

Stettenheim's son, Mr. Stettenheim being then in Europe——

Q. I don't want the details, how did you get the information?

A. I got the information from Mr. Gray and Mr. Stettenheim's son.

Q. What action was taken as a result of the information you received about these transactions?

A. I immediately engaged counsel to protect the interests of the corporation of which I was vice- 10  
president and am.

Q. Did you ever know of any resolution or motion or authority of any kind given to either Mr. Weinberg or Mrs. Weinberg or both to execute any of these papers in question here?

A. Never. At no time.

Q. Did any of the proceeds, so far as you know, of these mortgages, go to the credit of this corporation?

20

Mr. Coulomb: Objected to, so far as he knows is all right.

The Court: So far as he knows will be admitted.

A. So far as I know, none of the moneys ever went to the credit of the corporation.

Cross-examination.

30

By Mr. Coulomb:

Q. You never attended any meetings of the corporation here in Atlantic City, did you, Mr. Engle?

A. By proxy, not personally.

Q. As a matter of fact, Mr. Engle, there was never

any resolution or authorization by any act of the Board of Directors to purchase in this property in the first place, was there?

A. I can't say that there was. I don't recall any.

Q. What interest did you have in the corporation?

A. Well, an interest as a stockholder.

Q. How many shares of stock did you have?

A. Three, I believe.

Q. Had you paid for that stock personally or had  
10 the price been paid by Mr. Stettenheim?

Mr. Cole: I object.

The Court: I will permit it.

A. The money was not paid by Mr. Stettenheim.

The money was paid by Mrs. Stettenheim.

20 Q. You were holding the stock for her?

A. Yes, I immediately assigned it in blank.

Q. To her?

A. To the Home for Hebrew Orphans.

Q. Beg pardon?

A. To the Home for Hebrew Orphans.

Q. At her direction?

A. At her direction.

By Mr. Cole:

30

Q. Did you personally ever have any information from Dr. Weinberg prior to the time you have stated that any of these transfers or mortgages had been made?

A. No, sir.

Q. Were you ever advised by him that the pro-

ceeds of any of these mortgages had been placed to the credit of the corporation?

A. No, sir.

By Mr. Coulomb:

Q. Did your corporation or C. Berenda Weinberg Clinical Laboratory have a bank account?

A. That was an authorization at either the first or a later subsequent meeting to Dr. Weinberg to open such an account in one of the banks here, I don't recall the name, but I could refresh my recollection from the books. 10

Q. Do you know whether any account was ever opened here?

A. No, I don't know, but I presume there must have been.

Q. As a matter of fact, Mr. Engle, wasn't the only interest that either you or Mr. or Mrs. Stettenheim or Mr. Gray had in this matter at all was the securing of a loan of \$25,000 by the issuing of this capital stock? 20

Mr. Cole: I object to him speaking for anybody except himself.

The Court: Yes, of his own knowledge.

A. Will you repeat the question, you mean do I know whether that is a loan? Certainly not. It was not intended to be a loan. 30

Q. It was not? Are you sure of that?

A. Absolutely, to my knowledge.

Q. Do you know whether or not any interest was ever paid upon the amount of \$25,000?

A. The corporation was paid up to its stockhold-

ers an amount equal to six per cent., and it was paid, that money going to the benefit of the owner of the stock.

Q. Were there any minute in any of your directors' meetings or stockholders' meetings at any time authorizing the payment of a dividend of six per cent.?

Mr. Cole: Objected to as being irrelevant on this  
10 issue.

Mr. Coulomb: If your Honor please, I don't think it is irrelevant.

The Court: I will permit the question. The books are in evidence, and save me the trouble examining them if necessary. I will permit it.

A. No.

20 Q. Let me ask you, Mr. Engle, were you present at the Atlantic City, when settlement was had at the time the property was purchased by the Company?

A. I was not.

Q. Who represented the company at that time at that settlement?

A. I don't know.

Q. You don't know who? Were you a director at that time?

A. Oh, yes, I have been a director always.

30 Q. And vice-president?

A. Yes.

---

Mr. Cole: This company had an account in the Chelsea National Bank, the money which paid for this property was deposited there.

Mr. Abbott: I made inquiry the other day, I just made inquiry from the Assistant Cashier, and said never any account there. It may have been paid there, Judge, but not an account opened.

Mr. Cole: Very funny, these checks all were signed in the corporate capacity and appear to have been deposited in the Chelsea National Bank.

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10

ROBERT G. GREY, recalled.

Direct examination.

By Mr. Cole:

Q. Did you ever have any word from Dr. Weinberg or Mrs. Weinberg or any other source that any of the proceeds of these mortgages that have been testified about were credited to the corporation account? 20

A. No.

Q. I notice there was introduced in evidence a resolution purporting to have been passed by the corporation authorizing this loan of twenty thousand dollars and as originally drawn the meeting was supposed to have been held on March tenth, 1926. I ask you whether there was ever any meeting of the directors of the corporation or stockholders on March tenth, 1926, or any other day authorizing the borrowing of twenty thousand dollars and mortgaging the company's property for it? 30

A. No.

Q. You have already testified and it is in evidence about when you received information concerning

these various transactions and I would like you to tell me, if you recall, what was the source of your information at the time and from whom did you get it?

A. Dr. Weinberg called up the office one afternoon, Saturday afternoon, I remember, and asked me to send him a telegram authorizing him —

Mr. Coulomb: I object to what he said.

10 Q. Yes, I don't care about that. Dr. Weinberg called you, did he?

A. Yes.

Q. And was it from him you got the information about these transactions?

A. No. I really got that from you. I mean I didn't know anything about it until I had read the investigation you had made.

Q. That was since this litigation first began then?

20 A. Yes.

Cross-examination.

By Mr. Coulomb:

Q. One question I would like to ask, more properly I suppose, cross-examination of his direct testimony a few minutes ago. I will ask leave to ask him now.

30 The Court: You may do so.

Q. You held how many shares of stock in this corporation in your name?

A. 498, I believe.

Q. Were those shares of stock paid for by you?

- A. No, not by me.
- Q. By whom were they paid?
- A. Mrs. Stetenheim.
- Q. And you held them for her?
- A. I endorsed them. I don't hold any.
- Q. Beg pardon?
- A. I don't hold any personally. I endorsed them to her. They are supposed to be for the Home for Hebrew Infants.
- Q. So that you have endorsed the certificate in blank to Mrs. Stetenheim, is that correct, for all the shares of stock you held? 10
- A. I can't say I endorsed it back to her directly. I endorsed it in blank and that I believe was she endorsed it to the Home for Hebrew Infants.
- Q. Don't you know whether you did or did not?
- A. I thought they were in fact. I would have to look at them. I thought I endorsed them in blank.
- Q. You say, Mr. Grey, that no resolution was ever passed March 10, 1926. All you mean to say is that you know of none? 20
- A. Yes. Well, of course —
- Q. Were any books of account kept by the corporation that you know of?
- A. I didn't keep any.
- Q. Do you have any records of the fund by way of books of account in any way of the financial transactions of this corporation?
- A. The first month or so Dr. Weinberg sent up a statement of some sort showing how much he had spent but after that I never got any record of any kind. 30
- Q. So that this corporation went along, of course, a few months after 1922 until 1926, when this mortgage was made, without any financial report of any kind being received by you or demanded by you of Dr. Weinberg?

A. Well, there was none demanded because the property was bought and all we were interested in was to see that the taxes and interest on the first mortgage was paid and I didn't care anything about anything else.

Q. How did you know that the interest on the first mortgage was paid?

A. Well, I wrote to Dr. Weinberg and asked him whether he paid it.

10 Q. That is the only way you know what he told you?

A. That is the only thing.

Q. How did you know the taxes were paid, the same way?

A. Same way.

Q. And the water rent and other charges the same way?

A. Well, I never inquired about that. I just inquired about the taxes and interest.

20 Q. This property, Mr. Grey, was bought by the laboratory company for the purpose of affording Dr. Weinberg an office for the practice of his profession, was it not?

Mr. Cole: I object, please your Honor.

The Court: Sustain the objection.

30 Q. Do you know how much cash was paid by the company for this property when it was purchased?

A. I thought it was the whole amount, \$25,000, that is what I thought.

Q. You were not present at the —

A. I wasn't present.

Q. Do you know whether Dr. Weinberg repre-

sented that corporation at the purchase of this property?

A. I presume he did because he was the—well, I wasn't there and Mr. Engle wasn't there and there were only, he was the only other possible person.

Q. Mr. Grey, here is the settlement sheet which unquestionably you know about because it is attached to your minutes; how much does that show the company put up?

A. \$15,946.70.

10

Q. Do you know what became of the other approximately nine thousand dollars?

A. No, I thought that was to buy the house, to buy equipment, that is I am not sure of that.

Q. Buy equipment for what purpose?

A. For the laboratory.

Q. Who was to conduct the laboratory?

A. Dr. Weinberg.

Q. Did Dr. Weinberg ever file any statement or report that within the two months that you speak of when he did file some statement showing how the money was expended?

20

A. I don't remember any more what that was.

Q. Would it likely be in your minutes if he did so?

A. No, I don't think so. I don't think we held a meeting that first year at all.

Q. No meeting the first year?

A. No.

Q. What was the occasion of these monthly meetings held after that then? I have looked through this minute book and, so far as I can see, there was nothing transacted at them?

30

A. No, there wasn't; as I remember it somebody suggested we ought to have a meeting once a month and then we had them.

Q. Was Dr. Weinberg present at any of these meetings?

A. No, not at those monthly meetings, no.

Q. None of your people were present at the annual meetings?

A. That is right.

Q. Excepting as you say by proxy?

A. Yes.

By Mr. Cole:

10 Q. Have you had the custody of these minute books ever since this company organized?

A. Yes, sir.

Q. Have they ever been in the custody or control of Dr. Weinberg or Mrs. Weinberg?

A. No.

Q. Were you ever asked by Dr. Weinberg or Mrs. Weinberg or the title company to permit them to have the official seal of this corporation?

A. No.

20 Q. To affix to any of these papers?

A. These papers? No.

(Recess taken to 2:00 o'clock P. M.)

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AFTERNOON SESSION.

Trial of the cause resumed at 2 o'clock P. M.

30

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Mr. Coulomb: If your Honor please, with respect to the witness C. Berenda Weinberg, my inquiry at noon, I tried to get him by telephone, and wouldn't answer either place, namely the office at the Ritz-

Carlton or his home, and I then sent Mr. Bartha of the Title Company, and a young man from my office, and they found nobody at home, either at the Ritz-Carlton office, while there was an automobile in front of the apartment where he lives, which I understand was thought to be his, we got no reply there. I then got in touch with Mr. Charlton's office and found out from them that Dr. McGivern had operated on Dr. Weinberg and that Dr. Weinberg was confined to bed in the hospital located on these very premises 109 South Iowa Avenue, which is now, as I understand it, Dr. McGivern's laboratory. The nurse said, not on inquiry of me, but on inquiry of Mr. Charlton's office, that he was not able to be present. I later on got his own nurse on the 'phone, and his nurse, or some one, said that he was in Dr. McGivern's private hospital, having been just operated on, either this morning or late last night, and was unable to be present so far as she knew. 10

The Court: What do you suggest? Do you want his testimony? 20

Mr. Coulomb: It seems to me, if your Honor please, there are some phases of his testimony that are of importance. There are several things in connection with the minutes, it may be Mr. Gray would be able to clear them up. Before going to that, however, I would like to put Mr. Bartha on the stand again for the purpose of showing some details in connection with the \$7,000 mortgage and the \$5,000 mortgage March 20th and September 15th, I think, respectively. 30

STEPHEN BARTHA, recalled.

Direct examination.

By Mr. Coulomb:

Q. Mr. Bartha, referring to the settlement of the \$7,000 mortgage, which I think was some time in  
10 March of 1925, have you before the records of your office?

The Court: Let me ask first, upon what do you base the contention that these mortgages have any value at all or having been issued? They are all without the corporate seal and I am just wondering what the effect is.

Mr. Coulomb: If your Honor please, the corpo-  
20 rate seal has no effect on the mortgages, and the law is clear upon that point.

The Court: It is?

Mr. Coulomb: I think so, absolutely clear that there can be as a matter of law, there can be a motive.

The Court: Not a corporate seal. The Act of  
30 1910 made good all corporation mortgages without the seal, those theretofore made. Now, has there been anything since that makes the corporation act approved by the secretary? There may be some question about a corporation deed which is acknowledged by the individual signing it.

Mr. Coulomb: If your Honor please, I don't remember the cases that make that distinction, but I do know that there are cases which hold that a corporate deed is effectual with a mere scrawl.

Mr. Cole: It may be conceded if it is a corporate act.

Mr. Coulomb: If the Court pleases, it is begging the question to say first there must be a corporate act before you can admit a deed without a seal, and then to say the seal indicates some corporate act. 10

The Court: I haven't had occasion to examine it lately, but my impression is that any instrument which requires a seal by a corporation must have its corporate seal. There are one or two cases which says that certain instruments are not required to be sealed, for instance, a lease, there is a case there that says it is not, but the first point is this, there is a law that requires or permits, we will put it either way, the corporation to have a corporate seal, which there is some testimony was done in this case. Then the only mortgage that I have had before me at all has an affidavit by a person claiming to be the secretary, that she well knows the corporate seal of the corporation and that the seal attached thereto is such corporate seal. I am simply wondering just what the situation is. As I say, I haven't looked into it. 20 30

Mr. Coulomb: If your Honor pleases, I do know of cases which hold that a corporate deed may be validated by any kind of a seal. Whether there is any condition attached to those cases which I overlooked, with respect to whether or not they were

authenticated by means of an affidavit of the seal, or acknowledged as they may be by the president, or the executing officer, I am unable at this present moment to say.

The Court: Prior to 1910 there is no question about it because there was an Act of 1910 validating all such instruments.

10 Mr. Coulomb: But it doesn't go to the effect that they are validated, being invalid, they are validated by the Act, simply says it is not required.

The Court: I think not. I don't think that is the act. I think the act is that they validate it.

20 Mr. Coulomb: That act validates them, of course, I suppose there may have been some doubt as to their validity, but I am speaking of the fact there are cases which hold that the deed of a corporation or mortgage of a corporation may be sealed without the corporate seal of the company.

The Court: Present anything you desire on that point, and I am not ruling on it now.

By Mr. Coulomb:

30 Q. Referring to the settlement concerning the mortgage of \$7000 made by C. Berenda Weinberg Clinic laboratory to Morris Bernstein, dated March 20, 1925, was the settlement for that mortgage at your office of the Chelsea Title Company?

A. There was.

Q. On that date or what date?

A. On that date.

Q. How were the funds disbursed arising from that mortgage?

A. Statement of the settlement that I have here and the photostatic copies of the checks reveals that there was paid to the Chelsea Title and Guarantee Company for the title insurance and miscellaneous charges the sum of \$80.50.

Q. You haven't got the original of that check yet?

A. Not yet, but I asked the messenger to bring them up. 10

(Photostatic copy offered, received in evidence and marked Exhibit D12.)

A. There was paid to A. S. Siracusa & Sons in satisfaction of a mortgage held by them, principal and interest, the sum of \$2212.46.

(Photostatic copy of check offered, received in evidence and marked Exhibit D13.) 20

A. There was paid to Meyer Bernstein commission and fire insurance the sum of \$942.73.

(Photostatic copy offered, received in evidence, and marked Exhibit D14.)

A. There was paid to the order of C. Berenda Weinberg Clinic and Research Laboratories the sum of \$3764.31. 30

Q. How was that check endorsed?

A. That check was endorsed by C. Berenda Weinberg Clinic and Research Laboratories, Incorporated, under which endorsement there is the endorsement of C. Berenda Weinberg.

The Court: Not as treasurer, but individually.

Mr. Coulomb: Not as treasurer.

(Check offered, received in evidence and marked Exhibit D15.)

A. I have here the original of that check.

10 Q. What is the aggregate amount of the four checks which you have just produced?

A. That would be \$7000.

Q. Will you turn to the settlement concerning the \$5000 mortgage which was in September, I don't know the exact date.

A. 16th.

Q. September 16th, 1925.

20 A. Disbursements under that settlement were made as follows: To the Chelsea Title and Guarantee Company for title insurance and miscellaneous charges, the sum of \$72.50.

(Check offered, received in evidence and marked Exhibit D16.)

A. To Myer Bernstein commission and insurance the sum of \$675.08.

30 (Check offered, received in evidence and marked Exhibit D17.)

A. To the C. Berenda Weinberg Clinic and Research Laboratories the sum of \$4250.42.

Q. How is that check endorsed?

A. That check is endorsed by C. Berenda Weinberg, Clinic and Research Laboratories, Incorpo-

rated, C. Berenda Weinberg, President, C. Berenda Weinberg.

Q. You have the original of that latter check?

A. That is the original, and that is the photostatic copy.

(Original check offered, received in evidence and marked Exhibit D18, and photostatic copy marked in place of original.)

10

(No cross-examination.)

Mr. Coulomb: I think that is all with the exception of Dr. Weinberg's testimony. I really think, if I am correctly informed as to what he will testify, we are entitled to have it.

The Court: You are entitled to have his presence here, to be sworn, there is no doubt about it. You subpoenaed him.

20

Mr. Cole: And I want to encourage his being here.

Mr. Coulomb: I would like to know also from your Honor what I should do with respect to this excuse which he makes which may or may not be found to be a fact. The certificate or letter from Dr. McGivern is certainly apparently not sufficient, or at least not in due form, as I understand it, and the proof and statements we made are simply those that have been made to me.

30

The Court: Evidently at the time of this operation he was under subpoena, and unless it was an emergency operation, he certainly can't take ad-

vantage of that fact not being present, otherwise we could all have our teeth taken out any time we wanted to to avoid a subpoena, because that is a part of the operation, to extract his teeth.

Mr. Coulomb: The only thing I could say about that is that a day or two before this trial was scheduled, I think that was last Tuesday, we, Dr. Weinberg informed me that he was waiting for Dr. McGivern to recover from an illness in order to have an operation performed by Dr. McGivern, and that he had not then said on that day that he would not be able to wait for Dr. McGivern, he must have it before.

The Court: But he evidently did. He evidently waited for Dr. McGivern.

Mr. Coulomb: That is apparently what has been done.

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HENRY U. DENNIS, SWORN.

Direct examination.

By Mr. Cole:

30

Q. Are you an employe of the Atlantic City National Bank?

A. Yes, sir.

Q. Did you produce, at my request, a statement showing the account of Weinberg Clinic and Research Laboratory, Incorporated?

A. Yes, sir, they are the bank records of that account.

Q. Will you look at the statement, please, and tell us when it opened and when it closed, if it is closed?

A. Account of the Weinberg Clinic and Research Laboratories was opened April the 2nd, 1927, deposit of \$225.

Q. Closed when?

A. The account was closed on July the 18th, 1928.

10

Mr. Cole: 109 South Iowa, no doubt about it being the same?

Mr. Coulomb: No.

Mr. Cole: This consists of four sheets. I want to have it marked, not retained, leave them mark a copy.

(Bank record offered, received in evidence and marked Exhibit C5.) 20

Cross-examination.

By Mr. Coulomb:

Q. When did you say that account was opened?

A. This particular account was opened on April the 2nd, 1927.

30

Q. By whom, if you know?

A. Yes, presumably by Mr. Weinberg.

Q. Do you know?

A. I have the signature cards with me.

Q. When was the last deposit made in that account?

A. Last deposit was made on December 5th, 1927, deposit of \$214. .

Q. Were checks drawn from that account by his signature as treasurer?

A. Yes, sir.

Q. Will you produce the signature card, please?

A. Yes, sir (producing card).

10 Mr. Cole: He produces two cards and we offer them.

(Signature cards offered, received in evidence and marked Exhibits C6 and C7.)

By Mr. Cole:

20 Q. A moment ago, in answer to a question asked by Mr. Coulomb, you said this particular account—just what did you mean by that? In other words is there any other account that the Atlantic City National Bank has of this corporation than the one represented by those sheets you have handed to me?

A. No, sir, no other account outside of a personal account.

Q. I am not asking you about the personal account, talking about the corporation. Does that represent all the accounts the Atlantic City National Bank has with this corporation?

A. Yes, sir.

30

By Mr. Coulomb:

Q. Will you tell me again, you say the last deposit made in that account was what date, and what amount?

A. December 5th, 1927, \$214.

Q. That was the last moneys which were deposited to the credit of that account?

A. Yes, sir.

Q. Can you tell me from there what were the last date and amount of the last moneys which were withdrawn from that account?

A. On December the 5th, 1927, a check for \$153. On December the 6th there were four checks, \$37.50, \$25.90, \$26.18, \$115. On July the 18th, the day the account was closed, a check for \$5.20. 10

Q. That was July 18th, 1928?

A. Yes, sir.

Q. And that closes the account, that check?

A. Yes, sir.

Q. I want to show you a check and ask you to examine it and say whether or not that check was not deposited, so far as appears from the endorsement on the back of it, into the account of the C. Berenda Clinic and Research Laboratory? Will you just read the endorsement? 20

A. Yes, sir, I should say that it was.

Q. Will you read the endorsement, please, the endorsements that are on that check?

A. C. Berenda Weinberg Clinic and Research Laboratories, C. Berenda Weinberg, President.

Q. What other endorsements are on there?

A. Atlantic City National Bank endorsement.

Q. Will you look at the date of the check, please?

A. January the 9th, 1925.

Q. Would you say that there was not an account 30 of the C. Berenda Weinberg Company in your bank on that date? Just passing that question for a minute, Mr. Dennis, how long have you been with the Atlantic City National Bank?

A. December the 1st, 1918, ten years.

Q. Are you quite sure that this was the only ac-

count that the bank had with the C. Berenda Weinberg Clinical Laboratory?

A. Yes, sir.

Q. I don't want to have any misunderstanding about it, I simply want to be sure if you know from the check that you have just examined that that was deposited in the C. Berenda Weinberg account, in an account of the C. Berenda Weinberg Clinical Laboratory in your hand. I understood you to say  
10 that it was.

A. Apparently from the endorsement I should say that it had been, from the fact that our records show the account was not opened until 1927, there must be room there for further investigation to find out what happened to the check.

Q. When did you make an examination of the books and records of the bank for the purpose of testifying here today so far as to determine just what accounts the C. Berenda Weinberg Research,  
20 Incorporated, had; was it just today or just a few minutes ago, or had you had some time to make the search?

A. No, we just took the records we had in the department at the time and brought them down. We didn't make any further investigation to determine whether there had been an account previous to this time or not.

Q. There may have been then an account previous to this one that you don't know of?

30 A. There is a possibility that there was.

The Court: I call your attention to the fact that the check to which you have just been testifying bears date January 9th, 1925, but the stamp of the bank bears date January the 11th, 1926. I simply

call your attention to that, so, if you are investigating, you may be able to locate it.

Mr. Coulomb: I think it is of sufficient importance, if your Honor please, to have this investigation. I think Judge Cole and I could agree about it.

Mr. Cole: I am going to ask him to do it.

By Mr. Cole:

10

Q. Now, Mr. Dennis, will you make a further investigation to ascertain whether there was any other account of this corporation than the one represented by the sheets you have presented, and with that in mind will you examine as to this check of January 9th, 1925, of Siracusa, President, for \$600, which, as you say, bears the signature C. Berenda Weinberg, President, to ascertain whether that check went to the credit of the corporation or whether it was cashed by Mr. Weinberg? Will you do that? 20

A. Yes, sir.

Q. And report?

A. Yes, sir. January the 11th.

The Court: There can be no question but that January is misstated, the transaction was January the 9th, 1926.

Mr. Cole: You have January, 1926. You understand what we want, do you? 30

A. Yes, sir.

Q. Here are the cards which you may take back.

The Court: The stamp of the Atlantic City Na-

tional Bank shows that it was 1926 and the date of the mortgage is January 9th, 1926.

Mr. Cole: I asked counsel for the Chelsea National Bank to produce the sheet of that bank with this corporation, and he produces a signature sheet showing that the account opened March 28th, 1922, with a deposit of \$17,000, and I want to offer that.

10 (Sheet offered, received in evidence and marked Exhibit C8.)

Mr. Cole: Now, Mr. Abbott, this sheet apparently is not all the transaction because it is still open on May, some time, of 1922, with a balance of \$4,191.09. Are you looking for further sheets?

Mr. Abbott: Yes. By the way, I am not counsel for the bank, but they let me have it.

20

Mr. Cole: I produce the card bearing the signature C. Berenda Weinberg as president and treasurer, of the Chelsea National Bank, datel 3/28/1922.

(Card offered, received in evidence and marked Exhibit C9.)

30 Mr. Cole: There was also handed me what purports to be a copy of a resolution of the corporation which reads: "On motion duly made and seconded, it was ordered that C. Berenda Weinberg be authorized to open a bank account in the Chelsea National Bank and to deposit moneys therein and to draw checks thereon in the name of C. Berenda Weinberg Clinic and Research Laboratories as treasurer of said company. (Below) I certify that the above is a true copy of the motion made at a meeting of the

Board of Directors of C. Berenda Weinberg Clinic and Research Laboratories, held on the 23rd day of March, A. D., 1922.”

That is all in typewriting, still in typewriting “President and Treasurer”. No signature above, and below the name of “C. Berenda Weinberg and Robert C. Gray, and Solton Engle”, and I offer that in evidence.

(Certificate offered, received in evidence and marked Exhibit C10.) 10

Mr. Cole: Now, Mr. Coulomb, I asked my office to call up all the banks in Atlantic City to ascertain if this corporation ever had an account. My stenographer reports that every bank has said no with the exception of the Atlantic City National Bank and the Chelsea National. Now, will you believe that is a fact?

Mr. Coulomb: I think so, yes. 20

Mr. Cole: Then it is agreed that the only two banks in which this corporation had a bank account were the Chelsea National Bank and the Atlantic City National Bank.

I do not believe for one moment, because I think I know what Dr. Weinberg is going to say, there will be anything for us to rebut, and I don't want to bring my folks back from New York and have them sit around here. While I think it is very remote indeed, I want to reserve the right, in case there should be the slightest occasion for it. 30

The Court: You would be entitled to have that right, of course.

(Further testimony adjourned to December 19th, 1928, at 9:45 A. M.)

Atlantic City, N. J., December 19, 1928.

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Trial of the cause resumed at 9:45 A. M., pursuant to adjournment.

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C. BERENDA WEINBERG, SWORN.

Direct examination.

By Mr. Coulomb:

Q. Doctor, you are a practicing physician in Atlantic City?

A. Yes, sir.

20

Q. How long have you been such?

A. About twenty years.

Q. What has been, if anything, your special work?

A. Well, for the past ten years it has been diagnostic work and research.

Q. Do you know Mr. Stettenheim?

A. Yes, sir.

Q. There is a father and son, is there not?

A. Yes, sir.

Q. What are their names?

30

A. The father is Arthur Stettenheim, and son Frederick Stettenheim.

Q. Do you know where they live?

A. New York City.

Q. When did you first meet them?

A. Oh, about eight years ago, seven or eight years ago.

Q. You met them professionally or socially?

A. Professionally.

Q. Did you treat them?

A. Yes.

Q. Was your treatment successful or not?

A. Successful.

Q. As the result of that treatment did or did not either of the Mr. Stettenheims take an interest in your professional career?

A. They did.

10

Q. What, if anything, did they suggest to you touching that career?

Mr. Cole: That is all objected to as being irrelevant and incompetent.

The Court: I will permit it.

A. Well, that I continue my work in research.

Q. Did they suggest to you anything touching the advancement of money to you so that you might be better prepared to prosecute that work?

20

Mr. Cole: That is objected to for the same reason.

The Court: Permitted.

A. Frederick Stettenheim, the son, knew at the time that I was trying to purchase the building on Indiana Avenue adjoining Marvel's sanitarium, and we were in Adams' office, rather, I was to make the payment on the building, when we received a telegram stating that they wanted \$5000 more, on that day I had met the son and told him about this, I wasn't going to get the building, and a few days later Fred told me, he says, "Well, Father appre-

30

ciated what you did for me, and what you are doing, and he is coming down here and will go over the matter with you.”

Q. As the result of your various conversations or consultations with the Stettenheims, was a sum of money put at your disposal?

A. \$25,000.

Q. Now, was that a loan or a gift?

A. So far as Mr. Stettenheim was concerned.

10

Mr. Cole: Which Mr. Stettenheim?

A. Mr. Isadore Stettenheim, the father, it was a loan, but I was under the impression from the son, from what he told me, that it was a gift.

Q. There was a corporation formed, was there not?

A. Yes, sir.

Q. What was the name of that corporation?

20

A. C. Berenda Weinberg Clinic and Research Laboratories.

Q. Did that corporation buy a property?

A. No, I bought the—that I don't recall, my impression is that the property was bought under the name of C. Berenda Weinberg, and afterwards conveyed to the corporation.

Q. But the title eventually came to the corporation?

A. Came to the corporation.

30

Q. Where was that property?

A. 109 South Iowa.

Q. How was it you ever—where did the money come from that paid for the property?

A. \$17,500, I paid \$500 down the date that I signed that agreement with them, or something, I don't know, option.

Mr. Cole: Of course I am objecting to this witness testifying about papers. I think we ought to have them here. It is important.

The Court: Yes.

Mr. Coulomb: Your Honor please, I think it clearly appears the consideration was \$17,500, appears in the minute, and mere matter of general history of the thing, not as though this case was before a jury, that makes it simpler, I think. 10

The Court: I will sustain the objection.

Q. Was it paid for this property?

A. I paid —

Q. Was it to pay?

A. Yes.

Q. And title was taken eventually in the name of the corporation?

A. Yes, sir. 20

Q. What condition was the property in when it was bought, what did it consist of?

A. It consisted of a frame building having two baths and one bath in the basement, and six rooms.

Q. Where was the property located?

A. 109 South Iowa.

Q. Was it frame building or stone building?

A. Frame building.

Q. Or partly stone and partly frame?

A. Frame building. 30

Q. How many, as you entered the basement, what did the basement consist of, just give us a general idea what that property was inside.

A. Consisted of a cellarette and furnace room and bathroom and laundry room.

Q. That was in the basement floor?

A. Yes.

Q. What was on the first floor?

A. There was a kitchen, reception room and dining room.

Q. On the second floor?

A. The second floor there were four bedrooms.

Q. Any baths?

A. One bath.

10 Q. On the third floor, if there was a third floor?

A. The third floor had three bedrooms and one bath.

Q. Was that house, in its condition, suitable for your work in the laboratory or for research purposes?

A. No.

Q. What, if anything, did you do to renovate it to make it available for your use?

20 A. Tore the entire side of the building out and enclosed it in hollow tile and stuccoed the building, and when it was completed it had twenty-one rooms.

Q. What kind of rooms were the twenty-one?

A. Well, there were —

Q. Taking the basement, starting with the basement again, just show what changes were made there.

30 A. The basement was concreted, the furnace room was concreted and cemented, cement floors put down, the upper floors —

Q. Was there any change made in the heater at that time?

A. That was done later. No.

Q. I beg pardon?

A. That was done later.

Q. What was done on the first floor?

The Court: I am wondering, Mr. Coulomb, how this is going to help us in this case.

Mr. Coulomb: If your Honor please, if this money went into the improvement of this building, then this building got the advantage of it, and I think I have a right to show what was done, show how much was spent, whether Dr. Weinberg took this money from this mortgage and simply pocketed it or used it for his own use or whether it went back into the building, makes a great deal of difference. Your Honor can readily understand in this case that this corporation is not a usual corporation, it is not a straightforward corporation. I don't mean to say that there was any fraud in its inception, anything of that sort, because I am not charging that, but there is a very peculiar situation in the thing evidenced by the minutes, that Dr. Weinberg was to pay interest on this \$25,000 represented by this stock, which created a situation here certainly inharmo-  
nious with the idea of this being a straightforward corporation, the return on the capital was, if there was any, was to be distributed in dividends, in this case six per cent. was paid, it was required to be paid when the money was paid in, almost the very first minute of this corporation shows that six per cent., I don't know whether they want to determine the interest —

The Court: Up to the present moment you haven't attempted to show any of the suggestions that you make in your argument.

Mr. Coulomb: If your Honor please, it is in the, the minutes are here, the minutes speak for themselves.

The Court: There is nothing to show that this man paid this money for that.

Mr. Coulomb: If your Honor please, of course I can just ask him what he did with the money, but, it seems to me, it is certainly a more orderly way to do it to show what was done by him at this building.

10 Mr. Cole: I don't see how it can deprive this corporation of title to this property because this man, if it is a fact, which it is not, should see fit that this man accept money —

The Court: I will permit Mr. Coulomb to show that this man spent large amount of money, but I don't see at the present moment why I am interested whether it is done to cement a pavement or something of that sort.

20

Mr. Coulomb: Maybe not. I would have rather thought it was. I just simply said the money was paid.

The Court: If it is denied, then, of course, you may go into detail.

Q. Tell us how much money you spent for various items so far as you now can remember with respect  
30 to the improvements that you made upon this property.

A. Cost me about, I think it was \$27,000 to remodel the building. It cost me \$4200 to put in eleven bathrooms, tile baths.

Q. Is that in addition to the twenty-seven thousand?

A. Yes. I put in an oil burning system that cost a little over three thousand dollars, and then when we were through we found that our pipes were half-inch pipes, suitable to the old frame building, and would not carry the water, and we had to put in, I think, inch or inch-and-a-half pipes.

Q. Do you know what that cost?

A. Around two thousand dollars. And then I built an operating room, in addition to the building, when that was there, that cost approximately seven thousand dollars. 10

Q. What was done with respect—was there anything done with respect to a new chimney in the house?

A. There was a new chimney put in there. When we were all through we found that the chimney, the old chimney, which was, I don't know, just a few inch chimney, suitable to the old building, we had an explosion in there, took fire or something in the oil burner, and I had to put in a large chimney on the other side of the basement, and move the furnace and everything from one side of the basement to the other side, at an additional cost, I think the chimney was—I don't recall what it was, but approximately around \$8000. 20

Q. How much of the fund of \$25,000 that you received from the Stettenheims by way of this corporation was used in that work?

A. All of it.

Q. That is including the purchase of the property? 30

A. Yes.

Q. Now you say that it cost you twenty-seven thousand to renovate the house, twenty-seven thousand five hundred, was it, or twenty-seven thousand?

A. Approximately \$27,000.

Q. Was that in addition to the price that you paid for the property?

A. Yes.

Q. Did the C. Berenda Weinberg Corporation furnish any of these moneys other than the \$25,000 that went in either to the purchase or renovation of the property?

A. Well, moneys that I earned.

Q. I say, did the corporation itself advance you any moneys other than the \$25,000?

10 A. Well, I made several loans from Mr. Stettenheim personally after that, two or three thousand dollar loans for the period of a year, which I paid back.

Q. I mean anything in addition to the \$25,000 and these loans that you have mentioned?

A. No, sir.

Q. Who paid the taxes on this property during the time that you occupied it?

A. I did.

Q. Was there any interest paid on the \$25,000?

20 A. Every six months.

Q. How much was the interest?

A. Six per cent.

Q. Was that paid by you or by the corporation?

A. By me.

Q. There was a first mortgage, was there not, on this property?

A. Yes.

Q. Do you remember the amount of it?

A. I don't just recall the amount.

30 Q. Who paid the interest on that?

A. I did.

Q. Out of your own funds?

A. Yes.

Q. Or was it advanced by the corporation to you?

A. My own funds.

Q. Where did the money come from, Dr. Wein-

berg, that was used by you in the renovation of this building?

A. Some moneys I borrowed through the banks and some moneys through raising mortgages.

Q. Do you remember making a mortgage by the corporation to a man named Bernstein?

A. Yes, sir.

Q. Do you know what the amount of that mortgage was?

A. I don't recall the exact amount. 10

Q. The testimony shows it was \$20,000, is that the mortgage that you have in mind now?

A. Yes.

Q. There had been previous mortgages made by you to Mr. Bernstein, hadn't there?

A. Yes.

Q. What became of the proceeds of those mortgages that were made to Mr. Bernstein?

A. Well —

Q. What use was made of it? 20

A. I used some of the money to pay off on the notes that I advanced in the alterations and equipment of the building.

Q. Do you know how much that was?

A. All of it.

Q. All of it?

A. Yes.

Q. Now, there was some other mortgages on this property, were there not, at the time of the giving of the Bernstein mortgages, which were paid off? 30

A. Paid off, yes.

Q. What became of the proceeds from those mortgages that were paid off by the Bernstein mortgage?

A. Well, all I know that all the money that I ever borrowed on the building went back for work being done in the building and equipment of the building, and some of the moneys, a small percentage of it,

was used for expenditures in research work. I was for three years maintaining a laboratory, and helping to finance it, for research work in the City of New York, and a small farm near Newark, New Jersey, where we were doing some research work in tuberculosis. We had spent a great deal of money on that and it was one of the facts that interested Mr. Stettenheim, and we subsequently had turned that over to the United States Government because it would take two or three hundred thousand dollars to furnish that work, and we had given all our research work and all we did to the Government to complete that work.

Q. Did you get any compensation from the Government for it?

A. No, nothing at all. We turned that over to them gratis.

Q. What became of your research laboratory in New York City?

20 A. My brother is now maintaining or helping, and I am helping him along with that. We are doing some special work now.

Q. Is that a part of the work of the corporation?

A. No, the New York laboratory had nothing to do with this.

Q. Dr. Weinberg, I show you a letter which is in one of the minute books of the corporation, which has already been offered in evidence, and ask you whether you wrote that letter?

30 A. Yes.

Q. Will you give us the date of the letter so we can identify it as being in the book?

A. January 4th, 1927.

Q. I will refer you to a transcript and ask you to read it, please, and the letter.

A. "I am still retaining the same secretary, Mrs. W." What did you mean by that?

Mr. Cole: I object.

Q. To whom was the letter addressed, Doctor?

A. Mr. I. S. Stettenheim.

Q. Who was he?

A. Mr. Stettenheim is the man who advanced this money.

Q. Is he the Isadore Stettenheim to whom you referred a few minutes ago?

A. Yes, sir.

10

Q. What did you mean when you say, "I am still retaining Mrs. W. as the secretary."

A. I don't know, I mean that she was acting as secretary for the corporation and myself.

Mr. Coulomb: If your Honor please, I don't think it is necessary to offer that letter separately, because it is in the minutes.

The Court: It is in.

20

Cross-examination.

By Mr. Cole:

Q. Who do you say made the loan?

A. Mr. Isadore Stettenheim.

Q. To whom did he make it?

A. Made it to me personally.

Q. In what way was it made, by cash or checks? 30

A. Mr. Stettenheim paid me—by check.

Q. I show you three checks that have been offered in evidence, one marked Exhibit C4, one C5, and C6, they are amount to \$25,000, and ask you whether they are the checks that represent the loan to which you have testified?

A. Yes, sir.

Q. Do you observe that they are all made to the corporation?

A. Yes, I do. I made the statement before that I was not positive.

Q. And they all went to the credit of the corporation, too, didn't they?

A. I didn't hear.

Q. They went to the credit of the corporation in  
10 bank?

A. Yes, sir.

Q. And you drew out from this fund as treasurer of the corporation, didn't you?

A. Yes, sir.

Q. Now, was there any other loan made by either Isadore Stettenheim or F. R. Stettenheim—by the way, who is F. R. Stettenheim?

A. That is his son.

Q. Not his wife?

20 A. No, that is his son.

Q. What is his wife's name?

A. I don't recall the first name.

Q. Was there any other loan made by either of these parties to you or to the corporation than represented by these checks?

A. Mr. Stettenheim loaned me probably six or seven thousand dollars in the period of several years, each one amounting to anywhere from two or three to three thousand dollars, which I paid back at the expiration of a year.

30 Q. You knew, of course, that the title to this property had gone in the name of this corporation, didn't you?

A. Yes, sir.

Q. And all through your testimony you have been speaking or your counsel has been asking you, has

been speaking of you or this, that or the other. You were the president of this corporation, weren't you?

A. Yes, sir.

Q. Running this property down there for the corporation?

A. Yes, sir.

Q. Your wife acted as secretary, I suppose, in taking letters and writing letters and things of that sort?

A. Yes, sir.

10

Q. The ordinary work of what we call a secretary?

A. Not at first. My first secretary was, for a period of over a year, I just can't recall the name, it was the niece of Judge Ingersoll, a young lady living in Absecon, and for the moment I can't remember the name.

The Court: I have no niece, so it can't be this Judge Ingersoll.

20

Q. You knew this company had an officially elected secretary, didn't you?

A. Yes.

Q. You knew it also had an official seal, didn't you?

A. Yes—that I am not ——

Q. What?

A. Yes.

Q. That seal was over in New York, wasn't it?

A. Yes.

30

Q. Now, when you say you spent \$27,000 in improving this property, do you mean that any part of this \$25,000 represented by these checks went into those improvements?

A. Yes.

Q. How much did it take to buy the property?

A. \$17,500.

Q. So that this check for \$17,000 to the order of the corporation went to buy the property, didn't it?

A. Yes.

Q. In the name of the corporation?

A. Yes.

Q. So that you could not have spent that in the improvement, did you?

10 Mr. Coulomb: He didn't say so, Judge Cole. He said the difference between the purchase price.

Mr. Cole: I thought he said he spent \$27,000 in improving the property.

Q. Didn't you spend \$27,000?

A. \$27,000, we tore the entire building down.

Q. Where did you get the \$27,000?

20 A. I borrowed, I don't know how many thousand dollars, in the banks, I borrowed \$10,000 in the Chelsea National Bank, borrowed approximately about, I think over \$5000 in the Atlantic City National Bank.

Q. On your own credit?

A. On my own credit.

Q. Now you made or signed, rather, the mortgages that are in controversy?

A. I couldn't hear the first part.

30 Q. I say you signed the mortgages that are in controversy here, didn't you?

A. Yes, sir.

Q. Had your wife attest as secretary?

A. Yes, sir.

Q. Did you keep any record of the money that you received and the money you spent while you were

operating that property for this corporation, have you any books?

A. Well, I kept my check books and kept my day ledger and kept a yellow report that I used in the business.

Q. Have you those books now?

A. No, I don't think I have any of the books since I moved from Iowa Avenue to the hotel.

Q. You knew, Doctor Weinberg, did you not, that when you transferred the title of this property from the corporation to yourself and your wife, and when you signed the mortgages as president of the corporation and had your wife sign as secretary, that you had no authority from the directors to do it, didn't you? 10

Mr. Coulomb: I object to that, if your Honor please. It seems to me the question is too broad to be relevant in this issue. We are not concerned here about the transfer of this property. That may be an independent transaction. If it is confined to the mortgages which preceded the Bernstein mortgages I have no objection to the question, but if it is referred to the transfer of the property which came after the signing of the Bernstein mortgage, I don't think it is relevant to this issue. 20

The Court: It may not be relevant, but I don't see any objection to it. I will permit it.

30

(Question repeated.)

A. There are two questions there, if I could answer one at a time I could make myself clear. In signing my name as treasurer to the mortgages I always felt, whether I was justified in doing it or not

I don't know, but I always felt that I was justified and in my rights of doing it. The second question, when I transferred the property from the corporation to myself, that I didn't know that I was doing, and when I found that I did do that, I immediately consulted an attorney here and asked that that be stopped in some way. I thought what I was signing was merely a mortgage of some kind. I didn't know it was a conveyance, and I think shortly after that occurred, when I was informed that I had done that, through the lawyer who had me sign this, then I immediately consulted my attorney and wrote to New York and asked him to please come down here and straighten this matter out. I saw Mr. Charlton.

10 Q. You say you thought that you had a right to sign the mortgages?

A. At the time that I signed those mortgages, absolutely, I felt that I had a right, of course I was later on told different.

20 Q. I show you a letter addressed to Mr. Stettenheim, dated October 11, 1927, and ask you whether that is your letter?

A. I don't remember writing this letter.

Q. Now, Dr. Weinberg.

A. Judge Cole, there were reasons why —

Q. I didn't ask you for reasons, sir. I ask whether that is your letter?

A. Yes, that is my letter.

30 (Letter offered in evidence.)

Mr. Coulomb: It is after the date, if your honor please, of the transaction to which the third person has now come in.

The Court: I will let it be marked for identification at this time.

(Letter marked C1 for identification of this date.)

Mr. Cole: The purpose of the offer, may it please your Honor, is to prove his present position.

Q. I show you another letter marked "Monday," without date, and ask you if that is your letter?

A. Yes, that is my letter.

(Letter offered in evidence.) 10

Mr. Coulomb: My objection is the same.

(Letter marked C2 for identification of this date.)

Q. I show you another letter dated October 6, 1927, and ask you if that is your letter?

A. Yes, sir, that is my signature.

Mr. Cole: Offer that letter. 20

Mr. Coulomb: Make the same objection.

(Letter marked C3 for identification of this date.)

Q. I show you a letter addressed to Mr. Newman. Do you know who he is, Emile Newman?

A. Yes.

Q. Is that your letter?

A. Yes; sir. 30

Q. Who is Mr. Newman?

A. I don't know. I was asked to give an address to Mr. Newman, I think he is an attorney or some one employed in Mr. Stettenheim's office, I am not just certain about that.

Q. To what did this letter refer?

A. To that transfer.

Mr. Coulomb: Letter speaks for itself.

(Letter offered in evidence.)

Mr. Coulomb: My objection is the same, after the date of the making of this mortgage.

10

(Letter marked C4 for identification.)

Q. Have you the bank books, that is the books you took the receipt in for moneys deposited for this corporation?

A. Have I? No, I have not.

Q. Did you ever have any?

A. Yes, sir. That is, my own personal bank books.

Q. What became of them?

20

A. I don't know, Judge Cole. When I moved from 109 South Iowa, there were a lot of things stored in the basement consisting of a lot of bank books, personal books, manuscripts, several diplomas, that evidently, when they cleaned out that basement, by some accident or something, these were all thrown away, or taken away, because it necessitated me getting a new diploma from the State of New Jersey and some other things on the laws of that.

30

Q. During the time that this corporation was being managed by you, you had your own personal bank account, didn't you?

A. Everything was in one account.

Q. In your own personal account?

A. Yes, everything was in one account.

Q. Are you sure about that?

A. Absolutely sure of it.

Q. Didn't you have an account in the Chelsea National Bank in the name of the corporation?

A. Judge Cole, I am not certain of that, but this is what I believe took place—now, I may be wrong on that, I am not saying this trying to evade anything—it seems I opened an account in the bank in the name of the Clinic and they had me transfer it by a motion or something to my personal account, or vice versa, I am not certain about that.

Q. Was that also true with the account in the Atlantic City National Bank? 10

A. Yes.

Q. Both accounts were transferred to you personally?

A. They were transferred through to me personally, I think you will find something.

Q. After that all the moneys you received went to your personal account?

A. Yes, that was done, I think you will find something in the minutes about that, just what it is I don't recall. 20

Q. The minutes of this corporation?

A. Yes.

Q. Can you find that?

A. I think you will find it in one of the first minutes, that a letter of some kind was sent to the Chelsea National Bank.

Q. Do you remember the minute that said that there was to be —

A. Whether it was one way or the other way I don't recall, I know there was a transaction in which first the moneys were deposited in one way and then the moneys were changed in another way, it was done with the knowledge. 30

Q. You remember the minute which said that no one was to have any right to encumber this prop-

erty or sell or obligate it without the action of all the directors?

A. No.

Mr. Coulomb: Objected to as immaterial and irrelevant.

Q. Don't remember that, eh?

10 The Court: He has answered, so I will permit it.

By Mr. Coulomb:

Q. Dr. Weinberg, do you know whether any of the, either Mr. Stettenheim, Isadore, or his son or his wife, knew about the improvements that were being made on this property after its purchase?

A. I never consulted Mr.—Mrs. Stettenheim doesn't come into this at all.

20

Mr. Cole: I object. Doesn't bind this corporation at all.

The Court: I will permit it.

A. Mr. Stettenheim never questioned me as to where the moneys were coming from for the improvement on the property, we never discussed it.

30 Q. My question is, Dr. Weinberg, whether you know, by anything he said or did, that you know he knew you were making the improvements?

A. He came to my office frequently and saw the improvements I was making.

Q. Did the corporation have any income, as a corporation, from the work that you were doing as a physician?

A. They had no income from anything that I did, during that period of time; excepting for moneys that were required for my living expenses and to carry a certain amount of life insurance, every dollar that I earned went into research, and I borrowed a great deal of money in the various banks in Atlantic City to carry that through, and when I went through bankruptcy I have since then taken up all my obligations and all my notes at every one of the banks, paying them off today, debts that I had incurred while I was in that building, because I don't owe a bank in Atlantic City a dollar, I mean as a result of that bankruptcy, I have renewed and paying off something on all my notes. 10

Q. When did you leave Iowa Avenue?

A. Last March, I believe, April or March.

Q. When did you go back there or make any effort to find these papers, including the bank books and diplomas which you said were stored in the basement? 20

A. About two or three weeks after I moved in, it was necessary for me to sign some papers in Trenton, and we went back to look for it, and Dr. McGivern and I went down there, and it seems in a closet underneath the stairs I used for a store room, this goes from the recollection, that the house man had a lot of rubbish, was thrown on it, it was probably put right on to the wagon all the time and thrown away. There were about six manuscripts in there, and a paper that I was writing for a medical journal, three or four small diplomas, and a very expensive etching that was made by Dutchess and Edgar of Berlin, valued at about \$1900, and that was lost, including all my bank books. 30

Q. What is it, your personal books of account, or books of account of the corporation were in that box?

A. I never had any books of the corporation. I had a day book and then I had a monthly account, and then I had an expense account, I don't know what it is, and some ledgers there, I don't know one thing from another.

Q. Your personal accounts or the corporation account?

A. They were all the moneys that came in and were spent.

10 Q. I know, but was those books kept in your name personally?

A. The only corporation book that I kept was a book which had something in there about the property, when originally bought the property, but, in so far as that there was no income to be derived or anything from the property, I didn't have any regular books under the head of the corporation, they were all personal books.

20 Q. Was the corporation entitled to any of your earnings as a physician in the conduct of your work?

A. Nothing was ever said to me about it.

Q. And you never kept any accounts or rendered any accounts to them?

A. No.

Q. Did they ever demand any?

A. No.

Mr. Coulomb: If your Honor thinks it is necessary, I don't want to insist on it, but I do believe an oral argument might be of some benefit in this matter, either in conjunction with, certainly not in lieu of memorandum, but in conjunction with it.

The Court: Very gladly give you that opportunity, but I hesitate to do so this morning, because we have encroached on the time of other cases already. 10  
I would like to have an oral argument if you would like to, gentlemen, in this case, just any motion day you can arrange to do that.

Mr. Coulomb: We can have it next motion day if your Honor is free, although I understood from Mr. Shinn that you were engaged in some kind of work in connection with the court itself during that Christmas week. 20

The Court: During Christmas week, I am, but on the 26th, which is a motion day, I could probably find time.

Mr. Cole: I offer the letters.

The Court: I will admit them.

(Letters admitted in evidence and marked Exhibits C1, C2, C3 and C4 of this date.) 30

The Court: I will hand these letters to Mr. Coulomb and he will return them.

(Argument adjourned until December 26th, 1928, at 9 o'clock A. M.)

## CONCLUSIONS.

## IN CHANCERY OF NEW JERSEY.

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Between  
 10 C. BERENDA WEINBERG  
 CLINIC AND RESEARCH  
 LABORATORIES, INC., a  
 corporation, &c.,  
*Complainant,*  
 and  
 C. BERENDA WEINBERG,  
*et al.,*  
*Defendants.*

On Bill, &c.  
 Conclusions.

20

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MESSRS. COLE & COLE for complainant.  
 MR. WILLIAM CHARLTON for defendants, C. Berenda Weinberg and Sadie Weinberg.  
 MESSRS. BOURGEOIS & COULOMB and MR. MORRIS BLOOM for the defendant, Morris Berenstein.  
 MESSRS. BOLTE & TRIPICIAN for the defendants, National Savings and Trust Company.

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INGERSOLL, V. C.:

A corporation is bound by the act of an officer or agent where the act is within the apparent powers which the corporation has caused those with whom

its officers have dealt to believe it has conferred upon them.

Directors who attend no meetings (save the first or organization meeting) held bound to know the uniform course of business pursued by the president of the company, who was the sole agent of the transaction of the corporation's business.

Held, that a deed executed by the president of a corporation, without authority from a board of directors, for all of the property of a corporation, without consideration to himself, is a nullity. 10

C. Berenda Weinberg is a physician, resident of Atlantic City, deeply interested in research work in connection with the ills of the human body, the discovery of remedies therefor and the method for the cure of the diseases of mankind. He was not in a position financially to proceed with the investigations to the extent desired by him.

Isadore Stettenheim and Frederick Stettenheim, father and son, who had been patients of Weinberg and apparently felt under obligations to him—to use Weinberg's words—"placed \$25,000 at his disposal" for the purpose of assisting in the purchase and equipment of a building for medical and research purposes. Weinberg insists that, so far as the father was concerned, this money was to be a loan; but so far as the son was concerned, it was to be a gift. 20

Upon the 21st day of March, 1922, a certificate of incorporation of the C. Berenda Weinberg Clinic and Research Laboratories was recorded in the clerk's office of Atlantic County, and on the 23rd day of March, 1922, was duly filed in the office of the Secretary of State of New Jersey. 30

Said certificate stated the name of said corporation to be "C. Berenda Weinberg Clinic and Re-

search Laboratories;" that its principal office in the State of New Jersey was, "109 South Iowa Avenue, Atlantic City, New Jersey;" that "C. Berenda Weinberg" was the agent in charge, and that the objects for which it was formed were: "The operation of an institution for the study and treatment of gastro-intestinal diseases and research on the internal secretions; the results, observations and discoveries that result from such researches to be  
 10 given from time to time for the benefit of the public through proper medical channels. It also being the purpose to provide proper facilities for the treatment of indigent patients free of charge;" that the capital stock was \$25,000, divided into 500 shares of the par value of \$50 each, and the incorporators were C. Berenda Weinberg, 22 South Illinois Avenue, Atlantic City, N. J., 1 share; Solton Engel, 17 Cedar Street, New York City, N. Y., 1 share, and Robert G. Grey, 17 Cedar Street, New York City,  
 20 N. Y., 38 shares. Robert G. Grey and Solton Engel were employes of Stettenheim, Grey as secretary or confidential man and Engel as a clerk, and manifestly, the \$25,000 advanced by Stettenheim was for the purpose of the incorporation, used as the basis for issuing said shares of stock.

The first meeting of the corporation was held at the office of Stettenheim, or of Grey, at 17 Cedar Street, New York City, on the said 23rd day of March, 1922. It may be, however, that this date  
 30 "23rd" is incorrect, as it is in writing, filling a blank left in the minutes, which are typewritten, and which were probably prepared in advance, the place of the meeting also being in writing in a blank space left therein.

A form of by-laws was read and adopted. An amendment to said by-laws was passed as follows:

“Neither the president nor any other officer or director may contract a debt on behalf of the corporation, or sell, assign or transfer any property, real or personal, belonging to the corporation, without the sanction of the entire board at a regular or special meeting.” It will be noted that this method of amendment of the by-laws was in violation of Section 26 of the by-laws which had just been adopted.

The three incorporators were elected directors. 10  
On the 25th of March, 1922, the three directors met and elected themselves as officers, as follows:

President and treasurer—C. Berenda Weinberg.

Vice president—Solton Engel.

Secretary—Robert G. Grey.

It was “ordered that C. Berenda Weinberg be authorized to open a bank account in the Chelsea National Bank, to deposit moneys therein, and to draw checks thereon, in the name of C. Berenda Weinberg Clinic and Research Laboratories, as 20  
treasurer of the company.”

It was “resolved that C. Berenda Weinberg be and he is hereby appointed the agent of the company in charge of the registered office, upon whom process against the company may be served in accordance with the laws of New Jersey.” The amendment to the by-laws as adopted by the stockholders was read.

On March 23, 1922, a proxy is entered in the following words: “We, the undersigned, being all 30  
the incorporators of the C. Berenda Weinberg Clinic and Research Laboratories, organized under the laws of the State of New Jersey, do hereby waive notice of the time, place and purpose of the first meeting of the incorporators of the said company, and do fix the 23rd day of March, A. D. 1922,

at 11 A. M. o'clock, in the City of New York, as the time and the place of said meeting.

And we do hereby waive all the requirements of the statutes of New Jersey as to the notice of this meeting, and the publication thereof; and we do consent to the transaction of such business as may come before said meeting."

On April 30th, 1923, minutes of stockholders' and directors' meetings appear as follows:

10 "The annual stockholders' meeting, which was adjourned from April 2nd, 1923, was held today in the office of the company in Atlantic City, New Jersey.

Present: C. Berenda Weinberg.  
Solton Engel (by proxy).  
Robert G. Grey (by proxy),

comprising all of the stockholders of the corporation.

20 The minutes of the first meeting of the corporation were read, together with the by-laws as heretofore adopted, and all of which are hereby confirmed.

The following were chosen directors of the company to observe for one year and until their successors are chosen and qualify:

C. Berenda Weinberg.  
Solton Engel.  
Robert G. Grey.

30 There being no further business, the meeting adjourned.

(Signed) C. Berenda Weinberg,  
Pres. & Treas."

"The annual directors' meeting was held in Atlantic City, N. J.

The following directors were present:  
C. Berenda Weinberg.

Solton Engel (by proxy).

Robert G. Grey (by proxy).

The reading of the minutes of the previous meeting was dispensed with.

The following were unanimously chosen officers of the company to serve for one year and until their successors are chosen and qualify:

President and treasurer—C. Berenda Weinberg.

Vice president—Solton Engel.

Secretary—Robert G. Grey.

10

There being no further business, the meeting was adjourned.

(Signed) C. Berenda Weinberg,  
Pres. & Treas."

It was proven that these minutes were prepared by Grey in New York, sent to Weinberg at Atlantic City to sign and place in the minute book as a minute of the annual stockholders' and annual directors' meetings. Then follows minutes as follows:

20

"May 1st, 1923.

A regular monthly meeting of the board of directors was held this day at 12 o'clock noon in the New York office of the company at 17 Cedar Street.

Present: Solton Engel and Robert C. Grey, a quorum under the by-laws.

The minutes of the annual meeting were read and approved as read.

There being no unfinished business and no new business offered, the meeting adjourned.

30

(Signed) Robert G. Grey,  
Secretary."

Minutes in identically the same form (except the changing of the word "annual" to "previous") appear for alleged meetings on June 1st, 1923; July 3rd, 1923; August 1st, 1923; September 4th, 1923;

October 11th, 1923; November 1st, 1923; December 1st, 1923; January 2nd, 1924; February 1st, 1924; March 1st, 1924.

On March 13th, 1924, appears a proxy to Weinberg in the same form as that of April 27th, 1923, and minutes of alleged meetings of the stockholders and directors, duly signed by C. Berenda Weinberg as president and treasurer in the same form as those of 1923. Then follow minutes of directors' meetings in the same form as above.

On November 29th, 1924, appears a proxy signed by C. Berenda Weinberg, naming I. M. Stettenheim as his proxy at any meeting of the directors or stockholders.

On December 1st, 1924, appears a minute of a meeting of the directors, all being present, at which the following resolution was passed:

"Resolved that C. Berenda Weinberg, president, and Robert G. Grey, secretary, be authorized to give Hamilin and Company, 17 Cedar Street, New York City, three promissory notes as follows:

\$750 payable April 1st, 1925.

750 " Aug. 1st, 1925.

1,000 " Dec. 1st, 1925.

Resolved further that C. Berenda Weinberg, president, and Robert G. Grey, secretary, be authorized and hereby are authorized to sign these notes on behalf of the company."

This minute was not signed by Grey, the secretary, but bears the signature of C. Berenda Weinberg as president.

The minutes of the meetings of the directors on January 2nd, 1925; February 2nd, 1925, and March 2nd, 1925, follow as before.

On March 10th, 1925, there appears the usual proxy to C. Berenda Weinberg, and on April 1st,

1925, the stereotyped minutes of the stockholders' and the directors' meetings appear.

The minutes of the directors' meetings appear as of May 1st, 1925; June 1st, 1925; July 1st, 1925, and August 1st, 1925, in the same form as above.

On September 1st, 1925, the same minute appears, except that Grey was not present, having given a proxy to Engel, who signs the minute.

The minutes of the directors' meetings appear as of October 1st, 1925; November 2nd, 1925; December 1st, 1925, and January 2nd, 1926, in the same form as above. 10

On January 19th, 1926, a waiver of notice of a special meeting of the C. Berenda Weinberg Clinic & Research Laboratories, not specifying whether of stockholders or directors, and a minute of such meeting, appears as follows:

"January 19th, 1926.

Those present at the special meeting of the C. Berenda Weinberg Clinic & Research Laboratories held this day were: 20

Solton Engel and Robert G. Grey, a quorum under the by-laws.

The following resolution was made:

Resolved that C. Berenda Weinberg, president of the C. Berenda Weinberg Clinic & Research Laboratories, be and hereby is authorized to sign three notes payable to the order of Hamilin & Company, 17 Cedar Street, New York City, \$750 each, dated April 1st, July 1st and October 1st, 1926, respectively. 30

The foregoing resolution was duly seconded and passed by unanimous vote.

Robert G. Grey,  
Secretary."

Nothing appears to indicate that Weinberg

waived notice thereof or participated therein. Then follows the usual minutes of meetings of February 1st, 1926, and March 1st, 1926.

On March 23rd, 1926, there is the proxy for the annual meeting and the customary minutes thereof, signed by Weinberg. Then the minutes of May 1st, 1926; June 1st, 1926; July 1st, 1926; August 2nd, 1926; September 1st, 1926; October 1st, 1926; November 1st, 1926, and December 1st, 1926, in the usual form.

10 All of these minutes appear in a loose-leaf binder. In a second binder appears like minutes of the meetings of January 3rd, 1927; February 2nd, 1927; March 1st, 1927, and on March 17th, 1927, the usual proxy appears.

On April 1st, 1927, the regular meeting was attended by all directors and the following resolution was passed:

20 "Resolved that Dr. C. Berenda Weinberg, president, be notified and instructed that there be no renewal of the first mortgage on the property of the C. Berenda Weinberg Clinic & Research Laboratories, that the holder of said mortgage will be paid off by the stockholders of the company and that said mortgage be transferred on or before the expiration thereof."

On April 1st, 1927, the annual stockholders' meeting was held, with all stockholders present, and the following resolution was passed:

30 "Resolved that notice be given to the present mortgagors that mortgage will be paid off to them at the expiration of said mortgage, April 17, 1928, or before said date."

The same directors having been elected, met and re-elected the officers.

On May 1st and June 1st, Engel was the only

director present in person, but by proxy represented Grey, and like minutes were made. On July 1st, August 1st and September 1st, the same minutes appear, Grey being present. Then follow the minutes of October 1st, November 1st and November 21st, at each of which Grey and Engel were present, but Weinberg was not, in which appear the following:

On October 1st:

Mr. Engel reported that he had been advised by 10 Dr. Weinberg, president of the corporation, that title to the property at 109 South Iowa Avenue had been transferred to C. Berenda Weinberg and wife in March, 1927, and that the sheriff had levied upon it and had ordered its sale for October 6th, 1927, to satisfy personal judgments against Dr. Weinberg.

Upon reference to Mr. Vincent L. Liebell, attorney, the matter was turned over to Cole & Cole, attorneys of Atlantic City, who have drawn up a petition to the Court of Chancery that the fraud-20 ulent transfer be set aside. Mr. Engel reported that he had verified the petition. A restraining order has been obtained holding up the sale pending decision on the petition.

The following motion was made by Mr. Grey:

“Resolved that the action taken by Mr. Engel in protection of the interest of this corporation in the property at 109 South Iowa Avenue be and hereby is approved.”

November 1st:

“Resolved that Dr. C. Berenda Weinberg, presi- 30 dent and treasurer, be and hereby is requested to resign as president and treasurer of the corporation.

Resolved that the vice president or secretary of the corporation be and hereby are authorized to

take any action necessary to protect the property of the corporation, located at 109 South Iowa Avenue, Atlantic City, New Jersey.”

November 21st, 1927:

10 “Resolved that the agreement made on November 15th, 1927, between Dr. C. Berenda Weinberg, of Atlantic City, County of Atlantic and State of New Jersey, and Michael L. Davies, of Atlantic City, County of Atlantic and State of New Jersey, relating to the sale of the property known as 109 South Iowa Avenue, Atlantic City, New Jersey, in which Dr. Weinberg agreed to convey by general warranty deed to said Michael L. Davies, or to any person, persons or corporations designated by the latter on or before the first day of March, 1928, for the sum of \$100,000, be and is hereby disavowed.

20 It was further resolved that any action taken or to be taken by Dr. C. Berenda Weinberg on behalf of the corporation be and is hereby disavowed and disapproved, unless such action was or is taken in compliance with instructions of the attorneys for the corporation.”

A letter written by Grey to Weinberg, dated March 27th, 1922, is very illuminating as to real security for the money advanced by Stettenheim (there being evidence that Grey was only acting for him). The letter of Grey, as secretary, dated April 3rd, 1922, shows the payment of shares held by Weinberg.

30 The property at 109 South Iowa Avenue was purchased in the name of C. Berenda Weinberg Clinic on April 15th, 1922, as shown by settlement certificate of the Atlantic Guaranty and Title Insurance Company, and shows payment of \$15,946.90, presumably of the \$17,000 advanced by Stettenheim.

Just prior to the annual meeting of April 1st,

1929, a letter from Grey to Dr. Weinberg is placed in the minute book and numbered as page 24, in the following words:

"In going over your tax return I find the items:

Notes Payable—\$15,000.

1—To whom was note given?

2—Is it secured by any mortgage?

3—When was note given?

Mortgage—\$23,000.

1—Is this the entire amount of first mortgage? 10

Interest—\$1,380.

1—To whom was this amount paid?

2—Date of payment?

Net Income—\$1,500.

1—To whom was cash given?

Will you please answer these questions by return mail, as I would like to straighten out my records."

On page 51 appears what purports to be a letter from Grey, as secretary, to Weinberg, as follows:

"On October 6th I sent you the following letter: 20

'According to a letter of the Atlantic Guaranty & Title Insurance Company of Atlantic City, N. J., dated April 15th, 1922, the property of the C. Berenda Weinberg Clinic and Research Laboratories is subject to a first mortgage which is payable within three years, that is during 1925.'

I presume that you are continuing this as an overdue mortgage. Is this correct? I have not received any reply as yet."

Following page 53 appears a letter from Dr. 30  
Weinberg to Hamlin & Co. in which he states that the taxes for 1925 had been paid.

Filed in the minute book appears a copy of a letter from Grey to Dr. Weinberg as president, dated March 27th, 1922, as follows:

"I enclose herewith check for \$17,000 in payment

of 340 shares of stock of your company at \$50 per share to enable you to purchase building at 109 South Iowa Avenue, Atlantic City, N. J., subject to first mortgage of \$22,000 with the understanding that there is to be no other mortgage unless it is desired that a second mortgage be issued to me. Whenever such second mortgage is paid in full, capital stock is to be transferred to the party taking up the second mortgage, or vice versa. As the stock  
10 is being retired, second mortgage is to be reduced in proportion thereto.

In the meantime, I reserve the right to make a term lease of the property instead of creating a second mortgage.

In accordance with our understanding I am to purchase 120 shares more at \$50 a share (total \$6,000) as soon as the transfer of property to the company has been completed, the deed delivered and the stock issued and delivered.

20 As per our understanding, the interest or dividends are to be 6% payable semi-annually. I also enclose herewith,

(1) Agreement between Robert G. Grey & C. Berenda Weinberg.

(2) A copy of Certificate of Incorporation.

30 (3) Agreement for Sale of Land by George W. Webb, et ux., to you.

(4) Unsigned deed Seraph F. Lillig, et ux., to C. Berenda Weinberg Clinic & Research Laboratories, Inc."

There also appears a copy of a letter from Grey, as secretary, to Weinberg, as president, as follows:

“The following shares of stock for the C. Berenda Weinberg Clinic & Research Laboratories have been issued:

Certificate #1	1 share	—C. Berenda Weinberg
“ #2	1 share	—Solton Engel
“ #3	38 shares	—Robert G. Grey
“ #4	340 shares	—Robert G. Grey

10

I am enclosing herewith 38 shares of Robert G. Grey (Certificate #3) transferred to you and 1 share (Certificate #1) in your name. The other share of the 40 original shares of stock representing \$2,000, for which amount the company was incorporated, is being held by Mr. Engel, as a director of the company. It has, however, been transferred to you on the reverse side. Certificate #4 represents shares issued to Robert G. Grey in payment of \$17,000. Certificates #1, 2 and 3 represent the original 40 shares for which you paid \$2,000.”

20

Dr. Weinberg’s testimony is to the effect that at the time of the purchase of 109 South Iowa Avenue, the house consisted of 6 rooms and 2 baths. When completed there were 21 rooms.

There was paid on account of the purchase \$17,500

To remodel the building	\$27,000	
The const. of 11 bathrooms	4,200	
An oil burner system	3,000	
Piping house	2,000	30
Operating rooms	7,000	
Moving furnace, new chimney	1,000	44,200

Making a total of	\$61,700
Amount received from Stettenheim	25,000
	<hr/>
	\$36,700

That he paid out the balance of \$36,700, securing the money from his receipts and upon several loans which he paid back. He paid all the taxes and interest on the first mortgage, and every six months he paid to Stettenheim or to Grey the sum of \$750, being interest on the \$25,000 paid in or advanced by Stettenheim.

10 Weinberg was the only one in charge at 109 South Iowa Avenue, and conducted it as though it was his own property.

A. On the 16th day of February, 1925, a mortgage was made to one Morosca to secure the payment of the sum of \$2200, which mortgage was signed by C. Berenda Weinberg, as president, and attested by his wife, Sadie Weinberg, as secretary. On February 17, 1925, this mortgage was duly assigned and cancelled on March 25, 1925.

20 B. On the 20th day of March, 1925, a mortgage was made to Morris Berenstein to secure the payment of \$7,000. This mortgage was signed by C. Berenda Weinberg as president, and attested by Sadie Weinberg as secretary, and was cancelled March 25, 1926. The proceeds of this mortgage were paid out by the title company as follows:

	To title Company charges	\$80.50
	Cancellation of Mortgage A	2,212.46
	Bernstein	942.73
30	Check to order C. B. W. C. & R. L.	3,764.31
		<hr/>
		\$7,000.00

This check was endorsed, "C. Berenda Weinberg Clinic and Research Laboratories, Inc. C. Berenda Weinberg."

C. On the 24th day of April, 1925, a mortgage was made to one Peikin to secure the sum of \$3,000 and signed the same as above. This mortgage was cancelled September 18th, 1925.

D. On the 16th day of September, 1925, a mortgage was made to said Bernstein to secure the sum of \$5,000 and signed the same as before. This mortgage was cancelled on March 25th, 1926.

The proceeds of this mortgage were paid out by the title company as follows: 10

To title company charges	\$72.50
Bernstein, Ins. & Com.	675.08
To C. B. W. C. & L.	4,252.42
	<hr/>
	\$5,000.00

This check was endorsed: "C. Berenda Weinberg Clinic & Research Lab., Inc., C. Berenda Weinberg, Pres., C. Berenda Weinberg." 20

E. On August 27th, 1925, a mortgage was made to said Peikin to secure payment of \$2600 and signed as before. This mortgage was not recorded until after the record of mortgage D and was cancelled on March 25th, 1926.

F. On the 9th day of January, 1926, a mortgage was made to Atlantic Amortization Co. to secure the sum of \$2200, and was signed as before. This mortgage was cancelled on March 25th, 1926. 30

G. On March 17th, 1926, a mortgage was made to said Morris Bernstein to secure the payment of \$20,000, and was signed as before, and is still of record.

The proceeds of this mortgage were paid out by the title company as follows:

To Title Company charges		\$145.30
Bernstein—Int. on \$7,000 and \$5,000 to date		360.00
Bernstein—Comm.	\$1,990.00	
Fire Ins.	87.97	2,077.97
<hr/>		
Atl. Amortization Mtg. Co. to pay F.		1,522.50
10 C. B. W. C. & R. La.		3,894.23
<hr/>		
		\$8,000.00
Mortgage B cancelled		7,000.00
Mortgage D cancelled		5,000.00
<hr/>		
		\$20,000.00

The check to C. B. W., etc., was endorsed C. Berenda Weinberg Clinic and Research Lab., Inc., C. Berenda Weinberg, Pres. and Treas., C. Berenda Weinberg.

H. On March 17th, 1926, a mortgage was made to one Feikin to secure the sum of \$2600, and was signed as before. This mortgage was evidently to take the place of E, which was cancelled.

I. On March 30th, 1926, a mortgage was made to the Atlantic Amortization Co. to secure the payment of \$2,575, and was signed as before, and still remains of record.

J. On July 7th, 1926, a mortgage was made to W. I. Schloss to secure the payment of \$6500 and was signed as before, and was cancelled on February 25th, 1927.

On the 4th day of March, 1927, a deed was made purporting to convey said property to the said C. Berenda Weinberg and Sadie, his wife. This deed was signed C. Berenda Weinberg as president and attested by said Sadie Weinberg as secretary.

Thereafter, said Weinberg and his wife made a mortgage to I. E. Schloss and Mildred Klein as executors to secure the sum of \$6500. This mortgage was evidently to take the place of J, which was cancelled.

10

All of these instruments were recorded in the clerk's office of Atlantic County, without undue delay.

On the 9th day of June, 1927, a bill was filed in this court to foreclose the mortgage of \$22,000 held by Martha Lippincott (and subject to which the conveyance to the Clinic, &c., was made). This suit proceeded to a final decree, and at a sale held by the sheriff on December 8th, 1927, the said premises were sold to said Morris Bernstein for the sum of \$42,000, and after an order of confirmation, a deed was delivered to him.

20

With the exception of the organization meetings of the stockholders and directors, and of one meeting held December 1, 1924, at which a resolution was passed authorizing the execution of three certain promissory notes to a New York firm, in the aggregate amount of \$2500, no meetings of either were held until April 1, 1927, about the time the trouble concerning these transactions arose.

30

It is true that in the minute books appears minutes of meetings having been held, but the evidence is uncontradicted that such minutes were prepared in New York and sent to Weinberg to be entered in the book.

The dividends received by Stettenheim were not

dividends earned by the company, but were, in fact, payments made to cover interest upon money advanced by him. In fact, Grey wrote to Weinberg immediately after the original directors' meeting that "as per our understanding, the interest or dividends are to be 6%, payable semi-annually."

It is manifest that there was no specific authority given by resolution to Weinberg to execute those instruments.

- 10 In *Economy Auto Supply Company, Inc., v. Fidelity Union Trust Company*, Vol. VII, *Advance Reports No. 1*, page 24, it was held: "Our decisions have always been that the president of a corporation, although its executive head, is not empowered to bind the corporation in all of its business affairs. These cases are collected in *Aerial League of America v. Aircraft Fireproofing Corp.*, 97 N. J. L. 530, and will not be here again recited. They deal with various transactions between corporations and
- 20 third persons involving the implied power of the executive head of the corporation to bind it,"

- In *Aerial League of America v. Aircraft Fireproofing Corp.*, *supra*, it was held: "A corporation is bound by the act of an officer or agent only to the extent that the power to do the act has been conferred upon such officer or agent expressly by the charter, by-laws or corporate action of its stockholders or board of directors, or can be implied from the powers expressly conferred, or which are incidental thereto, or where the act is within the
- 30 apparent powers which the corporation has caused those with whom its officers or agents have dealt to believe it has conferred upon them."

There are numerous cases in which the powers of an officer of a corporation and his authority to act for the company are enlarged beyond those

powers which are inherent in his office. But those are cases in which the agency of the officer has arisen from the assent of the directors, presumed from their consent and acquiescence in permitting the officer to assume the direction and control of the business of the company. Thus, when in the usual course of the business of a corporation, an officer has been allowed to manage its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to transact its business. These are simply instances of the application of the principle that usual employment is evidence of the powers of an agent, and a responsibility will be laid upon the principal for the acts of his agent within the apparent authority so conferred upon the agent—a doctrine which has come to be applied to corporations in many respects as well as to individuals, and with the same qualifications and limitations. In such cases, the authority of the officer does not depend so much on his title, or on the theoretical nature of his office, as on the duties he is in the habit of performing. *Stokes v. New Jersey Pottery Co.*, 17 Vroom, 237, 242; *Martin v. Webb*, 110 W. S. 7; *Commercial Ins. Co. v. Union Mutual*, 19 How. 318; *Mining Co. v. Anglo-Californian Bank*, 14 Otto 192; *Taylor on Corp.*, paragraphs 202, 236, 244; *Ang. & A. on Corp.*, paragraphs 229, 302." *Fifth Ward Savings Bank v. First National Bank*, 48 N. J. L. 513, at page 527.

The present Chancellor, in *Cope v. C. B. Walton and Co.*, 77 N. J. Eq. 512, at page 519, said: "As to the first reason (because the C. B. Walton Co. did not execute or authorize the execution of the assignment, which was made by the treasurer without authority, and that it is therefore not binding

upon the company), true it is that the board of directors did not authorize the execution of the assignment to Allen, but, irrespective of what the by-laws provide concerning the powers of the treasurer with reference to the making of orders for the payment of money, I hold that Mr. C. B. Walton, the treasurer of the company, had power to make the assignment in question because the directors of this corporation, since its organization in 1903, had permitted him to exclusively manage and control its affairs.”

10 Then follows the quotation above made, and “See also *Clement v. Young-McShea Amusement Co.*, 69 N. J. Eq. (3 Robb.) 347; *Blake v. Domestic Manufacturing Co.*, 64 N. J. Eq. (19 Dick.) 480.”

Weinberg, as president, executed at least ten different mortgages upon the premises, received the proceeds therefor, either as treasurer or personally, conducted the business in its entirety and in every way controlled and operated the company and its business as though it was his private property.

20 At no time, from the meetings at the incorporation of the company, did the two directors, Engel and Grey (with the single exception before referred to), take any part in the business of the company, except to sign pretended proxies and minutes of the company, or to participate in alleged meetings of the stockholders and directors, at none of which meetings was there any attempt to take any action concerning the conduct of the business.

30 In *Conover v. National Mutual Ins. Co.*, 1 N. Y. 290: “For the defense, it was insisted that (certain) acts of the secretary were never brought to the knowledge of the directors or received their formal ratification, but it was held on this point by Johnson, J. (at page 292), “that the directors were bound to

know the uniform course of business pursued by their sole agent for the transaction of their business at their office, especially where regular entries of his acts were made in their books, and they must be held responsible on the ground of a tacit assent and approval, unless they can show that, by a strict vigilance and scrutiny into his acts, they were unable to ascertain the course he was pursuing, and could not, therefore, arrest it or put the public upon their guard.” 10

Even should it be found that Weinberg may be deemed to be clothed with authority to transact the ordinary business of this corporation by reason of the circumstances hereinbefore recited, he cannot be deemed to be clothed with authority to sell and dispose of all of the property of the corporation; that it is not company business; it would result in terminating the company's activities, and it is debatable whether the directors, acting as such, could do so without the consent of the stockholders. Knopf v. Alma Park, Inc., 105 N. J. Eq. 299; Meyerhoff v. Bankers Securities, Inc., 105 Ibid. 76. 20

The deed from the company to Weinberg is a nullity. There is no authorization by the board of directors authorizing Doctor Weinberg to execute this deed, nor has such action ever been ratified. The rule of *caveat emptor* obtains, and particularly should it obtain in this case, where the president of a corporation, his wife acting as secretary, pretends to execute a deed to himself, without consideration. 30

“The first taker under the disputed deed took with notice that it was dealing with an agent and was bound to verify his authority at its peril. 27 R. C. L. 668, *et seq.* It was also put on notice by the sale of the tract as a unit, the tract having been previously laid out in build-

ing lots by a recorded map. Subsequent purchasers were likewise put upon inquiry by the record.

The special equity of innocent purchaser for value, set up by the defendants, cannot prevail against the legal title of the company. 27 R. C. L. 673. The innocence and good faith of a subsequent purchaser of an invalid title cannot supplant the legal title. *Vattier v. Hinde*, 7 Pet. 252; *Lindblon v. Rocks*, 146 Fed. Rep. 660."

A decree will be advised in accordance herewith.  
Determined February 25, 1930.

20

30

FINAL DECREE.

65-512.

IN CHANCERY OF NEW JERSEY.

10

Between

C. BERENDA WEINBERG  
CLINIC AND RESEARCH  
LABORATORIES, INC., a  
corp., &c.,

Complainant,  
and

C. BERENDA WEINBERG,  
*et al.*,

Defendants.

On Bill, &c.  
Final Decree.

20

A decree *pro confesso* having been entered on the 17th day of March, 1928, against Julius B. Press, Henry Eppsteiner, Atlantic Amortization Co., and Irving S. Schloss and Mildred Klein, executors of the estate of William I. Schloss, deceased, and the matter coming on to be heard in the presence of C. L. Cole, of counsel with complainant; William Charlton, of counsel with C. Berenda Weinberg and Sadie Weinberg; Bourgeois & Coulomb and Morris Bloom, of counsel with Morris Berenstein, and Bolte

30

& Tripician, of counsel with National Savings and Trust Company, on bill, answer and other pleadings; and the Court having read and considered the proofs and the argument of respective counsel, and being of the opinion that there was no right, power or authority in C. Berenda Weinberg, as president, or otherwise, to execute and deliver any of the deeds or mortgages set out in the bill and amended bill, and that the judgments set forth in the bill are not  
10 a lien on the premises described therein, and that as to the right, title and interest of the complainant, C. Berenda Weinberg Clinic and Research Laboratories, Inc., a corporation, said deeds, mortgages and judgments are not, nor is any one of them, a lien, nor do they in any wise affect the interest of said corporation in and to said premises, and that as to it, each and every of them is void and of no effect, and that said complainant is entitled to have and receive the surplus fund arising under the fore-  
20 closure of the first mortgage held by Lippincott covering the premises described in the bill;

It is, on this 25th day of June, 1930, on motion of Cole & Cole, solicitors of complainant, ordered, adjudged and decreed that the several conveyances, mortgages and judgments set forth in the bill and amended bill, are void and of no effect so far as they purport to convey the premises described in the bill, or create a lien thereon; that said premises were the property of the complainant; that com-  
30 plainant is entitled to the surplus fund arising under the foreclosure of the first mortgage held by one Lippincott covering the premises described in the bill, and that the same should be paid to the complainant, with interest from the date of the creation of said fund.

It is further ordered, adjudged and decreed that

complainant is entitled to its costs to be taxed, which shall include a counsel fee of three hundred dollars.

E. R. WALKER,  
C.

Respectfully advised,  
R. H. INGERSOLL,  
V. C.

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COPY.

10

EXHIBIT C1—ID.

My dear Mr. Stettenheim:

I was never so shocked as when Sadie told me what you said. I have read and reread my letter to you & where in God's name you can find any place that even so much as hinted to black-mail—I can't for the life of me see.

20

I'm not saying this to get into your good graces but Fritz certainly can vouch for me, that I've told him so many times not only how much I respected and venerated you—& that he should be the happiest man should get down on his knees & thank God for such a father. You to me have been almost an Ideal. What is there in this World I could say or know that I could black-mail you. Your wife—well—she ought to know how deeply I feel towards her & as to Fritz—he has always been a son & brother to me.

30

page 3.

Can tell you that. My God you can't call that Black-mail—I do have a right to protect my children & not bring disgrace on there names & do have a right not to want to go to jail—I do have a right

to pass out in such a way as to not only protect my name but pay all my debts—I now have \$150,000.00 insurance—I just place \$50,000 with the N. Y. L. (you can verify this) & I am enclosing my will to show you I mean what I say.

God knows things are bad enough between us—but to be accuse of black-mail is terrible & it hurts most of all.

10 Please Mr. S. return this letter to me—I don't care what you do or did with the other—but you can see why I want this back. I've just closed a deal for a formula which with a drug house that will bring me in not less than 15 to \$20,000 a year. I intent to turn this over to Cole & Cole as soon as papers are signed & his is to pay this money as it comes in to you.

Please—please Mr. S. don't think worse of me than it is.

Believe me I am always & ever Sincerely,  
(signed) Weinberg.

20

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COPY.

EXHIBIT C2—ID.—12/19/28 L.

C. BERENDA WEINBERG, M. D.  
Atlantic City.

Monday.

30 My dear Mr. Stettenheim:

Your letter 3rd received & thank you for being so prompt. The situation is rather peculiar. The Clinic is incorporated "for the treatment of diseases & research work." When I hand in my report to the Government I must show on the books of the

Corp. any dollar I took in & spent. That is why when I buy something I pay cash (by check) so as to live up to the motion passed "not to contract any debts with out order of stock holders" That is why it is necessary for me to send Mr. Grey a full report of how much I deposit & how much I spend so there will be no confusion or get my self in trouble with the State or Government. I want this to be honest and not have to tell them a long story. I can assure you that I shall never in any way shape or form do any thing other than what you expect of me & that I will live up to my promise etc. 10

There is only one other way out of this and that is to open two accounts in the bank & then I'd have a lot of excuses to make to the State & they'd think I was trying to put one over on them—but if you can suggest away you know. I look upon you not only as one who has helped me but as a Friend who would advise me as his own Child. Believe me that is how I feel towards you. 20

Everything is going on fine and tomorrow or next day they begin to do the out side work.

Everybody seems to think we bought a wonderful bargain. Shall I in the future send reports to you or to Mr. Grey. I understood you to say that I should report to Grey.

Remember me to Mrs. Stettenheim and Fritz.

My heart ful of thanks to you

Ever

(SIGNED) C. BERENDA WEINBERG.

30

COPY.

EXHIBIT C3—ID.—12/19/28 L.

C. BERENDA WEINBERG, M. D.  
Atlantic City, N. J.

Oct. 6, 1927.

10 Mr. I. Stettenheim,  
910 5th Av.  
New York City

My dear Mr. Stettenheim:

First I want to wish you and Mrs. S. a continu-  
ance of your past happy New Years, for it has given  
to you at least one thing, the happiness of seeing  
your Fritz married, a pleasure in which I can join  
you. For me and mine it has only brought unhap-  
piness, sorrow and sadness, all, I am afraid, of my  
20 own making. I am not writing you this letter be-  
cause it is the Day of Atonement, that is merely a  
coincidence, for before forgiveness I must right the  
wrong and that is what I tried to do before this  
day. Neither will I feel any special resentment if  
you aren't lenient and help me through this mess.  
Whatever you do it will be a matter of judgment be-  
tween what you think I have done or tried to do  
for you and yours in the past and your conscience;  
nor am I so weak-kneed as to plead for mercy for  
30 after all I can take my medicine like a man.

Before I go into details as to what I did, I want  
to say that I acted not for selfish reasons but be-  
cause I saw a chance to do something big that re-  
quired a great deal of money and that I thought  
in accomplishing this I could not only reimburse  
you but bring honor and profit to myself. I have

in the past three years spent over #35,000. above what I earned, except that I have been able to maintain the premiums on over \$100,000. Life Insurance. I spent this money on Research and to get this money I borrowed not only on the property but in the banks. There is now against the property in mortgages which I had no right to take, #28,000, not including the first mortgage of \$22,000. I took these mortgages, signed my name as Prest. and Treas. Let me now assure you that I always realized that if the crash came, I could always sell the place for enough to pay back to you the \$25,000. This place will always bring under any circumstances between \$75,000 and \$90,000. as it has been appraised by the Real Estate Board at \$102,000. 10

Unfortunately a judgment was placed against the property for \$8,000. through an error. They got it against the property, because in signing a bond, it seems I unintentionally conveyed the property from the Corporation to myself. This no doubt was done by a trick of the Attorney. When I became aware of this, I immediately engaged an attorney named Charlton to bring suit against me for unlawfully conveying the Corporation to myself and then notified your Mr. Grey and Mr. Newman. You can readily see that up to this point I had protected your interests in spite of the fact that I did things on the face of it, which were illegal and unlawful, but morally, I might say safe. 20

Now, Mr. Stettenheim, there are just two things that you can do,—bring action against me for fraudulently obtaining this money and send me to jail or let matters stand, permitting the action to go against me as it is, viz: that in conveying the property in my name without consent of the Corporation, letting them for the present suppose that 30

the second and third mortgages were taken out with your consent, having them set aside the judgment, then permitting me to take out a \$60 or \$65 thousand dollar mortgage which I have under way, giving you the ten or fifteen thousand that will be left from this and then sell the property and give you the balance. This of course is the safest and easiest course. Anything else will not only tie up your interest for years to come but even may endanger  
10 your getting anything back, unless you choose to buy in the property above the judgment and present mortgages which would total over \$85,000. which I would not advise unless you could carry it for 3 or 4 years for a big profit.

No amount of criticism on you part will help matters now. Explanations are not of any use as it is done and over. I committed a wrong in my endeavor to do something not only for humanity but to make things easier for myself and to carry on  
20 an ambition fore Research work. Technically I have cheated but after all I have done no particular harm since you will get all the money that is coming to you, provided you will help me in this action that I started myself. You can see that I meant to do the right thing, otherwise I would not have put myself in position as I did of bringing action against myself without even consulting you.; In other words, to protect your interest while you were abroad, I opened myself to the gravest danger.

30 This letter is a full admission of my guilt and can be used against me but let me assure you of one thing it will gain you nothing to prosecute me, excepting of course, for the action which I brought and which your Mr. Newman fully understands, unless you are desirous of getting satisfaction. If this is to be your attitude and final decision, please call

me on the phone as soon as you read this letter and I will give you certain information which I am sure will change your mind or you can speak to Fritz.

I know this is going to be a shock to you but after all what I did the biographies of some of our greatest financiers show that I have done no more nor no less than they, less, I should say, because at least I have protected your interest. With kind regards to Mrs. S. and yourself, I am

Sincerely yours,

10

(SIGNED) C. BERENDA WEINBERG.

ENVELOPE.

(Letter dated Oct. 6th came in this envelope.)

Atlantic

City

Oct. 7

2 Cents

1 A. M.

Stamp

1927

N. J.

20

Mr. I. Stettenheim,  
910 Fifth av.

New York City, N. Y.

Personal

(Please hold until he arrives)

30

COPY.

EXHIBIT C4—ID.—12/19/28 L.

C. BERENDA WEINBERG, M.D.,  
ATLANTIC CITY, N. J.

Sept. 21, 1927.

10 Mr. Emile Newman,  
17 Cedar St.,  
New York.

My dear Mr. Newman:

I am herewith enclosing affidavit which you will please swear to. It is necessary for you to do this within the next few days to protect your interest as they will execute judgment then. Of course, it is very evident that the judgment is a personal one but unfortunately it has been executed against the property which they insist is in my name. I am  
20 also enclosing a statement whereby I incur all expenses and it will not be necessary for anyone to appear in this action. Mr. Charlton, my Attorney, will take care of everything. We have five days before execution.

You can see I am trying to save Mr. Stettenheim not only the inconvenience of trying to recover what belongs to him but also the expense and trouble of coming to Atlantic City.

Yours very truly,

30 (SIGNED) C. BERENDA WEINBERG.

---

C. BERENDA WEINBERG, M. D.

Sanatorium and Offices:

109 So. Iowa Avenue,

Atlantic City.

I, C. Berenda Weinberg, will incur all expenses

in an action brought by Emile Newman for Israel Stettenheim against C. Berenda Weinberg and Sadie Weinberg.

Signed C. BERENDA WEINBERG  
Sept. 21, 1927.

Witness:  
SADIE WEINBERG.

10

EXHIBIT C3.

11/22/28 L.

(Ten Dollars Documentary Stamp)

PROOF BOND AND WARRANT OF ATTORNEY  
both by and to Individuals and Corporations to be  
filled in under like numerals below as follows, to wit: 20

- (1) Names and addresses of persons and corporations borrowing and making the mortgage with the names of husbands and wives of individuals.
- (2) Names and addresses of persons and corporations lending the money.
- (3) Enter here double the amount of the loan.
- (4) Enter here the real amount of the loan.

KNOW ALL MEN BY THESE PRESENTS,

30

(1)

THAT C. BERENDA WEINBERG CLINIC AND RESEARCH LABORATORIES INC., a Corporation of the State of New Jersey, (hereinafter called the Obligor) is, am or are held and firmly bound

(2)

unto MORRIS BERENSTEIN, of the City of Atlantic City, County of Atlantic and State of New Jersey, (hereinafter called the Obligee), in the penal

(3)

sum of Forty Thousand Dollars (\$40,000) lawful gold coin money of the United States of America,  
10 of its present standard of weight and fineness, to be paid to the said Obligee, his, her, their, its certain Attorney, Executors, Administrators, Successors or Assigns: to which payment well and truly to be made, I, we, it do or doth hereby bind and oblige myself, ourselves, itself and every of them, jointly and severally, firmly by these Presents. Sealed with my, our, its Seal or Seals. Dated the 17th day of March in the year of our Lord one thousand nine hundred and twenty-six

20 THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Obligor, his, her, their, its, heirs, executors, administrators, successors or assigns, or any of them, shall and do well and truly pay, or cause to be paid, when and as the same shall accrue or fall due as is hereinafter specifically provided, unto the above named Obligee, his, her, their, its certain Attorney, Executors, Ad-

(4)

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ministrators, Successors or Assigns, the real principal debt or just sum of Twenty Thousand Dollars (\$20,000) like lawful gold coin money as aforesaid, payable at any time within one year from the date hereof, together with interest thereon at the rate

of six per centum per annum, payable semi-annually in like lawful gold coin money as aforesaid, shall pay all interest and principal payments when and as the same shall fall due on this and prior encumbrances upon the accompanying mortgaged property, if any there be, and shall keep and maintain at all times fire insurance covering the accompanying mortgaged property in the manner and in the amounts provided herein and in said mortgage and shall pay all insurance premiums when due upon policies covering the accompanying mortgaged premises as well as pay all taxes, assessments and charges in nature thereof that may or will be laid or levied upon the lands and premises described in the accompanying mortgage, immediately upon their assessment; shall not apply for any deduction by reason of the accompanying mortgage from the taxable value of the lands therein described and embraced; shall produce to the said Obligee, or his, her, their, its Executors, Administrators, Successors or Assigns, if and when called for, and within thirty days from such call, receipts for all interest and principal payments as the same shall fall due on prior encumbrances, if any, and receipts for all insurance premiums upon existing insurance from time to time upon the accompanying mortgaged premises as well receipts for all taxes, assessments and charges in nature thereof laid or levied upon the said mortgaged premises, all of which must be paid within thirty days after the same shall first become due and payable and shall and will keep the buildings erected and to be erected upon the said lands insured against loss or damage by fire at all times in such safe and responsible stock (non-mutual) Fire Insurance Company or Companies as shall be satisfactory to said Obligee, his, her, their, its Executors, Administrators, Successors or As-

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20

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signs, and endorse with non-contributionship mortgage clauses or assign said policies to said Obligee, his, her, their, its Executors, Administrators, Successors and Assigns, and deliver all policies and certificates thereof to the said Obligee, his, her, their, its Executors, Administrators, Successors or Assigns as collateral security for the payment of the principal and interest aforesaid, the aggregate amount of which insurance shall not be less than  
10 the amount of this obligation or such additional amounts as may be necessary to fully satisfy said Obligee, his, her, their, its Executors, Administrators, Successors and Assigns at all times without any fraud or further delay; then the above obligation to be void, or else to be and remain in full force and virtue.

AND PROVIDED FURTHER, however, that if default shall be made in the production within thirty days when and if called for hereunder in  
20 any year of the tax receipts or of receipts for principal or interest payments when and as the same shall fall due on prior encumbrances, if any, or in the production of receipts for insurance premiums, or of any other assessments or charges as herein provided and conditioned as aforesaid, when and if demanded, or if default be made for the space of thirty days in payment of said taxes, assessments, charges aforesaid, interest and principal on prior encumbrances, if any, insurance premiums or other  
30 charges as herein provided as aforesaid, or in keeping the buildings erected upon said lands insured, and the policies and certificates thereof assigned or endorsed as aforesaid, or if at any time default shall be made in payment of principal or interest hereon as is provided herein as aforesaid for the space of thirty days after any payment thereof

either in whole or in part as is hereinbefore provided shall fall due, or after such demand or call as aforesaid is made, then and in every such case, whether it be the first or any subsequent default, the whole principal debt aforesaid shall, at the option of the said Obligee, his, her, their, its Executors, Administrators, Successors or Assigns, become due and payable immediately, and payment of said principal debt, and all interest hereon, together with any and all interest and principal on prior encumbrances, if any, insurance premiums, taxes, assessments or other charges herein provided to be paid by said Obligor, his, her, their, its Heirs, Executors, Administrators, Successors and Assigns and unpaid by him, her, them or it may be enforced and recovered at once, anything herein contained to the contrary notwithstanding. 10

AND PROVIDED FURTHER, that in default within thirty days if and when called for hereunder in production of receipts for principal or interest on prior encumbrances, if any, or of insurance premiums or production of receipts for taxes or other municipal assessments, and in default for the space of thirty days after the same shall become due in the payment of taxes, assessments, charges, interest and principal on prior encumbrances, if any, insurance premiums or other charges as aforesaid, the said Obligee, his, her, their, its Executors, Administrators, Successors or Assigns, shall have the option to effect such insurance, and pay such taxes, assessments, charges, interest and principal on prior encumbrances, if any, insurance premiums or other charges; and the premium or premiums paid for effecting such insurance and the amount paid for such taxes, assessments, charges, interest and principal on prior encumbrances, if any, insurance 20 30

premiums or other charges as aforesaid, shall be added to the principal moneys hereby secured, and payable on demand, with legal interest, in like money and at the place aforesaid. AND PROVIDED FURTHER, however, that if at any time hereafter, by reason of any default in insurance or in the payment either of said principal sum, when and as the same shall accrue, grow due and become payable as aforesaid, or at maturity, or of said interest, within the time specified, or in the payment of said taxes, assessments, charges, interest and principal on prior encumbrances, if any, insurance premiums or other charges as above provided, or in the production when and if called for within thirty days from such call of said tax receipts or receipts for principal or interest on prior encumbrances, if any, or receipts for insurance premiums without delay, suit shall be brought in any Court for the amount of such principal sum and interest, and such other items paid in conservation of this obligation, or judgment shall be obtained by virtue of the warrant of attorney annexed hereto, or proceedings to foreclose the accompanying mortgage shall be had, an attorney's commission of \_\_\_\_\_ per cent. for collection shall be payable by reason of such suit, judgment or proceedings, and shall be recovered in addition to all principal, interest, insurance premiums, taxes, assessments, principal and interest on prior encumbrances, if any, or other charges then due and unpaid by this Obligor, his, her, their, its Heirs, Executors, Administrators, Successors or Assigns, besides cost of suit.

AND PROVIDED FURTHER that the said party of the second part, his, her, their, its heirs, executors, administrators, successors and assigns shall and may from time to time and at all times

after default shall be made in the performance of the provisions and conditions hereof or any of them, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the property and premises in the accompanying mortgage granted and conveyed with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, his, her, their, its heirs, executors, administrators, successors or assigns or any other person or persons whomsoever.

10

C. BERENDA WEINBERG CLINIC AND RESEARCH LABORATORIES INC.

By

C Berenda Weinberg (Seal)  
(C B W C & R L I)  
President

ATTEST

Sadie Weinberg (Seal)  
(C B W C & R L I)  
Secretary

20

Signed, sealed and delivered  
in the presence of  
Floyd S. Sumner

---

To any Attorney of any Court of Law in New Jersey.

This is to authorize you to appear for me, us, it, my, our, its executors, administrators, successors in any Court of competent jurisdiction, in case of the breach of the condition of the above Bond, and confess judgment for the penalty therein contained, as of the last or any subsequent term, with costs of suit and release of errors; and this shall be your sufficient warrant.

30

WITNESS the hands and seals of individual parties hereto and the corporate seals of corporate parties hereto this Seventeenth day of March in the year of our Lord one thousand nine hundred and twenty-six

C. BERENDA WEINBERG CLINIC AND  
RESEARCH LABORATORIES INC.

By C Berenda Weinberg (Seal)  
(C B W C & R L I)

President

10

ATTEST: Sadie Weinberg (Seal)  
(C B W C & R L I)

Secretary

Signed, sealed and delivered  
in the presence of  
Floyd S. Sumner

\_\_\_\_\_  
(Endorsed)

20

App. No. 8210

BOND and WARRANT

C. BERENDA WEINBERG CLINIC  
AND RESEARCH LABORATORIES  
INC.

to

MORRIS BERENSTEIN

For \$

IN CHANCERY OF NEW JERSEY

30

Between  
Lippincott  
Complainant

and

Weinberg  
Defendant

} On Bill

Exhibit D1  
Dated Sept 1  
John C. Reed, Master  
CHELSEA TITLE AND GUARANTY  
COMPANY  
1313-1315 Atlantic Avenue  
Atlantic City, N. J.  
(In pencil):  
Rev 10.00  
R K

10

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EXHIBIT C4.  
11/22/28 L.

ERROR PROOF NEW JERSEY MORTGAGE  
BOTH BY AND TO INDIVIDUALS AND  
CORPORATIONS TO BE FILLED IN AS  
DESIGNATED UNDER LIKE NUMERALS 20  
BELOW:

- (1) Names and addresses of mortgagors or owners of the property borrowing, together with names of husbands and wives. In case of purchase money mortgages only (where husband is taking title) wives are not necessary.
- (2) Names and addresses of mortgagees or parties taking the mortgage or lending the money.
- (3) Fill in here double the amount of the mortgage loan. 30
- (4) Fill in here the real amount of the mortgage.
- (5) Fill in here the terms and manner in which the mortgage is to be paid whether it be in one payment or in installments; dates and amounts due.
- (6) Fill in here a complete description of the mortgaged property, follow this with the recital of

how the mortgagors obtained title giving names, date and record book and page of last deed; also provisions of wills of last record owner if dead or names of heirs if last owner if he died without will; dates of deaths, etc.

(7) State here whether subject to prior mortgages, building restrictions, etc.

THIS INDENTURE, made the Seventeenth day of March in the year of our Lord one thousand nine hundred and twenty-six

(1)

BETWEEN C. BERENDA WEINBERG CLINIC AND RESEARCH LABORATORIES INC., a Corporation of the State of New Jersey, hereinafter

(2)

20 called the party of the first part, and MORRIS BERENSTEIN, of the City of Atlantic City, County of Atlantic and State of New Jersey, hereinafter called the party of the second part:

WHEREAS, the said party of the first part in and by a certain Obligation or writing obligatory, under his, her, their, its seal or seals duly executed, and bearing even date herewith, stands or stand bound unto the said party of the second part, in the penal

30

(3)

sum of Forty Thousand Dollars (\$40,000) lawful gold coin money of the United States of America, of its present standard of weight and fineness, conditioned for the payment of the real principal debt

(4)

or just sum of Twenty Thousand Dollars (\$20,000)

(5)

like lawful gold coin money as aforesaid, payable at any time within one year from the date thereof, together with interest thereon at the rate of six per centum per annum, payable semi-annually, in like money when and as the same becomes due promptly, and shall pay promptly, when due or assessed as the case may be, and shall produce receipts therefor to the holders hereof from time to time when, if and as required for, all interest and principal upon prior encumbrances hereto, if any, and as the same shall accrue and become payable, taxes and assessments upon the land, premiums upon hereinafter mentioned fire insurance; shall not apply for any deduction or abatement by reason of this mortgage either from the taxable value of the herein mortgaged property or for taxes assessed thereon; shall always keep the buildings erected or to be erected upon said lands insured against loss by fire in safe stock (non-Mutual) Fire Insurance Companies as shall be satisfactory to the holders of this mortgage and endorse with non-contribution-ship (without full contribution) mortgagee clauses, or assign said policies, so that the same shall be made payable to and forthwith delivered to the said holders hereof as collateral security herefor prior to the expiration of prior expiring insurance in like amounts of such expiring policies; the aggregate amount of which insurance to be carried shall be the amount of this mortgage or such other or additional amounts as shall be agreeable to and fully

satisfy the holders hereof; and Together with any and all other provisions and conditions more fully set forth in said accompanying bond and warrant of Attorney all of which are to be read herein and made a part hereof and are to be considered conditions and covenants hereof.

10 Said bond and obligation further provides that unless insurance is produced as aforesaid the holders hereof may effect such insurance and should the premiums thereon, taxes, assessments, interest and principal on prior encumbrances, if any, etc., or any of them, remain unpaid at any time, the holders hereof may pay the same in conservation hereof and add such amounts so paid to the principal debt hereof to be recovered in addition to this mortgage obligation.

20 IT FURTHER PROVIDES that should there be default for the space of thirty days in the performance of any one or more of said conditions and covenants, whether it be the first or any subsequent default, foreclosure proceedings may immediately be had upon this mortgage and suit may be instituted upon the bond and warrant which it secures, as is now or will be provided by law and equity, and the whole principal debt hereunder with interest shall become due and payable and may be recovered together with all other items paid in conservation and protection of this mortgage with interest as well as all costs of suits and an Attorney's  
30 commission of \_\_\_\_\_ per centum.

NOW THIS INDENTURE WITNESSETH, that the said party of the first part, as well for and in consideration of the real debt or principal sum hereinbefore mentioned and recited, the receipt of which is hereby acknowledged, and for the better securing the payment thereof, unto the said party of the

second part, his, her, their, its Executors, Administrators, Successors and Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part, at and before the ensembling and delivery hereof, the receipt of which one dollar is hereby acknowledged, hath or have granted bargained, sold, assigned, transferred, aliened, enfeoffed, released, conveyed, 10  
ratified and confirmed, and by these presents doth or do grant, bargain, sell, assign, transfer, alien, enfeoff, release, convey, ratify and confirm, unto the said party of the second part, his, her, their, its

## (6)

Heirs, Successors and Assigns, ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Atlantic City, County of 20  
Atlantic and State of New Jersey, bounded and described as follows: BEGINNING at a point in the Easterly line of Iowa Avenue, eighty-five feet South of the Southerly line of Pacific Avenue, and extending thence (1) Eastwardly, parallel with Pacific Avenue, sixty-five and sixty-three hundredths feet; thence (2) Southwardly, parallel with Iowa Avenue, sixty feet; thence (3) Westwardly, parallel with Pacific Avenue, sixty-five and sixty-three hundredths feet to the Easterly line of Iowa Avenue; 30  
thence (4) Northwardly, along the Easterly line of Iowa Avenue, sixty feet to the place of beginning.

BEING the same land and premises conveyed unto the party of the first part by Seraph F. Lillig, et ux by deed dated March 30, 1922 and recorded April 17, 1922 in the Office of the Clerk of Atlantic

County at Mays Landing, N. J. in Book 676, page 343.

10 TOGETHER with all and singular the lands, buildings, improvements, waters, water courses, water rights (riparian and pier rights granted or to be granted if the within conveyed property is tangent to, touches upon or embraces water front or fronts to which they would or may attach or be entitled), mineral rights and deposits, woods, streets, alleys, passages, ways, rights, liberties, privileges, hereditaments, incidents, appendants and appurtenances in the line of title and to the same belonging, granted, or in any wise appertaining with the full right to and use of the same that may have been granted heretofore to these or the prior owners hereof or to which they were, may or will be in any way entitled, and the reversion and reversions, remainder and remainders, rents, issues, benefits and the profits thereof, and of every part and parcel thereof;

20 AND ALSO, all the estate, rights, title, interest, property, privileges, possession, claim and demand whatsoever, both in law and equity, of the said party of the first part, of, in and to the said premises, with the appurtenances, appendants, incidents and hereditaments now vested in the party of the first part or that may hereafter be vested in the party of the first part in fulfillment and in perfection by estoppel of the title hereto both as to the quantity and quality of the same intended and purported to be granted and conveyed by this deed, if there is ascertained to be in any manner any deficiency of title either as to the quantity or quality thereof or both.

30 TO HAVE AND TO HOLD the said premises, with all and singular the buildings, appurtenances, ap-

pendants, incidents and hereditaments thereunto belonging as aforesaid unto the said party of the second part, his, her, their, its, heirs, successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, his, her, their, its, heirs, successors and assigns.

(7)

This mortgage is a second mortgage and is subject to the lien and operation of a first mortgage in the principal sum of Twenty-two thousand dollars (\$22,000) now of record against said premises. 10

PROVIDED ALWAYS NEVERTHELESS that if the said party of the first part, his, her, their, its Heirs, Executors, Administrators, Successors shall faithfully do and perform all the matters, acts and things provided in the hereinabove recited bond and obligation, and shall fully perform all of the conditions and agreements therein contained, that then and from thenceforth as well this present indenture and the estate hereby granted, as the said obligation above recited shall cease, determine and become absolutely null and void as to all intents and purposes, anything herein contained to the contrary thereof in anywise notwithstanding, otherwise to remain in full force and effect and process may be had in foreclosure hereof as well as upon said recited bond. 20

AND the said party of the second part, his, her, their, its Executors, Administrators, Successors and Assigns, shall and may, from time to time and at all times after default shall be made in the performance of the conditions of said recited bond, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted premises, with the appurtenances, without 30

the let, suit, trouble, hindrance or denial of the said party of the first part, his, her, their, its Heirs, Executors, Administrators, Successors or Assigns, or of any other person or persons whomsoever.

IN WITNESS WHEREOF the individual parties of the first part to these presents has or have hereunto set his, her or their hands and seals, and the corporate parties hereto have caused its or their common or corporate seal or seals to be affixed and  
 10 set hereto duly attested by their proper and authorized officers thereof affixing their signatures hereto, in attestation of their due execution and delivery, the day and year first above written.

C. BERENDA WEINBERG CLINIC AND  
 RESEARCH LABORATORIES INC.

By C Berenda Weinberg (Seal)

(C B W C & R L I)

President

ATTEST: Sadie Weinberg (Seal)

20

(C B W C & R L I)

Secretary

Signed, sealed and delivered  
 in the presence of  
 Floyd S. Sumner

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#### INSTRUCTIONS FOR ACKNOWLEDGMENTS

30 Acknowledgments may be taken without the necessity of having Court certificate attached before the following:

A Notary Public, Master in Chancery, Attorney-at-Law for the State of New Jersey or before any Judge of any New Jersey Court of Record, Chancellor or Vice-Chancellor of the Court of Chancery,

without seal, or before an American Diplomatic Representative abroad, Notary Public of Foreign Countries, a Commissioner of Deeds for New Jersey, commissioned to act in another State for New Jersey, with his seal; but if taken before a Notary Public or other State or County officials of any State other than New Jersey, no seal necessary but Certificate of Court of Record in such State certifying to the authenticity of such official's right to take acknowledgments must be attached to the Deed. 10

STATE OF NEW JERSEY }  
COUNTY OF ATLANTIC } ss.

BE IT REMEMBERED, that on this 17th day of March in the year of our Lord one thousand nine hundred and twenty-six before me, the undersigned subscriber NOTARY PUBLIC OF N. J. personally appeared the undersigned deponent who being duly sworn, on his oath made due proof, to my satisfaction, that C. Berenda Weinberg is President, and deponent is Secretary (Cashier) of the C. Berenda Weinberg Clinic and Research Laboratories Inc. the corporation grantor in the within Mortgage named; that deponent well knows the common seal of said corporation; that the seal affixed to said Mortgage is the common seal of said corporation, and was so affixed thereto, and said Mortgage was signed and delivered by said President in the presence of deponent, as the voluntary act and deed of said corporation, pursuant to resolution of the Directors thereof, and that deponent thereupon signed his name thereto as a witness thereof. 20 30

Sadie Weinberg

Sworn and subscribed to before me the day and year aforesaid. All of which I do hereby certify.

Floyd S. Sumner  
Notary Public of N. J.

My Commission Expires June 4, 1930

Recd 3.50

Rev. 10.00

R K

10

STATE OF NEW JERSEY }  
ATLANTIC COUNTY }ss.

BE IT REMEMBERED, that on this  
day of \_\_\_\_\_ in the year of our Lord  
one thousand nine hundred and  
before me, the undersigned subscriber,

personally appeared

who, I am satisfied is or are

20 the grantor or grantors mentioned in the above  
Mortgage, and I having first made known to him, her  
or them the contents thereof, he, she or they ac-  
knowledged that he, she or they signed, sealed and  
delivered the same as his, her or their voluntary  
act and deed. All of which is hereby certified.

IN CHANCERY OF NEW JERSEY

30

Between  
Lippincott  
Complainant

and

Weinberg  
Defendant

On Bill

Exhibit D2  
Dated Sept 25  
John C. Reed, Master

1848

(In pencil):

3-25-26 11—

3.00

chg

CHELSEA TITLE & GUARANTY  
CO.

10

App. No. 8210

MORTGAGE

C. BERENDA WEINBERG CLINIC  
AND RESEARCH LABORA-  
TORIES INC.

to

MORRIS BERENSTEIN  
INSURED

Bk & pg

Dated .....19

20

Received in the Clerk's office of the  
County of Atlantic on the 25th day of  
March A. D. 1926 at Eleven o'clock in  
the forenoon, and recorded in Book 392  
of MORTGAGES for said County on  
pages 257 &c.

William A Blair Clerk  
C. M. W.

CHELSEA TITLE AND GUARANTY  
COMPANY

30

1313-15 Atlantic Avenue

Atlantic City, N. J.

REV. STAMP IS AFFIXED TO  
BOND SECURED BY THIS  
MTGE.

778

The following exhibits are omitted by consent:

Exhibit C5 is a sheet of the Atlantic City National Bank showing the account in that bank.

Exhibit C6 is a signature card of the Atlantic City National Bank.

10 Exhibit C7 is a signature card of the Atlantic City National Bank.

Exhibit C8 is the bank record of the Chelsea National Bank, showing the opening of the account, deposits, etc., in that bank.

Exhibit C9 is a signature card of the Chelsea National Bank.

20

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EXHIBIT C10.

Upon motion duly made and seconded, and passed, it was

30 ORDERED that C. Berenda Weinberg be authorized to open a bank account in the Chelsea National Bank; to deposit moneys therein, and to draw checks thereon, in the name of C. Berenda Weinberg, Clinic and Research Laboratories, as Treasurer of the Company.

EXHIBIT D1.

Iden. 11/22/28 L.

(copy)

C. BERENDA WEINBERG, M. D.

Atlantic City, N. J.

Jan. 4, 1927.

Mr. I. S. Stettenheim,  
910 Fifth Av.  
New York City.

10

My dear Mr. S:

Owing to an attack of illness I was unable to communicate with you sooner. No doubt Mrs. Beulah told you I was incapacitated for about 19 days but I am feeling better now. I know it will be a matter of gratification to you, Mrs. S. and Fred to know that I am now the house physician at the Ritz-Carlton and very shortly will be house physician at the Ambassador through your aid though you don't know it as yet. 20

Regarding the matter of the \$25,000. mortgage, there are several reasons why I wish to handle this at present myself. First, the Claridge Hotel Cor. has made me a tentative offer on my property which will not materialize until about the 1st of the month. You no doubt have heard that they are building a twelve story hotel adjoining my property and it is necessary for them to acquire this parcel. They are playing a waiting game and I am also. Second, a Mr. Arnold DeBrier and Mr. Katz, Prest. of the Pacific Ave. Bank, own the property adjoining mine and they have asked me to make an offer for my property as they wish to build an apartment house. Between these two something will happen in the 30

course of the next two or three months. The third reason for not taking up an immediate mortgage in New York is that Mrs. Lippincott, owner of the present mortgage, refuses to surrender same until it expires, unless she is paid the interest in full for the two years still to run and also a 6% bonus.

I just received the above information and was intending to send a letter to Mr. Grey today asking him to please read over the mortgage. Her lawyer  
10 informs me that the wording is such as to stipulate the expiration of three years and not within three years, and I am told by my attorney that if such is the case, there is no legal method by which she can be compelled to surrender the first mortgage without compensating her if she so desires. Kindly have Mr. Grey look this matter up and drop me a line, as it may be she is mistaken or the lawyer is trying to hold me up for an extra bonus.

Then again, it will not be necessary for you, pro-  
20 viding these other two things are all right, to get me a mortgage, since I am now carrying approximately \$90,000. straight Life Insurance and the Insurance Co. will take over a mortgage which they call a 10 year mortgage, costing me only 3½%.

I shall be in New York about the 7th of this month when I hope to have the pleasure of calling on you and your family. Things in general have been rather quiet though my consultation work is building up very rapidly, thanks to your New York doc-  
30 tors.

As to the matter of the Ambassador Hotel, the physician who has been in attendance, his term expires about now and I am sure with the influence I have with the local management and a word from you to Mr. Strauss, would put me in position of earning an extra \$5,000 or \$10,000. a year.

Mrs. W. joins me in extending to you and yours  
good wishes for a healthy and happy New Year.

Sincerely yours,

C. BERENDA WEINBERG.

P. S. I am still retaining the same Sec'y, Mrs. W.

10

EXHIBIT D2.

11/22/28 L.

STATE OF NEW JERSEY

(Seal): Liberty & Prosperity

DEPARTMENT OF STATE

I, JOSEPH F. S. FITZPATRICK, Secretary of  
State of the State of New Jersey, DO HEREBY 20  
CERTIFY, that the certificate of incorporation of  
C. Berenda Weinberg Clinic and Research Labora-  
tories was filed in my office March 23rd, 1922.

I DO FURTHER CERTIFY, that said corpora-  
tion has never filed any other certificate of report  
in my office since the date of incorporation.

IN TESTIMONY WHEREOF, I have hereunto  
set my hand and affixed my Official Seal, at Trenton,  
this Seventeenth day of November, A. D., 1928.

(Seal)

Joseph F. S. Fitzpatrick 30  
SECRETARY OF STATE.

## EXHIBIT D3.

11/22/28 L.

CERTIFICATE OF INCORPORATION  
of the  
C. BERENDA WEINBERG CLINIC AND  
RESEARCH LABORATORIES COMPANY.

10

WE, THE UNDERSIGNED, for the purpose of forming a corporation in pursuance of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," (Revision of 1896) and the various acts amendatory thereof and supplemental thereto, do make, record and file this certificate.

20

FIRST. The name of the Corporation is C. Berenda Weinberg Clinic and Research Laboratories.

SECOND. The location of its principal office in the State of New Jersey, is 109 South Iowa Avenue, Atlantic City, New Jersey, and the name of the agent therein and in charge thereof and upon whom process against the corporation may be served is C. Berenda Weinberg.

30

THIRD. The objects for which and for each of which the corporation is formed are: The operation of an institution for the study and treatment of gastro-intestinal diseases and research on the internal secretions; the results, observations and discoveries that result from such researches to be given from time to time for the benefit of the public through proper medical channels. It also being the

purpose to provide proper facilities for the treatment of indigent patients free of charge.

IN FURTHERANCE, and not in limitation, of the general powers conferred by the laws of the State of New Jersey, and of the objects and purposes as herein above stated, it is hereby expressly provided that the company shall have also, subject to the limitations imposed by the laws of the State of New Jersey, the following powers, that is to say: 10

(a) To do any or all things herein set forth as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might or could do, as principals, agents, contractors or otherwise.

(b) To conduct its business in all its branches and to have one or more offices, and to hold, purchase, mortgage and convey real and personal property, both within the State of New Jersey, and in all other States, Territories, Possessions and Dependencies of the United States, the District of Columbia and in all foreign countries. 20

(c) To manufacture, purchase or otherwise acquire, hold, own, sell, assign and transfer, invest, trade, deal in and deal with goods, wares and merchandise and property of every class and description. 30

(d) To purchase or otherwise acquire, to hold, own, maintain, work, mine and develop, and to sell, convey, mortgage, lease or otherwise dispose of, without limit as to amount, within or without the State of New Jersey, and in any part of the world,

real estate and real property, and any interest and rights therein.

(e) To acquire the goodwill, business, rights and property of all kinds, and to assume or undertake the whole or any part of liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds or otherwise.

10 (f) To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign, or otherwise dispose of, any and all trademarks, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and  
20 the like, or any such property, rights and information so acquired, and with a view to the working and development of the same, to carry on any business, whether mining, manufacturing or otherwise, which the corporation may think calculated directly or indirectly to effectuate these objects.

(g) To purchase, lease, exchange, hire or otherwise acquire, any and all rights, privileges, permits or franchises suitable or convenient for any of the  
30 purposes of its business, to erect and construct, make and improve, or aid or subscribe towards the construction, making and improvement of mills, factories, storehouses, buildings, roads, docks, piers, wharves, houses for employees and others, and works of all kinds; and in conjunction with and in

furtherance of the general business and purposes of the corporation, as above described, to construct, purchase, lease, own, operate or sell a railroad or railroads, or both, in any State or country other than the State of New Jersey, subject to the laws of such other State or country.

(h) To make and enter into contracts for any lawful purpose with any individual, firm, association, corporation, private, public, or municipal, body politic, and with the government of the United States, or of any State, Territory, District, Possession or Dependency thereof, or of any foreign country. 10

(i) To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated, or which shall at any time appear conducive, or expedient for the protection of the business, property or rights of the corporation and in general to carry on any business, whether manufacturing, mining or otherwise. 20

It is the intention that the objects, purposes and powers specified and clauses contained in this Third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this certificate, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers. 30

FOURTH. The amount of the total authorized

Capital Stock of the corporation is Twenty-five Thousand (\$25,000) Dollars, divided into five hundred (500) shares of the par value of Fifty (\$50.) dollars each. The amount of Capital Stock with which the Company will begin business is Two Thousand (\$2,000) dollars.

FIFTH. The names and Post Office addresses of the incorporators and the number of shares subscribed for by each (the aggregate of which, to wit, Two thousand (\$2,000) dollars, is the amount of Capital Stock with which the Company shall begin business) are as follows:

	Name	Post Office Address	No. of Shares
10	C. Berenda Weinberg	22 South Illinois Avenue Atlantic City, N. J.	1
	Solton Engel	17 Cedar Street, New York City, N. Y.	1
20	Robert G. Grey	17 Cedar Street, New York City, N. Y.	38

SIXTH. The duration of the Company shall be unlimited.

SEVENTH. The following provisions for the regulation of the business and the conduct of the affairs of the Company are hereby made:

30 The corporation may use and apply its surplus earnings, or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own Capital Stock from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine; and neither the property nor the Capital Stock so purchased and acquired, nor any of its Capital Stock taken in pay-

ment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless otherwise determined by a majority of the Board of Directors, or a majority of the Stockholders.

The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number and may by its by-laws provide the date or dates for the payment of dividends. 10

The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend or rescind the by-laws of the corporation, to fix the amount to be reserved as working capital, to authorize and to cause to be executed mortgages and liens upon the real and personal property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to the vote of at least two-thirds of the Board of Directors. 20

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors, or by a resolution, of the stockholders. 30

The Board of Directors shall have power to hold its meetings, to have one or more officers, and to keep the books of the corporation (except the stock

and transfer books outside of the State of New Jersey) at such places as may be from time to time designated by them.

## EIGHTH.

AND we do hereby associate ourselves into a corporation and further respectively agree to all the provisions of the foregoing certificate, and to take  
10 and pay for the number of shares of stock hereinbefore set forth and accordingly have hereunto set our hands and seals, this Thirteenth day of March, A. D. 1922.

C. Berenda Weinberg (L.S.)

Solton Engel (L.S.)

Robert C. Grey (L.S.)

In the presence of  
Elizabeth R. Powell  
as to C. Berenda Weinberg

20 E. S. Moore

E. S. Moore

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State of New York }  
County of New York } ss:

30 BE IT REMEMBERED that on this 13 day of March in the year one thousand nine hundred twenty-two before me a Notary Public personally appeared Solton Engel and Robert G. Grey who I am satisfied are the persons mentioned in and who executed the foregoing certificated and I having first made known to them and each of them the contents thereof they did severally acknowledge that they

signed, sealed and delivered the same as their voluntary act and deed.

Edward S. Moore, Notary Public  
N. Y. Co. Clerk 298  
N. Y. Co. Reg. 8255  
Kings Co. Clerk 415  
Kings Co. Reg. 8152  
Bronx Co. Clerk 10  
Bronx Co. Reg. 55  
Commission expires March 30, 1923 10

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State of New Jersey }  
County of Atlantic }

BE IT REMEMBERED that on this thirteenth day of March, A. D. 1922, before me, a Notary Public of the State of New Jersey, personally appeared C. Berenda Weinberg, who I am satisfied is the person mentioned in and who executed the foregoing certificate and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. 20

Elizabeth R. Powell  
Notary Public of N. J. (Seal)

Received in the Clerk's Office of the County of Atlantic on the 21st day of March A. D. 1922 at 8 A. M. and recorded in Book #12 of Certificate of Incorporation, page 59 &c, 30

Edwin A. Parker, Clerk  
O. G. O,



lantie County, at May's Landing, N. J.  
in Book of Certificate of Incorporation  
No. 12 page 59 &c.

Edwin A. Parker, Clerk,  
O. G. O.

Filed and Recorded Mar. 23, 1922,  
Thomas F. Martin,  
Secretary of State.

10

STATE OF NEW JERSEY  
(Seal): Liberty & Prosperity  
DEPARTMENT OF STATE.

I, JOSEPH F. S. FITZPATRICK, 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 C. Berenda Weinberg Clinic and  
Research Laboratories, and the endorsements  
thereon, as the same is taken from and compared  
with the original filed in my office on the Twenty-  
third day of March, A. D. 1922, and now remaining  
on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto  
set my hand and affixed my Official Seal at Trenton,  
this Seventeenth day of November, A. D. 1928.

Joseph F S Fitzpatrick  
Secretary of State.

(Seal)

30

(Endorsed)

CERTIFIED COPY

of

CERTIFICATE

of Incorporation

of

C. Berenda Weinberg Clinic and  
Research Laboratories.

## EXHIBIT D4.

It is hereby certified that, at meeting of the Board of Directors of C. Berenda Weinberg, Clinic and Research Laboratories, a Corporation of New Jersey, held on March 19, 1926, the President and Secretary of the Company were authorized, in behalf  
 10 of the Company, to execute and Bond and Mortgage unto Morris Berenstein in the amount of Twenty Thousand (\$20,000.) payable within one year from date of settlement, to bear interest at six (6%) per cent per annum and to be secured by the Companies premises in Atlantic City, New Jersey on the Easterly side of Iowa Avenue, eighty-five (85) feet Southwardly from the Southerly line of Pacific Avenue and extending sixty-five and sixty-three one-hundredths (65.63) feet by sixty (60) feet.

20 C. BERENDA WEINBERG, CLINIC AND RESEARCH LABORATORIES, A CORPORATION OF NEW JERSEY

C Berenda Weinberg Pre & Tr.  
 (C B W C & R L I)

Sadie Weinberg Sec'y  
 (C B W C & R L I)

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30 EXHIBIT D5: Check dated 3-18-1926, in the sum of \$145.30, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Wm. G. Lambert, Secretary, to the order of Chelsea Title and Guaranty Co. No. 2, for Chgs. C. B. Weinberg Clinic & Research Laboratories, indorsed, "For deposit in the Chelsea National Bank

to the credit of Chelsea Title and Guaranty Co. No. 2.”

EXHIBIT D6: Check dated 3-17-1926, in the sum of \$360.00, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Floyd S. Sumner and Wm. Lawrence, Jr., to the order of Morris Berenstein, for Int. on \$7,000 and \$5,000 mtg. to date, 109 S. Iowa Ave., indorsed, “Morris Berenstein, M. Berenstein.” 10

EXHIBIT D7: Check dated 3-17-1926, in the sum of \$2,077.97, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Floyd S. Sumner and Wm. Lawrence, Jr., to the order of Myer Berenstein, for Com. & fire insurance, 109 S. Iowa Ave., indorsed, “Myer Bernstein.”

EXHIBIT D8: Check dated 3-17-1926, in the sum of \$1,522.50, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Floyd S. Sumner and Wm. Lawrence, Jr., to the order of Atlantic Amortization Met. Co., for “Pay off Mtge. 109 S. Iowa Ave.,” indorsed, “For deposit to the credit of Atlantic Amortization Mortgage Company.” 20

EXHIBIT D9: Check dated 3-17-1926, in the sum of \$3,894.23, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Floyd S. Sumner and Wm. Lawrence, Jr., to the order of C. Berenda Weinberg Clinic and Research Laboratories, for “Bal. due mtge. 109 S. Iowa Ave.,” indorsed, “C. Berenda Weinberg Clinic 30

& Research Lab., C. Berenda Weinberg, Pres. & Treas., C. Berenda Weinberg."

10 EXHIBIT D10: Check dated Jan. 9, 1925, in the sum of \$750.00, drawn on Guarantee Trust Company, Atlantic City, N. J., made by Atlantic Amortization Mortgage Co., Frank J. Siracusa, President, to the order of C. Berenda Weinberg Clinic & Research Laboratories, in payment of balance, indorsed, "C. Berenda Weinberg Clinic & Research Lab. C. Berenda Weinberg, Pres., Sadie Weinberg."

20 EXHIBIT D11: Check dated Jan. 9, 1925, in the sum of \$600.00, drawn on Guarantee Trust Company, Atlantic City, N. J., made by Atlantic Amortization Mortgage Co., Frank J. Siracusa, President, to the order of C. Berenda Weinberg Clinic & Research Laboratories, in payment of on account loan, indorsed, "C. Berenda Weinberg Clinic & Research Laboratory C. Berenda Weinberg Pres."

30 EXHIBIT D12: Check dated 3-21-1925, in the sum of \$80.50, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed David E. Gardiner, Asst. Secretary, to the order of Chelsea Title and Guaranty Co. No. 2, for "Chgs. Morris Berenstein," indorsed "For deposit in the Chelsea National Bank to the credit of Chelsea Title and Guaranty Co. No. 2."

Exhibit D13: Check dated 3-21-1925, in the sum of \$2,212.46, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed David E. Gardiner, Asst. Secretary, to the order of A. S. Siracusa Sons, for "Mtg. & Int. from

2/16/25," indorsed, "For deposit only to the credit of A. S. Siracusa Sons Special Account."

EXHIBIT D14: Check dated 3-21-1925, in the sum of \$942.73, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed David E. Gardiner, Asst. Secretary, to the order of Myer Berenstein, for "Com. & Fire Ins.," indorsed, "Myer Bernstein."

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EXHIBIT D15: Check dated 3-21-1925, in the sum of \$3,764.31, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed David E. Gardiner, Asst. Secretary, to the order of C. Berenda Weinberg Clinic & Research Laboratories, for "Bal. due mtgor.," indorsed, "C. Berenda Weinberg Clinic & Research Lab., Inc., C. Berenda Weinberg."

EXHIBIT D16: Check dated 9-17-1925, in the sum of \$72.50, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Linus A. Kelly, Secretary, to the order of Chelsea Title and Guaranty Co. No. 2, for "Chgs., C. B. Weinberg," indorsed, "For deposit in the Chelsea National Bank to the credit of Chelsea Title and Guaranty Co. No. 2."

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EXHIBIT D17: Check dated 9-17-1925, in the sum of \$675.08, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Linus A. Kelly, Secretary, to the order of Meyer Bernstein, for "Ins. & Com. So. Iowa," indorsed, "Meyer Bernstein, Myer Bernstein."

30

EXHIBIT D18: Check dated 9-17-1925, in the

sum of \$4,252.42, drawn upon Chelsea National Bank, made by Chelsea Title and Guaranty Company, signed Linus A. Kelly, Secretary, to the order of C. B. Weinberg Clinic & Res. Lab., for "Bal. due Seller So. Iowa," indorsed, "C Berenda Weinberg Clinic & Research Lab., Inc., C. Berenda Weinberg, Pres., C. Berenda Weinberg."

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 NOTICE OF APPEAL.

65-512.

 IN CHANCERY OF NEW JERSEY.
 

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20	Between C. BERENDA WEINBERG CLINIC AND RESEARCH LABORATORIES, INC., a corp., &c., <i>Complainants,</i> and C. BERENDA WEINBERG, <i>et al.,</i> <i>Defendants.</i>	} On Bill, &c. Notice of Appeal.
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Sirs:

Please take notice, that defendant, Morris Berenstein, hereby appeals from the whole and every part of the final decree of the Court of Chancery in the above-stated cause, advised by his Honor, Robert H. Ingersoll, Vice-Chancellor, bearing date the

twenty-fifth day of June, A. D. 1930, wherein and whereby the Court held that the several conveyances, mortgages and judgments set forth in the bill and amended bill, are void and of no effect so far as they purport to convey the premises described in the bill, or create a lien thereon; that said premises were the property of the complainant; that complainant is entitled to the surplus fund arising under the foreclosure of the first mortgage held by one Lippincott covering the premises described in the bill, and that the same should be paid to the complainant, with interest from the date of the creation of said fund. To the Court of Errors and Appeals of the State of New Jersey, the last resort in all causes. 10

Dated: July 3d, 1930.

BOURGEOIS & COULOMB,  
*Solicitors for Defendant,*  
*Morris Berenstein.*

To: COLE & COLE, ESQS., 20  
*Solicitors for Complainant, C.*  
*Berenda Weinberg Clinic*  
*and Research Laboratories,*  
*Inc., &c.*

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I conceive that there is good cause for appeal in the above-entitled cause. 30

HARRY R. COULOMB,  
*Of Counsel with Defendant,*  
*Morris Berenstein.*

[ENDORSED]

July 3d, 1930.

Service of copy of the within Notice  
is hereby acknowledged.

COLE & COLE,  
Sols. for Complainant,  
C. Berenda Weinberg  
Clinic and Research  
Laboratories, Inc.

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PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

C. BERENDA WEINBERG  
CLINIC AND RESEARCH  
LABORATORIES, INC., a  
corp., &c.,

*Complainant-Respondent,*  
and

C. BERENDA WEINBERG,  
*et al.,*  
*Defendants-Appellants.*

10

On Appeal from the  
Court of Chancery.  
Petition of Appeal.

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*To the Honorable, the Court of Errors and Appeals,*

*in the Last Resort in All Causes:*

The petition of Morris Berenstein, the appellant  
in the above-entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a cer-  
tain final decree of the Court of Chancery, made in  
the above-entitled cause by his Honor, Edwin Rob-  
ert Walker, Chancellor, advised by his Honor,  
Robert H. Ingersoll, one of the Vice Chancellors of  
said court, dated the twenty-fifth day of June, A. D.  
1930, wherein it was decreed that the several con-  
veyances, mortgages and judgments set forth in the  
bill and amended bill, are void and of no effect so

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far as they purport to convey the premises described in the bill, or create a lien thereon; that said premises were the property of the complainant; that complainant is entitled to the surplus fund arising under the foreclosure of the first mortgage held by one Lippincott covering the premises described in the bill, and that the same should be paid to the complainant, with interest from the date of the creation of said fund; for the reason:

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1. That the said decree is erroneous in decreeing that the mortgage held by the appellant, Morris Berenstin, was void and of no effect as against the said complainant, C. Berenda Weinberg Clinic and Research Laboratories, Inc., a corp., &c., and no lien upon the property of said corporation.

Petitioner, therefore, prays that said final decree may be set aside and for nothing holden, and that  
20 the petitioner may have such other relief in the premises as to this Court shall be deemed proper.

BOURGEOIS & COULOMB,

*Solicitors for and of Counsel  
with Defendant-Appellant,  
Morris Berenstein.*

Dated: July 3d, 1930.

30

[ENDORSED]

July 3d 1930.

Service of copy of the within Petition is hereby acknowledged.

COLE & COLE,  
Sols. for Complainant-  
Respondent, C. Berenda  
Weinberg Clinic and  
Research Laboratories, 10  
Inc.

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ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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C. BERENDA WEINBERG CLINIC AND RESEARCH LABORATORIES, INC., a corp., &c., <i>Complainant-Respondent,</i> and C. BERENDA WEINBERG, <i>et</i> <i>al.,</i> <i>Defendants-Appellants.</i>	} On Appeal from Chancery. Answer to Petition of Appeal.	30
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The answer of C. Berenda Weinberg Clinic and  
Research Laboratories, Inc., a corporation, the

above-named respondent, to the petition of appeal of Morris Berenstein, the above-named appellant.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admits that a decree was, on June 25, 1930, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as  
10 to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this respondent.

COLE & COLE,  
*Solicitors for and of Counsel  
with Respondent.*

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

C. BERENDA WEINBERG CLINIC &  
RESEARCH LABORATORIES, INC.,  
*Complainant-Respondent,*

and

C. BERENDA WEINBERG, MORRIS BERENSTEIN,  
*et. al.,*  
*Defendant-Appellants.*

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ON APPEAL FROM THE COURT OF CHANCERY.

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BRIEF OF BOURGEOIS & COULOMB, FOR  
DEFENDANT-APPELLANT, MORRIS  
BERENSTEIN.

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The appeal in this case brings here for review, a decree of the Court of Chancery, advised by the Honorable Robert H. Ingersoll, Vice-Chancellor, directing the payment of surplus moneys arising under a foreclosure sale of property in Atlantic City, belonging to the Complainant, to the owner, C. Berenda Weinberg Clinic & Research Laboratories, Inc., complainant herein, rather than to the defen-



heim's secretary, Mr. Engle, a clerk, and Dr. Weinberg, who were the incorporators, met. The three of them were elected directors and officers, Dr. Weinberg being elected president and treasurer, Mr. Grey, secretary, and Mr. Engle, vice-president (See minutes referred to in Court's opinion, p. 115, l. 13, S. C.) The stock was divided as follows: one share to Dr. Weinberg, one share to Engle, and 498 shares to Grey (p. 26, l. 24, S. C.). Mr. Grey testified that the 498 shares of stock held by him were transferred, either to Mrs. Stettenheim or to the Hebrew Home for Children, and Mr. Engle testified that the share of stock held by him was transferred to the same parties (p. 64, l. 17, S. C.). The Vice-Chancellor, in his opinion, sets forth the minutes with great particularity, and it has been agreed that it is not necessary to print them. It will be observed from his opinion, p. 114, l. 26, that the corporation, after its first meeting, operated in the most singular and extraordinary way. At the annual meetings of the board of directors and the stockholders, which were held in Atlantic City each year, Dr. Weinberg was the only one who was present in person; Mr. Engle and Mr. Grey appearing by proxy. The proof shows that they were never present at any of these meetings, and it furthermore appears that the minutes of these respective meetings were all prepared in New York in advance of the meetings, and sent to Atlantic City, and there signed by Dr. Weinberg and returned to Mr. Grey. (See opinion of Vice-Chancellor, p. 129, l. 31, S. C.; and testimony of Mr. Grey, p. 36, l. 15, S. C.) Shortly after the incorporation, and on or about March 30, 1922, the company purchased the property in question, at 109 South Iowa Avenue, in the City of Atlantic City, for a laboratory and clinic for Dr. Weinberg, at a cost of



more particularly, with which to pay not only the expense of making the repairs, but also the expenses of going forward with his experimental work in connection with his laboratory researches (p. 96, l. 36, and p. 97, l. 1, S. C.). On one occasion, he borrowed \$15,000, and advised Mr Grey, the secretary, of the loan. See Vice-Chancellor's opinion, p. 122, l. 36, and p. 123, l. 1.) There was no resolution authorizing Dr. Weinberg to borrow the sum of \$15,000, nor was there any dissent to the transaction after Dr. Weinberg had advised Mr. Grey that the loan had been made. From time to time, in order to raise moneys, not only to pay the various loans, but also to do the work necessary in the completion of the repairs, and to pay the bills therefor, it appears that certain mortgages were created. They are set forth in detail in the Vice-Chancellor's opinion, p. 126, *et seq.*, and are as follows:

A. Mortgage to one Morosca, dated February 16, 1925, in the amount of \$2200, cancelled March 25, 1925.

B. Mortgage to Morris Berenstein, dated March 20, 1925, to secure \$7,000, cancelled March 25, 1926. Proceeds paid out as follows:

To Title Company charges	\$ 80.50
Cancellation of Mortgage A	2,212.46
Berenstein	942.73
Check to order C. B. W. C. & R. L.	3,764.31

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\$7,000.00

C. Mortgage to one Peikin to secure the sum of \$3,000, dated April 24, 1925, cancelled September 18th, 1925.

6 *Brief for Defendant-Appellant, Morris  
Berenstein*

D. Mortgage to said Berenstein to secure the sum of \$5,000, dated September 16, 1925, cancelled March 25, 1926. Proceeds paid out as follows:

To Title Company charges	\$	72.50
Bernstein, Ins. & Com.		675.08
To C. B. W. C. & L.		4,252.42
		<hr/>
		\$5,000.00

E. Mortgage to said Peikin dated August 27, 1925, to secure payment of \$2,600, cancelled on March 25, 1926.

F. Mortgage to Atlantic Amortization Co., dated January 9, 1926, to secure the sum of \$2,200, cancelled March 25, 1926.

G. Mortgage to said Morris Berenstein dated March 17, 1926, to secure the payment of \$20,000, still of record. (This is the mortgage, the validity of which is in question in this suit.) Proceeds were paid out as follows:

To Title Company charges	\$	145.30
Bernstein—Int. on \$7,000 and \$5,000 to date		360.00
Bernstein—Comm.	\$1,990.00	
Fire ins.	87.97	2,077.97
		<hr/>
Atl. Amortization Mtg. Co. to pay F.		1,522.50
C. B. W. C. & R. La.		3,894.23
		<hr/>
Mortgage B cancelled		7,000.00
Mortgage D cancelled		5,000.00
		<hr/>
		\$20,000.00

H. Mortgage to one Feikin, dated March 17, 1926 to secure they payment of \$2600, evidently to take the place of mortgage E, which was cancelled.

I. Mortgage to Atlantic Amortization Co. dated March 30th, 1926, to secure the payment of \$2575, still of record.

J. Mortgage to W. I. Schloss, dated July 7, 1926, to secure the payment of \$6500, cancelled on February 25, 1927.

As to the above various mortgages, see also the testimony of Stephen Bartha, p. 40, l. 29, *et. seq.*

The mortgage in question was made by C. Berenda Weinberg Clinic & Research Laboratories, Inc., to Morris Berenstein, dated the 17th day of March, 1926, (see Bond, Exhibit C3, p. 145, and mortgage, Exhibit C4, p. 153). The settlement for this was had at the Chelsea Title & Guaranty Company (p. 49, l. 29, S. C.), and the proof is that the proceeds were distributed as set forth in "G," above. All of the above mortgages were signed by C. Berenda Weinberg, as president, and Sadie Weinberg, as secretary. At the time of the execution and delivery of the last mortgage above referred to, namely, the mortgage of \$20,000 to Mr. Berenstein, a resolution was produced (Exhibit D4, p. 178). The check for the total cash proceeds of this loan, amounting to \$3,894.23 (Exhibit D9, p. 179, l. 30), was made payable to the order of C. Berenda Weinberg Clinic and Research Laboratories and was indorsed by C. Berenda Weinberg as president and treasurer, and then C. Berenda Weinberg, individually. After the



tion of the clinic and laboratory, nor that Dr. Weinberg would be compensated in any respect for his work in connection with the laboratory. Dr. Weinberg was never called upon to account for the payment of any expenses, nor for the receipt of any income. The so-called "dividends," or interest, as they were denominated in the letter, were in fact interest upon a loan, and were to be paid whether any earnings were had by the corporation or not. That the stock was merely security for the loan is further evidenced by the same letter to Dr. Weinberg, referred to in the Vice-Chancellor's opinion at p. 123, which, on p. 124, l. 7, says in part:

"Whenever such second mortgage is paid in full, capital stock is to be transferred to the party taking up the second mortgage, or vice versa. As the stock is being retired, second mortgage is to be reduced in proportion thereto."

No report was ever filed by this corporation with the Secretary of State, showing the names of the officers, etc. (Exhibit D2, p. 167).

#### I.

In considering the question involved in this case, there must always be kept in mind the character of the company, the reason of its incorporation, the peculiar way in which it conducted its meetings; the control over its affairs which it permitted to be handled by its president; the agreement that the owner of the stock should be paid interest at the rate of 6% per year, whether earned or not; the



directors were. That in its most important transaction, namely, the purchase of the property at 109 South Iowa Avenue, there was no resolution by the board of directors authorizing such a purchase.

That notwithstanding Mr. Gray or Mr. Stettenheim, or both, knew of the large expenditures that Dr. Weinberg was making for repairs, there was no complaint as to the expenditures, nor was there any inquiry made as to the source of the funds; and yet it must have been apparent to Mr. Stettenheim and to Mr. Grey that Dr. Weinberg did not personally possess the funds necessary to do this work. It will be observed, also, that Dr. Weinberg was permitted to borrow \$15,000 without comment. He, from time to time, borrowed moneys from Mr. Stettenheim, which were repaid, and yet Mr. Stettenheim made no inquiry as to where the funds came from with which to make the repayments. The peculiar method of holding the meetings, particularly the annual meeting of the stockholders and directors, in which only one member appeared in person, the others appearing by proxy; the agreement that Dr. Weinberg must pay interest on the \$25,000, advanced, and for which the stock was issued; not, it will be observed, the corporation, but Dr. Weinberg himself; the fact that Dr. Weinberg was also required to pay the interest on the first mortgage, the taxes and other municipal charges; all, it seems to us, conclusively point to the fact that the corporation was a convenient fiction through which Stettenheim would have some security for his loan of \$25,000.

That a corporation may be considered in a court of equity not necessarily as a legal entity in itself, but as a legal fiction, cannot be denied. In other words, when a complainant comes into a court of



law recognizes that a corporation is in reality a collection of individuals and the corporate entity a mere fiction, but the fiction also may be and often is disregarded even for the purpose of giving effect to the acts of the stockholders or members individually as the the acts of the corporation. As already stated, the fiction is to be disregarded whenever it is urged to an intent and purpose not within its reason and policy. 'The abstraction of the corporate entity should never be allowed to bar out and pervert the real and obvious truth.'"

In *In re Rieger, et al.*, 157 Fed., 609, it was held:

"The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud."

We contend, therefore, that in determining the validity of the defendant Berenstein's mortgage, the Court may not, and indeed in this case we submit that it did not require that this corporation, so irregular in its form, conduct and methods, should nevertheless be strictly exact in the execution and delivery of the mortgage in question. A fair reading of the testimony, and particularly of the Vice Chancellor's conclusions concerning it, will show at once the position in which the corporation permitted Dr. Weinberg to stand. The only office of the corporation, so far as is shown by the proof, was 109 South Iowa Avenue. The person in charge there was Dr. Weinberg. There was no suggestion from anyone; there was no notice to anyone that the company had a New



which he was required to pay, what his other source of income, if any, was; how the deficit was being made up; all of this would have been disclosed. The corporation, through its officers, did none of these things, but permitted Dr. Weinberg to handle the affairs in the way in which he thought best.

Mr. Berenstein has \$20,000 involved. If his mortgage is declared invalid, he has lost \$20,000. It might not be amiss to add right here, that no one representing the complainant company paid any attention to the foreclosure suit, to the entry of the decree therein, or to the sale of the property. The fund was the amount bid by Mr. Berenstein over and above the first mortgage, for the purpose of protecting what he believed and had a right to believe was a valid and subsisting second mortgage. Who made it possible for this wrong to be done? Was it Mr. Berenstein? Was Mr. Berenstein at fault in believing that Dr. Weinberg, in view of all of the circumstances of the case, was fully authorized to make the mortgage in question, or was the corporation, or rather those interested in it, to wit, the Stettenheims, in fault for permitting Dr. Weinberg to be in such a position as to mislead, to say the least, Mr. Berenstein? It is a familiar equitable principle that where one of two innocent parties must suffer, he who makes it possible for the wrong to be done must bear the burden; and in this case we submit that if anybody is to blame, it certainly is the corporation, and not Mr. Berenstein.

“Where one of two innocent persons must lose in consequence of the unauthorized act or fraud of a third, he must bear the loss who caused the credit to be given which produced the loss.” *Halsted v. Colvin* (51 N. J. Eq., 387).



Upon foreclosure of the first mortgage, process was served upon Dr. Weinberg, at 109 South Iowa Avenue. He apparently made no defense to the suit, and did not apprise the New York office of its pendency. It is submitted, however, that service upon the registered agent is legal service, and any decree made against a corporation in a suit wherein process was served upon its registered agent, even though notice was not forwarded to some other office of the company, is valid and effectual. In this case a decree was founded upon jurisdiction obtained over the defendant company by virtue of process served upon Dr. Weinberg; and in this decree, it was held that Morris Berenstein was entitled to be secondly paid out of the proceeds of the sale, to the amount of his mortgage debt, with interest and costs. The *lis pendens* in this suit was filed on November 5, 1927, and the sheriff's deed under the foreclosure suit was made on January 12, 1928 (p. 49, l. 1). The exact date of the sheriff's sale does not appear, but in the ordinary course of practice, it would not have been more than two weeks prior to the date of the deed; so that the sale had not yet occurred when this suit was commenced; and yet no effort was made to protect the complainant's alleged interest at such sale. In this connection, we contend that the complainant is now in no equitable position to assert its supposed rights, when it failed to attend the sale and protect its interest therein. Its conduct shows an entire disregard of the rights of innocent parties dealing with the corporation through its president.

## II.

We contend that the complainant company by its conduct, clothed Dr. Weinberg with apparent author-



of the corporation could not be mortgaged without a vote of the Board of Directors. The corporation was a close corporation, and was entirely managed by the president. Without a vote of the Board of Directors, he mortgaged the property of the company, causing the mortgage to be signed by a person purporting to be the secretary but who, in fact, was not the secretary. It was contended that the mortgage was void because it was executed without the authority of the Board of Directors. The Court held that the mortgage was valid. In this case, the corporation benefited by the proceeds of the mortgage.

To the same effect are the following cases:

- Poole v. West Point Butter & Cheese Co.*, 30 Fed., 513;
- Ratcliffe v. Clendenin*, 232 Fed. 61;
- Jensen v. Toltec*, 174 Fed., 86;
- In re Smith-Flynn Commission Co.*, 292 Fed., 465;
- The Egeria*, 294 Fed., 791.

In the case of *Morris v. Joyce*, 63 N. J. Eq. 549, it appeared that the complainant left in the hands of her attorney, J., who had charge of her investments, a bond and mortgage, executed by her to defendant M. The execution of the assignment was procured by fraudulent representations made by J. to complainant, as was also the retention of the bond and mortgage. J. procured M. to endorse his note for \$2,000 on the security of the mortgage and assignment, stating that he desired to raise a loan of \$2,000 for the benefit of complainant. Complainant was not a party to the note. M. knew that J. had charge of complainant's investments. *Held*: (1) that complainant's act in leaving the assignment with J.



“Admitting the fraud charged, the Company was still liable for the payment of the bond and mortgage in the hands of *bona fide* purchasers without notice of the fraud. The company, having held out S. as the owner of the bond and mortgage, must in such case, abide the consequences of the fraudulent conduct of its agent.”

In 14 A. *Corpus Juris*, p. 451, par. 2307, it is stated that:

“Where a president, within his apparent authority, borrows money on the representation that it is being borrowed for the use and benefit of the corporation, the latter corporation is liable therefor although it is not, in fact, applied to its use or for its benefit.”

In 2 C. J. 461, par. 71, it is said that:

“It is a general rule that when a principal by any such acts or conduct knowingly caused or permitted another to appear to be his agent either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances although no consideration moved to the alleged principal and although there was no actual fraud on the part of such principal, as the estoppel may be allowed on the ground of negligent fault on his part on the principle that ‘Where one of two innocent parties must suffer loss, the loss will fall on him whose conduct brought about the situation.’ ”

In the case of *Murphy v. W. H. & F. W. Cane, Inc.*, 80 N. J. L. 163, Justice Parker, writing the opinion of the Court, said at page 165:

“The situation would be different if it fairly appeared that authority to make this particular contract, or a class of contracts to which it belonged, or contracts generally had been delegated to the president, or if by holding out the president as authorized to make such contracts the corporation had estopped itself from denying such authority. *Fifth Ward Savings Bank v. First National Bank*, 19 Vroom, 513; *Blake v. Domestic Manufacturing Co.*, 19 Dick. Ch. Rep. 480.”

The above case was in the Supreme Court. The case was afterwards retried and a non-suit directed on the ground of Judge Parker's opinion in the Supreme Court. On appeal to the Court of Errors and Appeals (82 N. J. L. 557), the Court reversed the action of the trial Court, in an opinion written by Chancellor Pitney, in the course of which he said, at p. 558:

“The ground of the decision of the Supreme Court was that the president of the company had no power *virtute officii* to award sub-contracts, and that there was nothing to show express authority conferred upon him to make the particular sub-contract, or contracts of the like nature, nor to show that by holding out the president as authorized to make such contracts the corporation had estopped itself from denying his authority.”

And at pages 562-563:

“It is not correct, we think, to confine the ap-

plication of this doctrine to cases of strict estoppel. At least, where a third party seeks to charge a corporation with a contract made by it through the agency of one of its officers, it is not incumbent on such third party to show that the previous course of business was known to and relied upon by him. As was correctly pointed out by Vice-Chancellor Emery in *Blake v. Domestic Manufacturing Co.*, 19 Dick Ch. Rep. 493, 494, the principle of technical estoppel as between parties is not involved in such cases, and could not be for the reason that an estoppel of the principal toward the third person dealing with the agent must depend upon the representation made by the principal to the third party; a representation made by the principal to the agent would not, generally speaking, give rise to a technical estoppel."

And, at the bottom of page 563:

"The language employed by Mr. Justice Depue was that the authority of the officer to represent the corporation may be implied (we would prefer to say *inferred*) 'from the manner in which he has been permitted by the directors to transact its business.' It is, of course, a necessary corollary that where there are no directors *de jure* the agency may be created in favor of third parties by the conduct of the directors *de facto*, and that where the functions normally pertaining to a board of directors are in the particular instance performed by the stockholders themselves, they by common consent dispensing with the election of directors, the agency for the company may result as

clearly as if action by a board of directors had intervened, for such directors would themselves be no more than agents for the body of stockholders."

In the case of *Blake v. Domestic Manufacturing Co.*, 64 N. J. Eq. 480, Vice-Chancellor Emery, speaking for the Court, said, at page 493:

"The careful and precise statement in the above case by the learned Chief Justice of the question to be left to the jury in such cases distinguished, it will be noticed, between the holding out to the world and the holding out to the defendant, and this distinction, as it seems to me, touches directly one of the questions now involved, viz., whether the general agency in such cases arises from estoppel. If there was a holding out to the defendant, but not a holding out to others or to the public as well, then the agency in such case might well be said to depend upon the estoppel of the principal to deny the agency which he held out to the creditor and which the creditor had relied on. But it is clear, I think, that in commercial transactions, which must be carried on largely by means of general agencies to do particular public exercise of an authority with the permission of the principal, and where this general agency, in fact, exists as arising from this source, it is not necessary for the creditor to show further that it was previously known to him and that he acted in reliance on it. \* \* \*"

We submit that the cases of *Murphy v. W. H. & F. W. Cane, Inc.*, *Blake v. Domestic Manufacturing*

*Co.*, and the *Fifth Ward Savings Bank v. First National Bank*, all negative the proposition advanced by counsel for the respondent that the appellant cannot take advantage of the acts of the respondent corporation unless the appellant had knowledge of such acts.

The Vice-Chancellor, in his opinion, apparently recognized the rule and its application as above stated. In the head-note, he says:

“A corporation is bound by the act of an officer or agent where the act is within the apparent powers which the corporation has caused those with whom its officers have dealt to believe it has conferred upon them.”

“Directors who attend no meetings (save the first or organization meeting) held bound to know the uniform course of business pursued by the president of the company, who was the sole agent of the transaction of the corporation’s business.”

### III.

A question was raised as to the fact that the seal on the mortgage in question was a scroll in pen and ink. The learned Vice-Chancellor apparently did not consider this to be a vital question. In any event, the question is set at rest by Chapter 183 of P. L. 1928 (p. 351), which is a supplement to the act respecting conveyances, and reads as follows:

“Every deed or instrument of the nature or description set forth in the twenty-first section of the Act to which this Act is supplementary, heretofore or hereafter made by a corporation,

to or on which shall have been affixed, marked or printed a scroll of ink or other device by way of a seal, shall be taken and adjudged to be of the same force and effect as if it had been actually sealed with the corporate seal of such corporation, and shall be held to be as good and valid to all intents and purposes in all courts and places; and no such instrument shall be impeached or questioned for lack of a corporate seal.”

#### IV.

There is no dispute whatsoever that the proceeds of the mortgage in question, or of the mortgages which preceded it, and which were cancelled at the time of its execution, were used in the alteration and improvement of the building. It was testified that the building at the time of its purchase was unfit for the use for which it was intended. It is not denied that the improvements and alterations made the building fit and adequate for the purposes of the corporation as expressed in its charter, and were essential to the proper carrying forward of the professional activities within the specific purposes of the corporation.

It will be observed in the by-laws and in the minutes of the first meetings of the stockholders and directors that Dr. Weinberg was given very large powers in this direction. In a letter written by Mr. Grey to Dr. Weinberg, set forth in the Vice-Chancellor's conclusions at p. 123, l. 4, Dr. Weinberg was questioned as to a \$15,000 note, and he replies that the proceeds were used for the improvement of the building. There appears absolutely no dissent

to this transaction. It will be recalled that Dr. Weinberg testified that the mortgages were used to raise money to pay off some of these notes. It is needless to recite authorities to the point that where a corporation receives the benefit of the transaction, it cannot question the validity thereof. It will be remembered that after paying the cash consideration price for the property, there was approximately \$7,000 or \$8,000 left out of which to make the improvements, and it will be observed that nowhere in the minutes does it appear that Dr. Weinberg was questioned as to the expenditures of these funds.

The following cases are illustrative of the proposition that where a corporation receives the benefit, it cannot disavow the transaction from which it arose:

- Earle v. National Metallurgic Co., et al.*, 77 N. J. Eq. 17;
- Hackensack Water Co. v. DeKay*, 36 N. J. Eq. 548, 553;
- Reed v. Helois Carbide Co.*, 64 N. J. Eq. 231, 238; *Schultz v. Van Doren*, 64 N. J. Eq. 465, 467.

#### V.

Persons dealing with an agent of the corporation are not bound by the by-laws of said corporation, of which they are uninformed, limiting the apparent authority with which the corporation has clothed such agent.

- Clark on Corporations*, 3rd Ed. 580;
- Rathbun v. Snow*, 123 N. Y. 343;
- State v. Overton*, 24 N. J. L. 435.

VI.

We desire to direct the attention of the Court, with particular emphasis, to the opinion of the learned Vice-Chancellor. A reading of this opinion will disclose that the only point which the Court flatly decided, was that the deed made by C. Berenda Weinberg Clinic & Research Laboratories to C. Berenda Weinberg was without force and effect, and should be set aside (p. 133, l. 23). The appellant in this case is not concerned with the deed; but we point out that the Vice-Chancellor bases his decision upon the proposition that even the directors could not dispose of the entire property of the corporation, and thus put it beyond the power of the corporation to go forward with the objects for which it was created. Touching the validity of the mortgage in question, we desire to point out that the Vice-Chancellor, throughout the entire course of his opinion, resolves practically every question of law and fact in favor of the appellant, Berenstein. It will be further observed, in this connection, that he does not, anywhere in the opinion, determine the validity of the Berenstein mortgage. Counsel for the appellant, upon the receipt of the opinion, prepared a decree based upon it, in favor of the appellant, that is to say, upholding the validity of the Berenstein mortgage; and was surprised to learn that counsel for the respondent had likewise prepared a decree in favor of the respondent. Both of these decrees were presented to the Court. As will be seen, they were diametrically opposite. The Court finally signed the decree in favor of the respondent. In all due deference to the Vice-Chan-

cellor, for whom we have the deepest respect, we cannot help but believe that a decree in favor of the appellant is vastly more consonant with the opinion than is the decree in favor of the respondent, which was eventually signed. The entire burden, it seems to us, of the Vice-Chancellor's opinion is to disclose the irregularity of the methods in which the officers of the corporation, that is to say, the directors, Grey and Engle, respectively secretary and vice-president, managed the affairs of the corporation, and attended to its business. The Vice-Chancellor points out with great care the character of the meetings, the method in which they were held, and in what manner the directors attended, *i. e.*, by proxy. He points out the expenditures made by Dr. Weinberg, in excess of the amount advanced to the corporation by the Stettenheims. In the head-notes, he declares the law as we have claimed it to be, and we are unable to see how, in view of the opinion, the decree can be supported. We can only say, that every fact and every principle of law contended for by the appellant as a basis for a decree in his favor, is substantiated and established by the opinion of the learned Vice-Chancellor.

We respectfully submit, that for the reasons above discussed, the decree should be reversed.

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel*  
*with Appellant, Morris*  
*Berenstein.*

The first part of the report is devoted to a general survey of the  
 progress of the work during the year. It is found that the  
 various departments have all been actively engaged in their  
 respective duties, and that the results have been generally  
 satisfactory. The most important of these results are the  
 completion of the new building, the opening of the new  
 school, and the successful completion of the various  
 projects which have been undertaken. It is also noted that  
 the financial position of the institution is sound, and that  
 the various departments are all well supplied with the  
 necessary funds for their operations.

The second part of the report is devoted to a detailed  
 account of the various projects which have been undertaken  
 during the year. These projects include the construction of  
 the new building, the opening of the new school, and the  
 completion of the various projects which have been  
 undertaken. It is found that all of these projects have  
 been completed in a satisfactory manner, and that the  
 results have been generally satisfactory.

The third part of the report is devoted to a detailed  
 account of the financial position of the institution. It is  
 found that the financial position is sound, and that the  
 various departments are all well supplied with the  
 necessary funds for their operations.

The fourth part of the report is devoted to a detailed  
 account of the various departments of the institution. It is  
 found that all of these departments are well supplied with  
 the necessary funds for their operations, and that the  
 results have been generally satisfactory.

The fifth part of the report is devoted to a detailed  
 account of the various projects which have been undertaken  
 during the year. These projects include the construction of  
 the new building, the opening of the new school, and the  
 completion of the various projects which have been  
 undertaken. It is found that all of these projects have  
 been completed in a satisfactory manner, and that the  
 results have been generally satisfactory.

## New Jersey Court of Errors and Appeals

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Between

C. BERENDA WEINBERG CLINIC &  
RESEARCH LABORATORIES, INC.,  
*Complainant-Respondent,*

and

C. BERENDA WEINBERG, MORRIS  
BERENSTEIN, *et al.*,  
*Defendants-Appellants.*

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ON APPEAL, &C.

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RESPONDENT'S BRIEF.

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STATEMENT.

As we perceive the matter there are no material facts in dispute. The question for decision involves the power of C. Berenda Weinberg to execute as President of respondent a mortgage to appellant Berenstein. And possibly the further question of estoppel, but we think not.

Respondent is a corporation of the State of New

Jersey, and its single asset was a tract of land in Atlantic City known as 109 South Iowa Avenue. On March 4, 1927 by deed purporting to be executed by respondent said premises were conveyed to C. Berenda Weinberg and Sadie Weinberg, his wife. There were then other conveyances and mortgages, and on or about March 25, 1926, C. Berenda Weinberg pretending to act as President of respondent, executed a mortgage to Berenstein, appellant, in the sum of \$20,000 which was attested by his wife as Secretary, although she was not in fact such, and the corporation seal was not impressed. The validity of this mortgage is the single question involved. Pending the decision of the Vice-Chancellor, there was a sale of the premises under foreclosure of the first mortgage which existed at the time the respondent purchased. Under this sale a surplus was created in favor of Berenstein under his mortgage, assuming that it was valid, or in favor of the respondent if not, as the holder and owner of the legal title. The final decree adjudges and decrees the several conveyances, mortgages and judgments set forth in the bill and amended bill are void and of no effect so far as they purport to convey the premises described in the bill or create a lien thereon, and said premises were the property of complainant; that complainant is entitled to the surplus fund arising under the foreclosure of the first mortgage held by one Lippincott covering the premises described in the bill, and that the same should be paid to the complainant, with interest from the date of the creation of said fund.

As will be seen by the bill, amended bill and proofs, Weinberg either treated the premises as his own or assumed authority to execute in behalf of the corporation the several deeds and mortgages,

or else it seems most evident that he acted to defraud the corporation in order to meet his personal obligations. None of the parties to the bill or amended bill other than Berenstein, appealed from the decree. It would not have availed them if they had because if appellant's mortgage is good there was no surplus to favor them. The testimony of Bartha (page 40 and continuing) gives the history of the conveyances, judgments and mortgages so that we need not recite it here. Respondent's contention was and is that the mortgage in question is invalid because Weinberg had no authority to execute the same as President, and that the corporation did not receive the proceeds therefrom. Knowledge of the existence of the deeds, judgments and mortgages did not come to the respondent until shortly before the filing of the bill.

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ARGUMENT.

THE MORTGAGE TO BERENSTEIN IS INVALID AGAINST RESPONDENT.

Mrs. Weinberg was not the Secretary of the company at any time; therefore was without authority to attest the signature of her husband as President or the company's seal. The instrument did not have the company's seal impressed (see statement of the Vice-Chancellor at page 74.)

The Secretary was Robert G. Grey who kept all the minutes (page 19). At the first meeting of the corporation the following resolution was passed amending the by-laws (page 20):

“Resolved that the by-laws be amended to read as follows: neither the president nor any

other officer or director may contract either on behalf of the corporation or sell, assign or transfer any property, real or personal, belonging to the corporation, without the sanction of the entire board at a regular or special meeting."

On the same page he testified that there was never any authority by the directors authorizing the execution of the mortgage under attack, nor any authority to sell the premises. It was in the middle of September, 1927, when information came to it that Weinberg had executed certain deeds and mortgages, and the bill was filed on or about the 27th of said September. Weinberg testified that he knew the company had an official seal and that it was in the possession of the Secretary in New York (page 101). That Weinberg knew he had no authority to do what he did is conclusively shown by his letters. (See his letters pages 137 to 143). At the bottom of page 142, he says:

"This letter is a full admission of my guilt and can be used against me but let me assure you of one thing it will gain you nothing to prosecute me," etc.

On November 1st following the information of Weinberg's transactions, it was resolved that he be requested to resign as President and Treasurer, and further resolved that action be brought to set aside his actions, and further:

"That any action taken or to be taken by Dr. C. Berenda Weinberg on behalf of the corporation be and is hereby disavowed and disproved; unless such action was or is taken in compliance with instructions of the attorneys for the corporation."

The letter was provoked by reason of a suggestion in one of Weinberg's letters that he had employed an attorney to protect the corporation against his unlawful conveyances. (Exhibit C3 at page 141).

The opinion of the Vice-Chancellor states the material and essential facts at considerable length and we need not burden this brief with a repetition. It may be well to call attention to the fact that at the title company at whose office settlement was made between Weinberg and appellant, there was produced a certificate to the effect that the directors had passed a resolution authorizing the execution of the mortgage (pages 50-51). This certificate was wholly false. Sadie Weinberg was not the Secretary, and it bore a written scroll and not the seal of the corporation. The respondent received no part of the proceeds of the mortgage (pages 51-53). After paying certain mortgages then existing, none of which were authorized by the corporation, there was a balance as the proceeds of the loan of \$3,894.23, check drawn to the order of the respondent. This was deposited to the personal account of Weinberg.

Such are the undisputed facts. The opinion of the Vice-Chancellor cites a number of cases which clearly hold that under similar facts a corporation could not be bound. We should not recite those cases. It seems enough to cite the most recent decision of this Court, *Naame v. Satanov*, 147 Atl. Reporter 436. We quote from that opinion as follows:

"The primary contract—that is, the agreement of the vendor to sell and of the vendee to give a purchase money mortgage on the whole tract—was made by the two corporations and executed by them under their respective corporate seals. That agreement cannot be wiped out or modified except by corporate action

authorizing it, or subsequent corporate approval of, or acquiescence in, such cancellation or modification. Assuming that *Satanov*, the president of the defendant company, did make the agreement as alleged by the complainant, his act was a mere idle gesture so far as the rights of his corporation were concerned. As was stated in the case of *Mausert v. Christian Feigenspan*, 68 Eq. 671, 679, 63 A. 610, 64 A. 801, the president of a corporation has no power *virtute officii* to alter the provisions of a formal agreement under seal entered into by the corporation itself; and any act done by him which is outside the scope of the powers which inhere in his office is not binding upon the corporation, unless it is shown that authority was conferred upon him for the purpose by the directors either expressly or by their consent and acquiescence. There is nothing in the case before us which even tends to show that authority to modify the primary contract was conferred upon the president by a vote of the board of directors or that anything was afterwards done by the corporate body in approval of his act. In the absence of such proof, the agreement of the president of the *Satanov Company* cannot be enforced against it."

An attempt was made at the trial to bind the corporation to the unauthorized acts of Weinberg by showing some private understanding between him and one Stettenheim, and to impute to Stettenheim knowledge of what Weinberg had done. Two things may well be said in reply: First, Stettenheim was not an officer or director of the corporation, and there is nothing to show that he had any authority

to bind it. Moreover, the admissions in the letters of Weinberg show clearly that all that he had done he did without the knowledge of either Stettenheim or any of the directors of the corporation, and against the express provision of the by-laws quoted above.

Appellant's typewritten brief reached us after the foregoing was written. The brief contains many citations, most of which are not within this jurisdiction. The New Jersey cases are in harmony upon the subject of express power of officers of a corporation and implied power resulting from acts of an officer and a holding out by a corporation.

## II.

### THE RESPONDENT IS NOT ESTOPPED.

In the first place, all the challenged acts of Weinberg had been committed before the directors knew of it. This is so stated by witnesses Grey and Engle, and nothing in the record controverts them. The official seal of the corporation was always in the possession of Grey in New York (page 30). As already stated, he also was Secretary and had the minutes in New York. Nothing in the minutes indicate in any way that Weinberg was doing what he did do. The case is barren of any evidence or justifiable inference of any holding out of Weinberg to do what he did or justify a finding of apparent authority to do so. The appellant placed the matter of the mortgage and the disposal of the fund with his agent, the title company, which by the record, relied wholly upon the false certificate handed it by Weinberg. No inquiry was made touching the absence of the

official seal nor were the minutes of the corporation asked for.

Testimony was introduced by appellant in an attempt to show that the corporation received the proceeds of the several mortgages executed by Weinberg, and our insistence is that the company had no notice of the mortgages or the placing of any funds to its credit as proceeds of the mortgages, and that in fact, none was so credited. Some checks were drawn to the order of the company but never reached its bank account. Weinberg testified that he used some of the proceeds to improve the property of the corporation, but this fact, if it be a fact, was not brought to the attention of the directors. The amount which he may have spent by way of improvement is indefinite and uncertain. He should not be believed in the light of his admissions without corroborative proof, and there is none. At best, the corporation would be bound only to the extent of the value of the improvement, and there is no proof of value. Weinberg may have squandered the money in supposed improvements without authority which may have been a detriment rather than a benefit to the property of the corporation. But the final and complete answer is that the respondent could not have a benefit forced upon it. Its authorization or consent was necessary, and there was neither.

We are content to rely upon *Fifth Ward Savings Bank v. First National Bank* cited by appellant. The quotation is:

“An officer of a corporation may, by the acts of its directors or managers, be invested with capacity to bind the company by his acts beyond those powers which are inherent in his office; as where, in the general course of the

company's business, the directors or managers have permitted an officer to assume the control and direction of its affairs, and have held him out to the public as its general agent, his authority to act for the company in a particular transaction may be implied from the manner in which he has been permitted by the directors or managers to transact its business."

To the same effect is *Blake v. Atlantic Manufacturing Company* cited by Mr. Justice Parker in *Murphy v. Cane*, 80, N. J. Law, page, 163. In that case it is said:

"The situation would be different if it fairly appeared that authority to make this particular contract, or a class of contracts to which it belonged, or contracts generally had been delegated to the president, or if by holding out the president as authorized to make such contracts the corporation had estopped itself from denying such authority."

And the opinion concludes:

"We think the contract claimed by plaintiff, if agreed to by W. H. Cane, was not within his implied authority as president, and that there was no evidence to show that he was expressly authorized to make it for the company, or that defendant by any course of business had justified plaintiff in supposing it to be within his authority."

In the instant case, the president in the face of by-laws forbidding it, and without any express authority to do so, executed a conveyance for all the property of the respondent. Thereafter he likewise

executed the mortgage in question. These were extraordinary transactions and not in the usual course of any business. As previously stated, knowledge of the execution of the papers did not come to any director until shortly before the bill was filed. This is not controverted. We then have an absence of express power, a prohibition against the doing of the thing challenged without the vote of all of the directors and no knowledge of the challenged transaction until after its consummation. Even though it might justly be found as a fact (which we deny), that the directors had knowledge that Weinberg was improving the company's real estate and did not demur or object is not enough to justify the finding of estoppel or holding out with respect to the extraordinary thing which he did. As already stated, his letters confess his wrong and lack of power, so that he did not feel that what he was doing was within his power either express or implied. Estoppel without knowledge is unthinkable. There is no proof of knowledge and we repeat, there is no indication of a holding out to do what he did. Appellant's brief enters into great detail concerning minor transactions by Weinberg, none of which, with the possible exception of the question of the \$15,000 loan was ever brought to the attention of the directors. The fact that Mr. Stettenheim, or his wife, lent Weinberg \$25,000 is greatly stressed as justification for Weinberg's act. There is nothing in this to justify a finding that the corporation is thereby bound by what Weinberg did. Nor does the fact, if it be a fact, that the directors may not have conducted the affairs of the company with extreme nicety, aid the appellant. Attempt is made to place the respondent in the role of an innocent and injured person. It is worth repeating that nothing appears to indicate that he knew of a single trans-

action done by Weinberg pretended to be on behalf of the corporation. Figuratively speaking, he threw his money and papers in the lap of the title company and constituted it his agent to pass upon the validity of the mortgage, and it was content to rely upon a false affidavit made by Mrs. Weinberg without even requiring the production of the minutes or the official seal. It was gross carelessness to pass the mortgage as valid. Appellant's brief says, referring to the seal: "So far as appears it was never used." This does not aid the appellant. There was no occasion for its use. It had entered into no contracts nor done any act that required the use of the seal, but it was guarded against a misuse by being retained in the possession of its Secretary.

### III.

#### TOUCHING THE ABSENCE OF THE OFFICIAL SEAL.

In *Feder v. Forest Hill Apartments, etc.*, 100 Equity, 455, it is said:

"Where a contract for the purchase of lands was signed by the president of a corporation in the name of the corporation, and a scroll affixed as a seal, such contract is valid and enforceable when it appears that the corporation had no by-laws, had never adopted a common seal, and that the president had been accustomed to act for the corporation without express authority."

In the case under consideration there was a common seal and by-laws, and the president was not accustomed to act for the corporation without express

authority. The instrument was invalid without the official seal. The scroll seal had not been adopted by the corporation. The mortgage was therefore not the act of the company.

The Act of 1928, cited on appellant's brief applies only where the instrument executed with a scroll is the act of the corporation. In other words, the Act forbids a corporation setting up the absence of its official seal as a defense against an instrument where it appears that it either expressly or by implication adopted the scroll. The facts in this case are to the contrary.

#### IV.

#### THE OPINION OF THE COURT.

Such is the caption of the last point or suggestion made in appellant's brief. It is quite true that the Vice-Chancellor did not expressly say that the challenged mortgage is invalid. But that was the sole question submitted for his decision and his advised decree recites its invalidity. He did expressly decide that the deed conveying all the property of the corporation was invalid. This was the basic transaction which made it possible for Weinberg to execute the mortgage. The deed being invalid, there could be no valid mortgage without showing express authority or one necessarily implied, neither of which exists. It is true as stated under this caption, that the Vice-Chancellor sets forth many of the uncontroverted facts and cites cases and quotes therefrom, which under a different set of facts would be useful to the appellant.

But the bottom question is whether the decree

is erroneous. If not, the Vice-Chancellor's reasoning or his conception of the facts and the law are of little moment.

For the reasons stated, it is respectfully submitted that the decree is without error and should be affirmed.

COLE & COLE,  
*Solicitors of Respondent  
and of Counsel.*

