INDEX

	Page
Notice and Grounds of Appeal	1
Judgment Record	3-6
Complaint	3
Answer	5
Judgment of Non-Suit	5
Motion for a Non-Suit	47

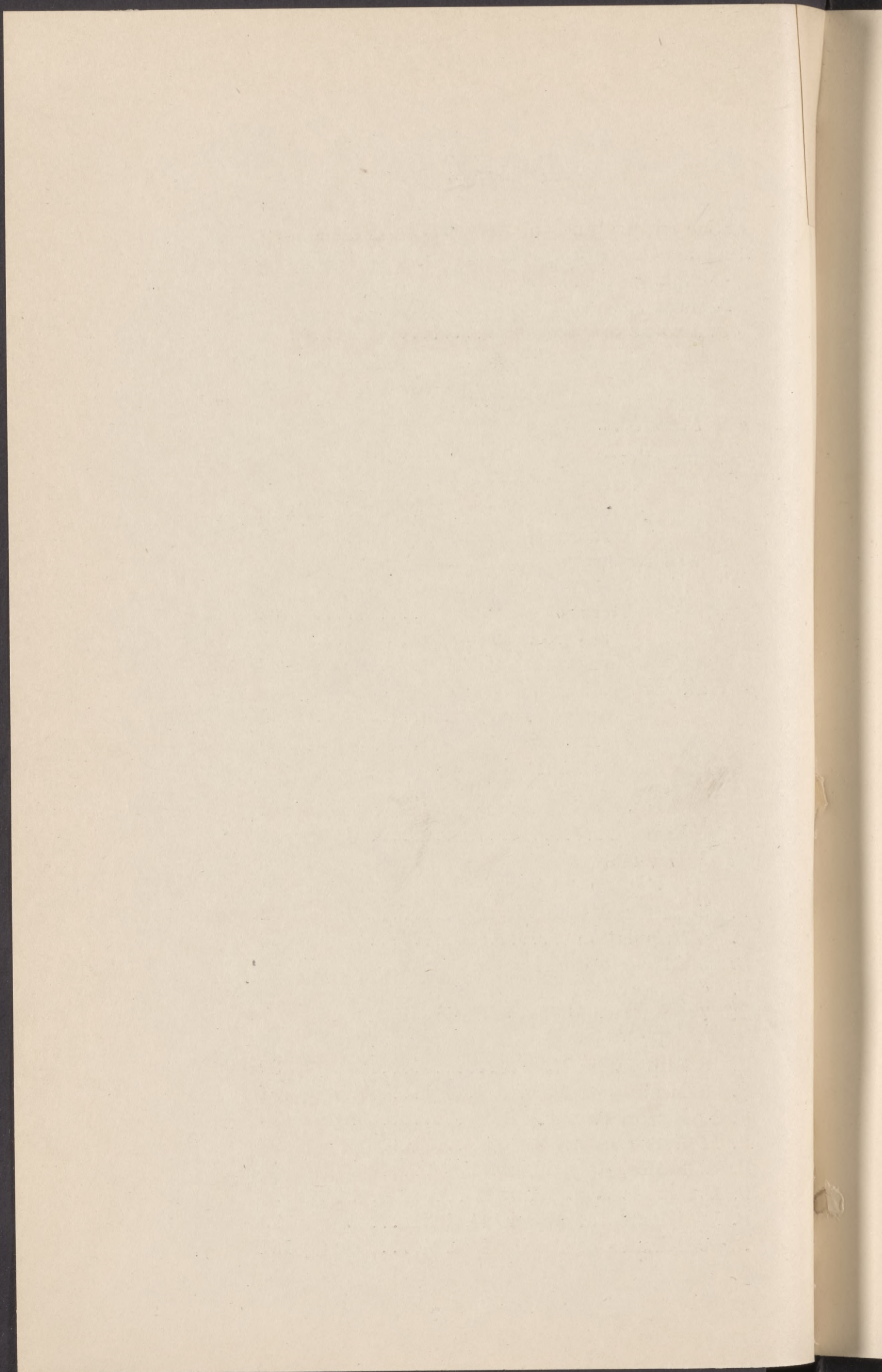
Testimony.

For Plaintiff.

Henry Berg,	
direct examination	7, 11
cross "	10, 20
re-direct "	25
Newell N. Smith,	
direct examination	25
cross "	32
re-direct "	42
re-cross "	43
Walter F. Edwards,	
direct examination	45
cross "	46

Exhibits.

		Off'd	P't'd
P. 1	Lease	8	52
P. 2	Defendant's Copy of Lease, Exhibit P. 1	14	61
P. 3	Letter, March 21, 1924	9	62
P. 4	Stipulation	17	63
P. 5	Affidavit of J. Lindsley Hoyt	18	64
P. 6	Affidavit of John R. Evans	18	65
P. 7	Charter and Incorporation of J. R. Evans Co.	20	68
P. 8	Stipulation	23	89
P. 9	Minutes of April 4, 1924	28	91
P. 10	Letter, April 8, 1924	30	93
P. 11	Letter, April 8, 1924	30	94
P. 12	Letter, July 12, 1923	42	97
P. 13	Letter, July 13, 1923	42	98
P. 14	Minutes of March 24, 1924	45	99
D. 5	Minutes of April 14, 1924	38	101



NOTICE AND GROUNDS OF APPEAL.

Filed April 16, 1925.

New Jersey Supreme Court

ESSEX CIRCUIT.

10

THE CORPORATE BOARD OF UNION LODGE No. 11, OF FREE AND ACCEPTED MASONS OF ORANGE, NEW JERSEY, a corporation of the State of New Jersey, *Plaintiff,* *vs.* J. R. EVANS CO., a corporation, and JOHN R. EVANS, formerly trading under the name of J. R. EVANS & CO., *Defendants.*	*Notice and Grounds of Appeal.*

20

To Messrs. Insley, Vreeland & Decker, attorneys of the defendants, 239 Washington street, Jersey City, New Jersey.

TAKE NOTICE, That the Corporate Board of Union Lodge No. 11, of Free and Accepted Masons of Orange, New Jersey, a corporation, the plaintiff in the above-entitled action, appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this case, upon the following grounds:

30

1. Because the Trial Court directed a judgment of non-suit against the said plaintiff and in favor of the defendants, when thereunto moved by counsel for the defendants, whereas said Court

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should have denied said motion and should have submitted to the jury for decision the questions involved in the issues.

AQUILA N. VENINO,
Attorney of Appellant.

10 Dated, April 15th, 1925.

20

30

40

JUDGMENT RECORD.

NEW JERSEY SUPREME COURT.

THE CORPORATE BOARD OF UNION LODGE NO. 11, OF FREE AND ACCEPTED MASONS OF ORANGE, NEW JERSEY, a corporation of the State of New Jersey, *Plaintiff,* *vs.* J. R. EVANS CO., a corporation, and JOHN R. EVANS, formerly trading under the name of J. R. EVANS & CO., *Defendants.*	*Judgment Record.* *Action at Law.* *On Postea.* *Judgment of Non-suit.* *In Ejectment.*

10

20

Insley, Vreeland & Decker, attorneys.

J. R. Evans Co., a corporation, and John R. Evans, formerly trading under the name of J. R. Evans & Co., the defendants in this cause, were summoned to answer unto The Corporate Board of Union Lodge No. 11, of Free and Accepted Masons of Orange, New Jersey, a corporation of the State of New Jersey, the plaintiff therein, in an action at law upon the following complaint: 30

(Summons issued April 22, 1924.)

The Corporate Board of Union Lodge No. 11, of Free and Accepted Masons of Orange, New Jersey, a corporation of the State of New Jersey, having its principal office in the City of Orange, County of Essex and State of New Jersey, demands of J. R. Evans Co., a corporation, organized and existing under and by virtue of the laws 40

of the State of Delaware, and John R. Evans, formerly trading as J. R. Evans & Co., the defendants herein, the possession of a store and appurtenances together with the land upon which it stands situated in the City of Orange, County of Essex and State of New Jersey,
10 being known as No. 231 Main street, Orange, New Jersey, formerly known as No. 301 Main street, Orange, New Jersey, together with a one-story addition in the rear of about 50x37½ feet, including basement under the same, which said store and premises, etc., is the one mentioned in the written lease dated March 14, 1916, between the Corporate Board of Union Lodge No. 11, of Free and Accepted Masons of Orange, New Jersey, a corporation,
20 and John R. Evans, carrying on business under the firm name of J. R. Evans & Co., and which said store and premises, etc., were occupied under said lease by the said John R. Evans and now occupied by J. R. Evans Co., a corporation as aforesaid, one of the defendants in the above-entitled action, who claims possession through the said John R. Evans; and the plaintiff say their right to the possession of the same accrue on the 8th day of April, 1924, and that the de-
30 fendants wrongfully deprives it of the possession thereof, and also the sum of Thirty Thousand ($30,000.00) Dollars, for mesne profits, use and occupation and damages.

AQUILA N. VENINO,
Attorney for the Plaintiff,
207 Market Street, Newark, New Jersey.

(Filed May 2, 1924.)

40

The answer of the defendants, J. R. Evans Co., a corporation of the State of Delaware, and John R. Evans, a resident of New Rochelle, New York, says:

1. They deny the truth of the matters contained in the complaint.

10

INSLEY, VREELAND & DECKER,
Attorneys for Defendants.

(Filed May 31, 1924.)

This action was tried before Nelson Y. Dungan, Esquire, Circuit Court Judge, to whom it had been referred for trial, with a jury, in the presence of the counsel of the respective parties, at the Essex Circuit Court, on the 17th and 18th days of March, 1925.

20

And the plaintiff having submitted its case and rested and the Court being of the opinion that it was not sufficient to entitle it to recover;

It was ordered that judgment of non-suit be entered against the plaintiff.

30

40

Whereupon, it is adjudged that the complaint of the plaintiff be dismissed and that the defendants, J. R. Evans Co., a corporation, and John R. Evans, formerly trading under the name of J. R. Evans & Co., do recover of the said plaintiff, The Corporate Board of Union Lodge No. 11, of Free and Accepted Masons of Orange, New Jersey, a corporation of the State of New Jersey, their costs, which have been taxed at the sum of forty dollars and ten cents.

Costs $40.10.

10

Judgment entered April 14, 1925.

WM. S. GUMMERE,
C. J.

20

I, Edward J. Kelleher, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above-stated cause as the same remains of record in my office.

(seal) In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-second day of April, A. D. nineteen hundred and twenty-five.

30

EDWARD J. KELLEHER,
Clerk.

40

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Tuesday, March 31, 1925.

CORPORATE BOARD OF UNION LODGE No. 11, F. & A. M., *Plaintiff*, *vs.* J. R. EVANS CO., *et als.*, *Defendants.*	*Action at Law.*

10

Before Nelson Y. Dungan, *J.*, and a jury.

For plaintiff, Aquila N. Venino.

For defendant, Insley, Vreeland & Decker (by William E. Decker).

20

J. Henry Harrison of counsel.

Mr. Venino opens for plaintiff.

Mr. Harrison opens for defendants.

HENRY BERG, sworn in behalf of plaintiff.

Direct examination by Mr. Venino.

30

Q Where do you live? A Orange, New Jersey.

Q How long have you lived there? A All my life.

Q What is your business? A Hat manufacturer.

Q Are you a member of the firm of F. Berg & Company, hat manufacturers of Orange, New Jersey? A I am.

40

Q Are you a member of the corporate body of Union Lodge, No. 11, of Orange? A I am.

Q How long have you been a member of that board? A About eighteen years.

Q What office do you hold now? A President.

10 Q How long have you held the office of president of this board? A About thirteen years.

Q During your term as president and also as a member of that board how many meetings have you attended of the board? A All except one.

Q Do you know Mr. John R. Evans? A I do.

Q Did the corporate board, just mentioned, have any business dealings with Mr. Evans in the month of March, 1916? A They did.

Q What was the nature of the business? A
20 They entered into a written lease with him.

Q I show you this paper and ask you what that is? A That is the written lease with J. R. Evans Co.

(Lease offered in evidence and marked Exhibit P. 1.)

Q After this lease was entered into did Mr. Evans take possession under this lease? A He
30 did.

Q Now, since this lease was made is this property mentioned in this lease—are the street numbers of that changed? A Yes.

Q What is the property known as now? A 231-233.

Mr. Harrison: What street?

The Witness: Main street.

Q Will you tell us what happened, if any-
40 thing, on March 20, 1924, with reference to this

lease; did anybody come and see you? A Oh, yes, Mr. Hoyt and Mr. Harter of Lindsley, Hoyt & Harter came to see me at my office and they had a copy of Mr. Evans' lease, on which they had Mr. Evans' endorsement.

Q I show you this paper and ask you whether you recognize that paper? A I do. 10

Q Is that the paper that Mr. Harter and Mr. Hoyt had with them? A It is.

Q What is that statement?

Mr. Harrison: I object.

(Paper marked P. 2 for identification.)

Q Now, did you have a conversation with Mr. Hoyt and Mr. Harter on that day? A I did.

Q After you had a conversation with Mr. Hoyt and Mr. Harter did you receive any communication from Mr. Evans? A I did. 20

Q I show you this paper and ask you what this paper is. A That is a letter I received from Mr. Evans.

Q After you had the conversation with Mr. Hoyt? A Yes.

(Paper marked Exhibit P. 3.)

30

Q Will you tell us now, Mr. Berg, what conversation you had with Mr. Hoyt? A Why, when Mr. Hoyt and Mr. Harter came to our office they had with them a copy of Mr. Evans' lease, on which they had an endorsement.

Mr. Harrison: I would like to object to the question on the ground it is incompetent and immaterial and not binding on the defendant.

40

The Court: The question may be answered.

A Mr. Hoyt and Mr. Harter came to my office and wanted me to have the copy of Mr. Evans' lease—

10 Q Is this Ex. P. 2 for identification the paper they had with them? A It is.

Mr. Venino: I will introduce it in evidence at this time.

Mr. Harrison: I would like to cross examine on that.

The Court: You may.

Cross examination by Mr. Harrison.

20 Q Now, who handed you P. 2 for identification, Mr. Berg? A Mr. Hoyt had it in his possession.

Q Did you read it? A No, I didn't.

Q How carefully, if at all, did you examine it? A I just looked at the back of it and he told me he had the endorsement thereon from J. R. Evans & Co. to J. R. Evans Co.

Q So you did not examine the endorsement?
30 A I did examine the endorsement.

Q What endorsement? A J. R. Evans & Co. to J. R. Evans Co.

Q So you saw the signatures? A I did.

Q Then you did not examine the lease? A I did, part of it. There was an endorsement there which he wanted us to consent to sign.

Q He asked you to consent to the assignment? A Yes.

Q And you was present at this meeting be-
40 sides you and Mr. Hoyt? A Mr. Harter.

Q And where was this meeting held? A At my office.

Q And on what date? A March 20, 1924.

Mr. Harrison: I object to it on the ground it is not material to this case and it appears that it is an assignment here made by J. R. Evans & Co. to J. R. Evans Co.; that this assignment is the assignment of an individual Evans to J. R. Evans Co., a corporation. It seems to me that until it is shown that this was the Evans' signature, or was done with his authority and that the assignment was accepted, that that is not evidential.

10

Mr. Venino: The answer to that is that the letter from Mr. Evans to Mr. Berg and the corporate board of Union Lodge respectfully requests and refers to the conversation had with Mr. Hoyt. He expressly mentions in that letter the calling of a special meeting for the purpose of consenting to it, as per Mr. Hoyt's conversation.

20

Mr. Harrison: I take it that even though that were so you could not have it signed until it was accepted, and there was no acceptance or assignment of this lease by a presentation of this paper signed as it is by Mr. Evans individually.

30

The Court: I think I will decline to accept the lease.

Direct examination (continued) by Mr. Venino.

Q This paper, P. 2 for identification, you say was in the hands of Mr. Hoyt at the time? A It was.

40

Q Now, just tell us the conversation.

Mr. Harrison: I would like to enter a formal objection to this testimony, on the ground it is hearsay and it cannot bind either Mr. Evans or the Evans Corporation.

10 The Court: I am inclined to think that the inference from this letter is that Mr. Hoyt was acting for him in this matter. Of course, Mr. Evans' signature has not been proven, but it contains the—it seems to be upon the letter head of J. R. Evans & Co. It seems to be Mr. Evans' letter. Of course, if it is shown it was not then I would have some doubt about it. I will permit the conversation.

20 Q Just tell us the conversation with Mr. Hoyt, what did he want and what did he say? A Mr. Hoyt came to my office and wanted me to sign for the corporate board as president a consent to the assignment of the lease from J. R. Evans & Co. to J. R. Evans Co.

Q On what he wanted you to sign was there anything endorsed on Ex. P. 2 for identification? A There was this endorsement here.

30 Q The endorsement was on that that he wanted you to sign? A A proper assignment by J. R. Evans & Co.—

Mr. Harrison: Objected to. He is reading from the instrument.

The Court: The reading of what the endorsement is will be stricken out.

Q What did you tell Mr. Hoyt? A I told him I could not do it, as I had no authority to do
40 it, and no member of the board had any au-

thority; that it would have to be acted on by the whole membership of the board.

Q What did he say to that? A He asked me if I would call a special meeting, and I told him I would. He wanted it that evening, and I told him I could not do it, and he wanted it Saturday and I told him I could not do it, and he wanted it the Monday following. 10

Q And you called this special meeting? A I did.

Q For what date did you call it? A For Monday, March 24th.

Q Now, Mr. Berg, can you tell us whether the signature on that Exhibit P. 2 for identification, with reference to the assignment of this lease from Evans to the corporation, the signature J. R. Evans was the signature of J. R. Evans, the defendant in this suit? A It is. 20

Q Do you know his signature? A I do.

Q Have you ever seen him write? A I have.

Mr. Venino: I offer the paper in evidence at this time.

Mr. Harrison: I renew my objection on the ground that it has not been shown that this was a properly executed assignment by Evans individually, or ever was accepted by the Evans Corporation; in other words, in order to be, in effect, an assignment there not only must be an execution, but also the acceptance. 30

The Court: It will be received.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal. 40

The Court: Do you know whose signature that is?

The Witness: Yes, sir.

The Court: Whose is it?

The Witness: Mr. Evans'.

The Court: I am speaking now of P. 3.

10 (Paper marked Exhibit P. 2.)

Q Mr. Berg, at the meeting that you called on March 24th—do you know who Mr. Hoyt is? A I do.

Q Who is he? A He is Mr. Evans' son-in-law and his lawyer.

Q And also his lawyer? A His lawyer.

Q And who was Mr. Harter? A He was manager of the Orange store.

20 Q At this special meeting of the board that was called did the plaintiff in this case consent to the assignment of this lease as requested? A They did not.

Q Will the minutes of that meeting disclose why they refused to consent? A They will.

Mr. Harrison: Objected to on the ground the minutes are the best evidence.

The Court: Sustain the objection.

30

Q Who was the secretary of that meeting? A Mr. Newell N. Smith.

Q Is he the regular secretary of the board? A He is.

Q And how long has he been secretary of the board? A About eight to ten years.

Q Do you know why the consent to the assignment was denied?

Mr. Harrison: Yes or no.

40

A Well, because—

Mr. Harrison: No.

A Yes.

Q At the time that Mr. Hoyt came to you did he and Mr. Harter and Mr. Evans, or anyone else, at that time, or at any time prior to that, tender a bond? A They did not. 10

Q Wait a minute. Tender a bond to you? A No.

Mr. Harrison: I object. My point, if the Court please, is that that is immaterial, because the provision in section—well, under the heading of the lease entitled "assignments" that lease provides in substance that the landlord will consent to the assignment 20 if it is satisfied with the rating of the corporation and if a bond shall be entered into by said John R. Evans. There is no provision here against an assignment. This provision, I take it, merely means that if a consent is asked for it will be granted upon certain conditions. Now, that being so—there being no prohibition here against an assignment and the clause against sub-letting, or any other letting, making no reference to an assignment, that is, there being no 30 prohibitory cause, then I take it that the question of whether a bond was given or whether the corporation was substituted or not only relates to the question of consent, and, even though there may have been an assignment, it seems to me that unless it can be shown at this time that it was a violation of the terms of the lease, that this evidence has no reference to the main issue that the 40

lease, which as stated in plaintiff's opening, was that there was no violation of the assignment. I think this evidence is irrelevant and immaterial.

(Argument.)

The Court: I am not inclined to permit this testimony now, but I am prepared to say unless this case goes over until tomorrow, unless you are prepared to submit cases along the lines suggested, I am very much inclined to take the opposite view. I am going to admit this subject to your objection.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: Well, was a bond at any time tendered?

The Witness: No, sir.

Q Did Mr. Hoyt or Mr. Harter or Mr. Evans, or anyone furnish you with any information up to that time or at any time prior with reference to the standing and rating of this company known as J. R. Evans Co.? A No.

Q After this first meeting of March 24th, when was the next meeting of the board? A April 4th, about.

Q Did the company consent to the assignment of the lease at that meeting? A They did not.

Mr. Harrison: Objected to on the ground that this—

The Court: I suppose that this corporation keeps minutes of its meetings and it should speak through its minutes.

Mr. Venino: Yes, we have them here.

Q Now, Mr. Berg, I show you these two papers and ask you whether those papers were presented at the meeting of the said board in April as you have just stated? A They were.

Mr. Venino: I now offer in evidence affidavit of John R. Evans, dated March 28, 1924, and also an affidavit of J. Lindsley Hoyt, made on the 25th day of March, 1924, as per stipulation between counsel. 10

Mr. Harrison: I am informed that the stipulation now being sought for only relates that it will not be necessary to produce the notary public to prove the contents of the affidavit.

The Court: Read the affidavit.

(Mr. Venino reads stipulation.) 20

The Court: It will be admitted in evidence. File your stipulation and have your stipulation marked in evidence.

(Exhibit P. 4.)

Mr. Harrison: I think that even a stipulation of this kind—the objection may still be open as to relevancy and I, therefore, object to the introduction of this affidavit upon the ground it has not been shown it is material or relevant to the issue in this case. It seems to me that even a stipulation between counsel does not go to the extent of advancing evidence that either of them did—but that it must appear that there is some relation between the matters to be introduced and the issue before the court. 30

The Court: The Evans affidavit will be admitted. The affidavit of Hoyt will be admitted, and an exception to that ruling may be noted, if you desire it. 40

(Hoyt affidavit marked Exhibit P. 5.)

(Evans adffidavit marked Exhibit P. 6.)

Q Mr. Berg, when did the plaintiff first know that there was a corporation in existence by the name of J. R. Evans Co.?

10

Mr. Harrison: Objected to, unless the witness is qualified to speak on behalf of the plaintiff corporation.

The Court: Objection sustained.

Q When did you first know? A On March 24th.

The Court: What year?

The Witness: 1924.

20

Q When did you first know that a corporation was in possession of J. R. Evans Co.? A On April 4, 1924.

Q Was that the second meeting? A The second meeting of the board.

Q And how did you gain your knowledge then of the fact that a corporation was in possession?

30

Mr. Harrison: I object—I withdraw the objection.

The Court: The question may be answered.

A When you presented two affidavits, one from Mr. Evans.

Q These affidavits which I just read? A Yes.

Mr. Venino: Which are marked Exhibits

40

P. 5 and P. 6.

The Court: You say that you have been present at all meetings of the corporation for thirteen years except one.

The Witness: Except one.

The Court: When was that?

The Witness: Last fall. I was up in the Catskills after Labor Day. 10

The Court: Up until the time these affidavits were presented had there been any information that came to any meeting of the board of the person or corporation that was using this store?

The Witness: Will you repeat that?

The Court: You say that the first you knew that a corporation was in possession of the store was when these two affidavits were presented at the meeting of April 4th? 20

The Witness: Yes, sir.

Q Now, this meeting that you claim you were not present at, was that after April 4th? A After Labor Day.

Q At any of the meetings, or at any one of the meetings that you have attended after the making of this lease with Mr. Evans, was there any information brought before any meeting of 30 the board of the fact that there had been a change from this individual Mr. Evans, to the corporation, that is, the transfer of the lease or possession of the store to tenants or a corporation? A Only at that time.

Q When was the first time that any information was brought at any meeting that you attended of the fact that there had been a corporation in existence by the name of J. R. Evans Co.? A April 4, 1924. 40

Q And that meeting was the first time that anything had been brought before the board at any meeting of the fact that there was a corporation in possession of it? A Yes.

Mr. Venino: I introduce at this time certified copy of the charter and incorporation of the J. R. Evans Co.

10

(Marked Exhibit P. 7.)

Cross examination by Mr. Harrison.

Q Where do you live? A Orange, New Jersey.

Q You have been a resident there practically all your life? A Not practically, but I have been all my life.

20

Q You ride up and down Main street quite often, do you not? A I do.

Q You know where the Evans store, we will term it, is? A I do.

Q You have seen the sign a number of times, haven't you? A Yes.

Q You have been in the store? A Yes.

Q Made purchases there? A Occasionally.

Q And you know Mr. Harter, who sits here at my immediate right? A I do.

30

Q And you have been interested in the Union Dramatic Club, haven't you, from time to time? A I have.

Mr. Venino: I object as not cross examination.

The Court: Well, I assume this is rather to further introduce Mr. Berg.

Q Did you ever have a Union Dramatic Club presentation as they have in Union Lodge No.

40

11, F. & A. M.—withdraw the question. What is the Union Dramatic Club? A Why, it is a club formed by members of the Union Lodge.

Q And you have been interested in furthering its purpose? A I do not take an active interest in that. I am not a member of the dramatic team. I guess you have reference to my brother Charles. 10

Q Didn't you lend some assistance in 1923 in putting through their program for that year? A I did not. You have reference to my brother Charlie.

Q Do you read the Newark Evening News? A I do.

Q And do you recall reading our Newark Evening News of November 4, 1922, with this caption: "Merchants elect their directors; Clarence E. Harter, president of the Orange Merchants' Association, has been a director of the recently incorporated J. R. Evans Co. of Connecticut. Mr. Harter is manager of the company's store in Orange." A I did not read that. 20

Q You did not read that? A No, sir.

Q Did you ever look at their sign? A I did.

Q J. R. Evans & Co.? A Yes.

Q And did you know that some time in 1922 and the early part of 1922 that that sign was changed? A That I don't know. 30

Q You didn't know it? A I didn't notice it, no.

Q When did you first know of the change in the sign? A Oh, that I could not say. It must have been in 1924. I guess it was around March.

Q Did you ever see any of the checks which were sent in payment of the rent for this store? A I believe I saw one. 40

Q And in whose possession was the check when you saw it? A I think our attorney had the check.

Q Was it prior or subsequent to the beginning of this suit? A Subsequent, I believe.

Q Who was the treasurer of the corporation during 1922? A George Spottiswood.

Q And was he a director of this corporate body? A He was.

Q And who succeeded him as treasurer and when? A Walter F. Edwards.

Q And when did he succeed Mr. Spottiswood? A Mr. Spottiswood died.

Q I mean in point of time? A About a year and a half ago, I believe.

Q Was he a director? A He was.

Q Do you know whether there has been any default in the rent of this store by the Evans interests? A The question of rent never came up before the board.

Q There has been no information brought to your board that there was any default in the payment of rent by the Evans interests? A No.

Q And so far as you know it has now been paid to date and you have no claims for rent?

Mr. Venino: I object. Before this question is answered I would like your Honor to read the stipulation between counsel, which is being violated by asking that question.

Mr. Harrison: I will not object to having that stipulation introduced.

Mr. Venino: I do not think it has any bearing in the evidence.

The Court: I cannot consider it, of course, if it is not in evidence.

Mr. Venino: Well, I am perfectly willing. It does not do any harm.

The Court: I do not want to persuade you to do it. I simply say I cannot consider it without it is in evidence because the—

Mr. Venino: I will introduce it in evidence. 10

Mr. Harrison: No objection.

(Paper marked Exhibit P. 8.)

The Court: Now, the question may be answered.

A Well, according to that stipulation—subject to the stipulation—

The Court: That is, the rent has been paid pursuant to that stipulation or the money has been paid in accordance with that stipulation? 20

The Witness: Yes, as far as I know. You will have to ask the treasurer that.

Q Now, just a word, Mr. Berg, as to this meeting of April 4th of the corporate body. Who were present? A All members of the board, I believe. 30

Q And just who constituted this board of directors? A Walter F. Edwards, he is treasurer. Newell N. Smith is secretary. Allen Hird is director. Walter Taylor, Gerd Oltmanns and Frederick M. Struck.

Q Isn't Mr. Venino also a member of the board? A Yes.

Q Was he there? A He was.

Q Was the meeting called at his suggestion? A It was. 40

Q Who did the talking at the meeting? A Mr. Venino with the board.

Q And you had, prior to this formal meeting, which was attended by some of the Evans interests, any preliminary meeting, at which a program was agreed upon? A I believe it was a meeting of March 24th.

10

Q That is, you members of the board got together, or most of you, and you agreed what action you were going to take at the meeting to be held on April 4th, and you let Mr. Venino do the talking for you? A Yes.

Q None of the other members of the board expressed an opinion one way or the other? A No, sir.

Q Mr. Venino did all that talking? A Yes.

Q And was it he who advised you and your board as to your rights? A He did.

20

Q. Did your corporate board adopt any resolutions at this meeting of April 4th relative to this lease? A I believe we did.

Q You are not familiar as to that? A Well, the secretary has it on his books.

Q Who drew those resolutions? A Mr. Venino.

Q Were there any letters written by or in behalf of the board to the Evans interests subsequent to this meeting? A That I couldn't say. You will have to look at the minutes.

30

Q Wasn't there a letter of April 8th written to Mr. John R. Evans, signed by Newell N. Smith, and which letter I now show you? A There was.

Q And who wrote that letter? A Newell N. Smith, secretary.

Q Who prepared the letter? A Mr. Venino.

(Letter marked D. 1 for identification.)

40

Re-direct examination by Mr. Venino.

Q Mr. Berg, how long was Mr. Spottiswood treasurer of the corporate board? A About 56 years.

The Court: Was he present at that meeting? 10

The Witness: He was not. He was dead.

The Court: Oh, he was dead in 1924.

The Witness: Yes, sir.

Q Now, after the meeting of April 4th, which was the meeting at which the affidavits were produced which have been read in evidence, was there a discussion by the respective members of the board with reference to the policy to be followed in connection with this? A There was. 20

NEWELL N. SMITH, sworn in behalf of plaintiff.

Direct examination by Mr. Venino.

Q Where do you live? A West Orange. 30

Q How long have you lived there? A All my life; ever since I was a little kid; all my life, practically.

Q What is your business? A Grain, hay and feed.

Q Are you a member of the corporate board of Union Lodge No. 11, F. & A. M., of Orange, New Jersey? A I am.

Q How long have you been a member? A I think 19 years. 40

Newell N. Smith, direct.

Q What office do you hold there now? A Secretary.

Q And how long have you been secretary? A Why, I have been secretary since I have been a member of the board. I was secretary when I was made a member, 19 years.

10 Q Do you know Mr. John R. Evans? A I do.

Q Mr. Smith, when did you first know that a corporation was in existence by the name of J. R. Evans Co.?

Mr. Harrison: I object to that as being immaterial and irrelevant.

The Court: It may be answered.

A When I sent out the notice calling a special
20 meeting of the corporate board to consider the question of the assignment of the lease to a corporation by that name, which was about March 20th or 21st.

Q What year? A 1924.

Q When did you first know that a corporation was in possession of the leased premises by the name of J. R. Evans Co.? A Why, at the meeting of March 4, 1924, when the question of the
30 consenting to the assignment was discussed.

Q No. I asked you when you first knew that a corporation was in existence. I am now asking when did you first know a corporation was in possession? A Well, at the April meeting; April 4, 1924, from these affidavits from Mr. Evans and Mr. Hoyt.

Q There was a meeting of April 4, 1924? A There was.

Q And did you— A March 24th. I beg pardon.
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Q And were you present at that meeting? A March 24th, I was not.

Q On March 24th? A No, I wasn't. I was sick, I believe, at that time. No, I was not present.

Q You were not present at the meeting? A Of March 24, 1924. 10

The Court: Who kept the minutes of that meeting?

The Witness: Mr. Walter F. Edwards was acting secretary of that meeting.

Q Were you present at the meeting of April 4th? A I was.

Q And did you keep the minutes of that meeting? A I did. 20

Q Was there any resolution passed at that meeting? A There were.

Q And what did you keep your minutes in, a book? A I did.

Q Have you the book there? A I have.

Q Those are minutes you have there of the meeting of April 4th; are they in your handwriting? A They are.

Q They are correctly kept? A They are. 30

Mr. Harrison: That is a conclusion.

Q Do they show just what resolutions were passed at that meeting? A They do.

Mr. Venino: I offer the minutes.

The Court: Of that meeting?

Mr. Venino: Of that meeting, yes.

Mr. Harrison: I do not know, but they may relate to a whole lot of things. 40

The Court: Show them to Senator Harrison. I suppose you only want those minutes which relate to this particular matter, but I understand both of those meetings were special meetings.

The Witness: They were special meetings.

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The Court: Of all the business transacted at both of those meetings, was it in relation to this matter?

The Witness: Yes; called especially for that purpose.

(Marked Exhibit P. 9.)

Q Will you read those minutes? A April 4, 1924, a special meeting of the corporate board of Union Lodge No. 11, F. & A. M., was held in the Masonic Temple, 235 Main street, April 4, 1924. Present: Henry Berg, president; A. N. Venino, vice-president; W. S. Edwards, treasurer; N. H. Smith, secretary; F. W. Struck, A. W. Hird, G. J. Oltmanns and Walter W. E. Taylor. The minutes of the last meeting of March 24th were read and approved. Mr. A. N. Venino read and reported that an investigation on his part developed that the J. R. Evans Co., a corporation, was formed on March 13, 1922, under the laws of the State of Delaware, and that subsequently and on or about March 17, 1922, Mr. Evans transferred all the assets and good will of the business which he was conducting at 231 Main street, Orange, New Jersey, to said corporation, and that such corporation took possession and has been in possession ever since March 17, 1922. The question of whether this board should consent to the assignment of the

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lease was generally discussed, whereupon, upon motion duly made, seconded and carried by an unanimous vote, the following resolution was adopted, namely, "Resolved that this board do refuse to consent to the assignment of the lease from J. R. Evans to J. R. Evans Co., a corporation, affecting 231 Main street, Orange, New Jersey, for the following reasons: First, because Mr. J. R. Evans has not entered into a bond guaranteeing the fulfilment of said lease, as called for by the said lease; second, because the board is not satisfied with the standing and rating of the said corporation of J. R. Evans Co.; third, because J. R. Evans let or underlet the premises without the written consent of the board, thus violating the conditions of the lease against under-letting; fourth, because by transferring the assets to the corporation Mr. J. R. Evans deprived the board of the security which he had given the board under the lease, as set forth on page 4 of the lease under paragraph securities; fifth, because Mr. J. R. Evans assigned the lease to the said corporation without the consent or knowledge of the board. Further resolved that on account of the breach of the conditions of the lease, as above set forth, that the board exercise their right of recovery and declare the lease null and void and that legal action be taken to recover possession of the leased premises. Further resolved that the matter be placed in the hands of A. N. Venino for legal action and that the April rent, which is received, be returned, and, on motion, the board adjourned."

Signed Newell N. Smith, Secretary.

Q Mr. Smith, after this meeting was Mr. Evans and the J. R. Evans Co., a corporation,

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notified of the action of the board? A They were.

Q Who notified them? A I did.

Q In what form did you notify them? A Why, I personally served a written notice on J. R. Evans Co., a corporation, and I also mailed a
10 written letter to J. R. Evans, registering the same.

Mr. Harrison: We have no objection. The letter of April 8th from Smith, as secretary, to J. R. Evans, and also letter of April 8th, 1924, from Mr. Smith to J. R. Evans Co.

(Marked Exhibits P. 10 and P. 11.)

Adjourned until tomorrow, Wednesday, April 1st, 1925, at 10 o'clock A. M.

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SECOND DAY.

April 1, 1925.

Continued pursuant to adjournment.

Present, counsel as before stated.

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Direct examination (continued) to Mr. Venino.

Q Mr. Smith, are the minutes of March 24, 1924, of the plaintiff corporation in the book you have there? A Yes.

Q Who was the secretary that acted at that meeting? A Mr. Walter F. Edwards acted as secretary.

Q And in whose handwriting are the minutes
40 in that book of that meeting? A My own.

Q Now, will you tell us how they came to be entered under your signature? A Why, Mr. Edwards took the minutes and gave them to me and I copied them, word for word, as he gave them to me, into this book, and I got through and destroyed them, having no further use for them. 10

The Court: Who signed them?

The Witness: I done all the writing in this book.

The Court: And who signed the minutes of the meeting?

The Witness: Mr. Walter F. Edwards.

The Court: In the book?

The Witness: No. I signed them. I wrote all of the minutes as he gave them to me. 20

The Court: Who actually signed the book as secretary?

The Witness: It is signed here Walter F. Edwards, acting—

The Court: Is that Edwards signature there?

The Witness: No, that is mine.

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Q And you say you took those minutes from written minutes given to you by Mr. Edwards? A Yes.

Q Where are the written minutes he gave you? A Destroyed.

Q Were these minutes read at the meeting of April 4, 1924? A They were.

Q Did you read those minutes? A I did.

Q And were they adopted? A They were and approved by the board. 40

The Court: The minutes so state?

The Witness: Yes, sir.

Mr. Harrison: There may be some cross examination. Therefore I object.

Q Mr. Smith, at any of the meetings of the
10 board prior to March 24, 1924, was there ever any knowledge brought before the board at any meeting prior to that time of the fact that there was a corporation in existence by the name of J. R. Evans Co.? A Never.

Q Was there ever at any meeting of the board prior to April 4, 1924, any knowledge brought before the board of the fact that a corporation by the name of J. R. Evans Co. was in possession of the store?

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Mr. Harrison: I object.

The Court: Sustain the objection.

Cross examination by Mr. Harrison.

Q You had some communications with the J. R. Evans Co. did you not? A Some.

Q Did you ever receive any letters from them? A Why, I received one letter from Mr.
30 Evans.

Q How was that letter signed?

Mr. Venino: I object, the letter being the best evidence.

Mr. Harrison: Withdraw the question. I now ask the plaintiff to produce the original letter of July 12, 1923.

Q While looking for the letter, Mr. Smith, did you, on July 12, 1923, over your signature as sec-
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retary, write a letter to the Evans Co. in the matter of how checks were to be drawn for the payment of the rent of the premises occupied in Orange, New Jersey? A I did.

Mr. Venino: I move to strike that out. If there is any letter in existence the letter is the best evidence. 10

The Court: As to whether or not he wrote the letter to the Evans Company on such and such a date may remain.

Mr. Harrison: My only point was to identify it by general reference to the subject matter, so there would not be any confusion on the part of the witness. If he had written a letter in another matter this would serve as a basis of identification of the letter I had in mind. 20

Q Is this the letter to which you refer? A It looks like it.

Q I would like just a categorical answer there, yes or no. A It is.

(Paper marked D. 2 for identification.)

Q Did you receive a reply? A I did. 30

Q And is this letter which I show you under date of July 13, 1923, addressed to you and signed J. R. Evans Co., the reply which you received? A It says per J. R. Evans.

Q Let us get away from the comments and answer the question. A It is.

(Paper marked D. 3 for identification.)

Q You say that you never heard of the J. R. Evans Co., as I understand your testimony? A 40

Not until I was notified to call the meeting for a special purpose.

Q Who brought that matter to your attention? A That I was to call the meeting?

Q Who brought the existence of the J. R. Evans Co. to your attention? A Why, at our board meeting.

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Q Well, who brought it to the attention of the board meeting, then, Mr. Berg, Mr. Edwards, Mr. Venino, or who? A Why, Mr. Berg stated what that meeting was called for.

Q And who told the details of the organization, of the time when it was organized, and the place it was organized and other information concerning the incorporation? Did Mr. Berg say that or did Mr. Venino say it? A Well, Mr. Berg told what the meeting was called for.

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Mr. Harrison: I ask that the witness' answer be stricken out.

Q (Question read.)

Mr. Venino: I object to the question at this time. The minutes of the board are the best evidence for that purpose.

The Court: The question may be answered. This is cross examination.

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A Why, Mr. Venino.

Q You are in the feed business, aren't you? A Yes.

Q How long have you been in that business? A Well, I have worked at it all my life. I have been in business myself about twelve or thirteen years.

Q And are you the Newell N. Smith who has a business on Valley Road, Orange, New Jersey? A I am.

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Q Well, do you sometimes assist in the organization of this work in giving them an advertisement? A Once.

Q You are interested in the Dramatic Club in advertising as to its prospectus? A Well, not a great deal.

Q And are you the Newell N. Smith who inserted the advertisement which I show you on page 6 of this pamphlet, which I show you, the advertisement being inserted on the upper left-hand corner? 10

Mr. Venino: I object to the question as not proper cross examination.

The Court: Well, of course, it does not now appear to the Court that it is cross examination, but I rather assume to throw some light on this program that there is some knowledge as to the incorporation of this company. Is that the purpose? 20

Mr. Harrison: Your Honor has defined my purpose.

The Court: I assumed that that was so and the question may be answered.

A I did. 30

Q At the time of your insertion of that advertisement or later did you know, or did you see the advertisement found on the same page of that pamphlet of J. R. Evans Co.? A I did not. I do not know that is there now.

(Pamphlet marked D. 4 for identification.)

Q Do you read the Newark Evening News? A I do. 40

Newell N. Smith, cross.

Q Regularly? A I try to. Sometimes I do not have time.

Q I ask you whether you read or not in the issue of November 4, 1922, an article which was headed, "Merchants elected directors as follows: Clarence E. Harter, president of the
10 Orange Merchants Association, has been elected a director of the recently incorporated J. R. Evans Co. of Connecticut. Mr. Harter is manager of the Evans store in Orange?" A I do not ever remember reading it or seeing it.

Q You do not know, but you may have seen it? A I do not recall.

Q And you have known Mr. Harter for sometime? A I am not well acquainted with him. I met him once when I served him with a notice.

20 Q You mean a casual acquaintance with him? A No, sir.

Q Didn't you know he was manager of the store? A Only when I was told, when I served him with the notice.

Q Who prepared these minutes of April 4, 1924? A Well, I prepared—I wrote them—what date was that?

Q April 4, 1924. Let me see the book a mo-
30 ment. Did you prepare this minute from the—paragraph No. 3, "Because J. R. Evans let or underlet the premises without the written consent of the board, thus violating the conditions of the lease against underletting?" A I not being a lawyer, Mr. Venino prepared those for me.

Q Did he give them to you in a written or typewritten form which you copied into the book? A I don't just remember whether it was
40 typewritten or not.

Newell N. Smith, cross.

Q Well, were they in some prepared form so that you copied from them into your minute book? A They may have been in legal form.

Q So that you took the form prepared by Mr. Venino and then wrote them into this book, is that the situation? A Yes.

Q Well, now, is that the last meeting to which any reference is made to this proposed lease— with reference to this Evans lease? A I guess that is the only thing that referred to the lease. 10

Q Well, will you look at the minutes of April 14, 1924? A There may be something in the minutes of the 14th.

Q Well, just look at them carefully and answer whether there is anything with reference to this lease in those minutes? A Why, we have some notations here of Mr. Venino for copies of letters of the J. R. Evans Co. 20

Q Didn't you hold a meeting Mr. Harter, Mr. Evans, Mr. Brinkerhoff and Mr. Hoyt attended, and Mr. Decker? A I think that was at this meeting of the 14th.

The Court: Your minutes show they were present?

The Witness: Yes, sir; they do.

30

Q So that there was a meeting held on April 14th? A There was.

Q By the corporate board, as we will term it, which was attended by Mr. Evans and other people representing him, is that true? A Right.

Q And was the matter of this lease at that time discussed?

Mr. Venino: I object to the question on the ground that the minutes of that meeting are the best evidence. 40

Mr. Harrison: Have you any objection of the minutes being read?

Mr. Venino: I have no objection to the minutes being introduced.

The Court: The minutes of that meeting of April 14th may be introduced in evidence.

10 (Marked Exhibit D. 5.)

Q Where was that meeting held? A At the Masonic Temple.

Q Who was present of the corporate board? A Henry Berg, president; A. N. Venino, vice-president; W. F. Edwards, treasurer; N. N. Smith, secretary; directors, F. W. Struck, G. J. Oltmanns, H. N. Montgomery and Walter C. E. Taylor.

20 Q And who was present with Mr. Evans in his group? A Why, Mr. Evans, Mr. Harter, Mr. Decker, Mr. Brinkerhoff and another gentleman there alongside of Mr. Hoyt.

Q Now, referring to what took place in the meeting of April 4th, was there any suggestion at that meeting by any member of the board that this lease, which had a fixed yearly rental of $4,000, was now worth $15,000 per year?

30 Mr. Venino: I object to the question as not proper cross examination and also the minutes of that meeting speak for themselves.

The Court: The question may be answered.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

40 A There was nothing mentioned about $15,000.

Q When was a reference to that increased value of the premises made, at which meeting? A I don't know. I never heard it.

Q Didn't you hear that statement made by Mr. Venino at the meeting of April 4th or April 14th? A $15,000?

Q Did he not say, in substance and effect, "You may have this lease if you will raise your annual rental to $15,000 a year?" A I do not remember any such remark. 10

Q Didn't he substantially say that to Mr. Evans and his group? A I did not hear it.

Q And weren't there some suggestions there made if they would be allowed to pay the increased rental they could remain in possession of the premises? A There was something said— 20

Q No, no. Was there not some reference made to an increased rental? A Nothing like any amount.

Q What was said? A Well, I have in the minutes there what was said.

Q What was said, if anything, with reference to the increased rental?

> Mr. Venino: I would like to have the witness instructed that he may resort to the minutes if he wishes to. 30
>
> The Court: Oh, yes.

Q Do you say there was nothing said about any increased rental in specific or general terms? A Nothing, only what is in the minutes.

Q Well, have you any recollection on the subject? A Nothing more than if they wanted to enter into a new lease they could do so, but they did not care about discussing that subject. 40

Q Who submitted that proposition? A Why, Mr. Venino referred to that.

Q Will you refer to your minutes and see what was said, if anything, with reference to that in your minutes? A Mr. Venino told Mr. Decker that in view of the fact that the board
10 had already decided at the last meeting to exercise their rights of recovery, as called for in the lease for breach of the conditions, it was too late to discuss at this time the assignment of the lease. Mr. Venino stated that if they wanted to discuss a new lease, on new terms and conditions, he would gladly enter into a discussion with reference to it, but Mr. Decker did not care to discuss that end of it, so the conference ended.

Q So there was something said about a new
20 lease on new terms and conditions? A Yes.

Q You have no recollection of any definite figures stated, as I understand it? A No.

Q How long did this meeting of April 14th last? A Why, I do not just remember. Our meetings are short.

Q No, not how short they are, but how long did this particular meeting last? A That was general with us.

Q On April 14th, the meeting of the corpo-
30 rate board, attended by Mr. Evans and other members of his group? A Oh, possible an hour and a half, or maybe two hours; I do not just exactly recall.

Q And was there any matter discussed other than the matter of the Evans lease? A Only what is contained in the minutes.

Q Was Mr. Evans and his group present at the whole meeting? A They were not.

Q A portion of the meeting was held behind
40 closed doors, at which they were not admitted?

A I don't know. They were there when we opened our meeting.

Q Don't you know that you kept them waiting for over an hour, or about an hour? A I don't know.

Q And then let them in the room? A I don't know how long they were waiting. 10

Q How long were Mr. Evans and his group in your meeting? A Only a short time.

Q Well, ten or fifteen minutes? A Thereabouts.

Q Well, was there anything else discussed while they were in the meeting other than the lease? A I don't think so.

Q Now, did you know that Mr. Evans and his group were coming to the meeting? A I had an intimation of it, yes.

Q And in what way had you obtained that 20 intimation? A Why, the gentleman called on me that day.

Q What gentleman called on you? A The five gentlemen mentioned.

Q That is, Mr. Evans— A Mr. Hoyt, Mr. Decker, I think it was, Mr. Brinkerhoff and Mr. Harter.

Q They called upon you and they had a talk about this whole situation? A Well, not the 30 whole situation, no.

Q But you knew at the time of their calling, or, as a result of their calling upon you, that they were coming to the meeting? A Yes.

Q Did you make any objections to their coming? A No.

Q What did you say to them about coming? A Why, as I told before, I would be glad to see them and hear anything they had to say.

Q You would be glad to hear what they would have to say and all the matters would be taken 40

up at the meeting? A Well, I don't know. I told them the matter had been referred to our counsel, Mr. Venino.

Q And if they attended the meeting all these matters concerning the lease would be taken up at the meeting? A No, I didn't say that. We could not take up any matter after it had been referred to Mr. Venino.

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Q Everything was in his hands? A The whole matter was turned over to him at the meeting of April 4th.

Q And the board followed his instructions? A Yes.

Q And did he do all the talking at this meeting? A He and Mr. Decker.

Q And did he prepare the resolution? A I believe he did.

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Mr. Venino: I introduce at this time P. 2 for identification, letter written by Newell N. Smith to J. R. Evans & Co., Stamford, Connecticut.

Mr. Harrison: It is rather irregular after closing the examination, but I have no objection to this order of procedure, but I do not want to be foreclosed.

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The Court: Then you may further examine after the re-direct examination.

(Papers marked Exhibits P. 12 and P. 13.)

Re-direct examination by Mr. Venino.

Q Mr. Smith, when you wrote this letter, Ex. P. 12, did you know at that time there was a corporation in existence by the name of J. R. Evans Co.? A I did not.

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Q When you received this letter under date of July 12th, 1923, marked P. 13, did you know

that a corporation was in existence or in possession of the name of J. R. Evans Co.? A No, not when I wrote that letter.

Q No, this is a letter you got in answer to the one you wrote. I asked you whether you knew whether there was a corporation by the name of J. R. Evans Co. in existence at the time you wrote this letter? A No, I didn't. 10

Q Did you know there was a corporation in existence or in possession of the store when you received that letter? A I didn't.

Q Mr. Smith, at this meeting of April 14, 1925,— A 1924.

Q —or 1924, were the minutes of April 4th read and approved at that meeting? A They were.

Re-cross examination by Mr. Harrison. 20

Q What did you do with the letter from the J. R. Evans Co. after its receipt? A Why, I had it on file until here recently and turned it over to our attorney, Mr. Venino.

Q Did you present the letter or indicate its contents to the members of the corporate body? A I did not.

Q Did you bring the letter to the attention of your new treasurer, Mr. Edwards? A Why, I don't just remember. I might have informed him that I had written. 30

Q Well, to whom, if anybody, did you show the letter? A I didn't show it to anyone outside of turning it over to Mr. Venino.

Q Well, did you at or about the time of its receipt call it to Mr. Venino's attention? A I did not.

Q This letter, P. 12, from you to Evans & Co., was written at the direction of the corporate 40

board, or the treasurer, was it, or on your own initiative? A I guess it was on my own initiative to so notify them to that effect.

Q Well, now, did you read this letter, Ex. P. 13, the letter from Evans to you? A I believe I did, sure.

10 Q Did you notice the headline, J. R. Evans Co.? A I didn't.

Q Did you notice the signature, J. R. Evans Co.? A I didn't. All I noticed was Mr. Evans signature.

Q Well, you didn't then read all the letter? A Well, I didn't read all the headlines, no. It is not customary, I do not think, for anyone to do that.

Q Well, whatever is customary is not the 20 point here, but why is it that you jumped over the signature of J. R. Evans Co. to J. R. Evans? A Well, I just naturally supposed, seeing Mr. Evans signature there, it was the same concern which he represented.

Q Oh, but you did notice it was J. R. Evans Co., didn't you? A No, I didn't.

Q Didn't the use of the word "per" strike you as being unusual? A No, it didn't.

Q J. R. Evans Co., per J. R. Evans? A No, 30 it didn't.

Q But you had this letter P. 13 in your possession from on or about July 13, 1923, up until the time you turned it over to Mr. Venino? A Yes, and up to that time I never noticed it being J. R. Evans Co.

Q Was it at this meeting that the Evans and Hoyt affidavits were submitted? A No, sir. April 4th was when those were presented.

Q Were the affidavits, which you had in your 40 possession, on April 4th, also before the board

at the meeting of April 14th? A Why, I don't remember that they were. They might have been, but I didn't see them. I didn't have them.

Q But hadn't you had those affidavits at the board, or had Mr. Venino done that? A Why, I think Mr. Venino read the affidavits.

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WALTER F. EDWARDS, sworn in behalf of plaintiff.

Direct examination by Mr. Venino.

Q Mr. Edwards, were you a member of the board of the plaintiff corporation? A I am.

Q Did you attend a meeting on March 24th, 1924, of that body? A I did.

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Q Who kept the minutes as secretary at that meeting? A I kept them.

The Court: Perhaps there may be no objection now of the minutes of March 24th.

Mr. Harrison: We have no objection. Put them right in.

(Minutes marked Exhibit P. 14.)

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Q Would you mind reading those minutes? A March 24, 1924, at a special meeting of the corporate board of Union Lodge, No. 11, F. & A. M., held in Masonic Temple, 235 Main street, Orange, March 24, 1924. Present: Henry Berg, president; A. N. Venino, vice-president; W. F. Edwards, treasurer; F. N. Struck, G. J. Oltmanns, Walter W. C. Taylor, H. N. Montgomery and Allen M. Hird. The minutes of the meeting of March 10th were read and approved. President Berg stated that this meeting was

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called at the request of Mr. J. R. Evans for the purpose of considering whether we would consent to the assignment of the lease from J. R. Evans to J. R. Evans Co., a corporation, which Mr. Evans alleged he formed, and to whom he assigned the lease. The question was generally 10 discussed, whereupon, on motion duly made, seconded and carried by unanimous vote, the following resolution was adopted, namely, that this board do not give or grant their consent to the said assignment of said lease at this time, because Mr. Evans has not made any provisions about entering into a bond as set forth in the lease, and because the board has no facts before it with reference to the standing and rating of said corporation, and because the board feels that the following information should be before 20 it before it should be requested to act, namely, when was the J. R. Evans Co., a corporation, formed, was this corporation formed by Mr. Evans and what interest had he in the same, when was the lease assigned to the corporation, has Mr. Evans already transferred the assets, good will and business to the said corporation which he was conducting at 231 Main street, Orange, New Jersey, is the said corporation now in pos- 30 session of said store, if so, since when, a financial statement of said corporation. Further resolved that Mr. A. N. Venino take immediate steps to procure before the board the above information and report back to the board. On motion duly made and carried the board adjourned. Signed Walter F. Edwards, secretary acting.

Cross examination by Mr. Harrison.

Q Who prepared those minutes, Mr. Ed- 40 wards? A I did.

assigning that lease to anybody else except the corporation which he formed. It could have been assigned to an individual. It could have been assigned to any other corporation. What would be the reason for saying that the Court ought to read into that paragraph a prohibition that the lease could not be assigned to such a corporation as Evans might form? The question, then, may be asked why then put it in there at all, why was it put in there if it was not put in there for the purpose of forbidding the assignment to a corporation which Evans might form without the consent of the lessor, after being satisfied that the standing and rating of the corporation and unless Evans should enter into a bond? It seems to me that the reason for that is quite evident. The consent of the lessor to such an assignment would be, as has been suggested, to change the obligation of Evans from the principal debtor under the lease to that of surety.

When we can discover in such a provision in the lease a reason for it, the Court ought not read into the lease a covenant or condition which is not expressly stated in the lease, and certainly one which is against public policy. That being the view of the Court, the non-suit must follow and an exception to that ruling of the Court as ground of appeal will be noted.

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Exhibit P. 1.

This Indenture, made the 14th day of March in the year of our Lord One Thousand Nine Hundred and Sixteen, (1916),

Between, the Corporate Board of Union Lodge Number Eleven of Free and Accepted Masons, of Orange, New Jersey, a Corporation of New Jersey, whose principal office is in the City of Orange, in the County of Essex and State of New Jersey, hereinafter called, "Landlord", of the First Part, and, John R. Evans, carrying on business under the firm name of J. R. Evans & Co., of the City of Stamford, in the County of Fairfield, and State of Connecticut, hereinafter called, "Tenant", of the Second Part.

Witnesseth: That the Landlord has let and by these presents does grant, demise, and to farm let, unto the Tenant, and the Tenant hereby hires from the Landlord, all that certain messuage or tenement, situate in the City of Orange, in the County of Essex and State of New Jersey, to wit:—

No. 301 Main Street, Orange, New Jersey, being a part of the First floor of Masonic Building formerly occupied by the Orange Post Office, together with a one-story addition in the rear of about 50 x 37-1/2 feet, to be constructed with basement, and the use of a drive-way in common with the abutting owners from the rear of the building to Centre Street, with the appurtenances for the term of Ten (10) years, from the First day of May, One Thousand Nine Hundred and Sixteen (1916) at noon, until the First day of May, One Thousand Nine Hundred and Twenty-six (1926) at noon, at the yearly rent of Four Thousand (4,000) Dollars, to be paid in

equal monthly payments of Three Hundred and Thirty-three and 34/100 Dollars each, in advance, on the First day of each and every calendar month, during the term hereof, it being understood that rent shall not commence until the said party of the second part takes possession, as hereinafter provided, but that One Thousand (1,000) Dollars shall be paid by the Tenant upon the execution and delivery of this lease, to be applied on account of rent for the first year. 10

And it is Hereby Mutually covenanted and agreed by and between the parties hereto that this letting is upon the following conditions:—

Payment: The Tenant will promptly pay to the Landlord, without any previous demand, the said rent as hereinbefore specified, at the office of George Spottiswoode, Treasurer of the Landlord, or his Successor, Orange, New Jersey. 20

Water, Light and Heat: The Tenant will pay all gas and electricity rates and charges that may be assessed during said term, within ten days after same shall become due and payable. The Landlord will pay all water charges as they fall due from time to time, and as a part of the consideration hereof will heat the demised premises with steam during the cold weather so that the temperature thereof shall be sufficient to keep the inmates comfortable. 30

Use. The Tenant will take proper care of and use and occupy the demised premises, and every part thereof, only as and for the purposes of Store and General Merchandise and for no other purpose whatsoever. The Tenant will not, without the written consent of the Landlord being first had and obtained, let or under- 40

Exhibit P. 1.

let the premises, or any part thereof; make any alterations in the building or premises; deface the walls or woodwork therein; injure or remove any tree or shrub; sell, or permit to be sold on the premises any kind of malt, vinous or spirituous liquors; and will comply with all the rules
10 and regulations of the Board of Health, and ordinances of the municipality applicable to said premises; and will yield and deliver up the quiet and peaceable possession of the same at the expiration of the said term, or at any earlier determination of this lease, in as good condition and repair as the same are in when entered upon or taken possession of; damage by ordinary wear and tear and by the elements only excepted.

The proper care of the premises and fixtures hereby demised, shall include keeping of the
20 grass on the sidewalks trimmed; the removal of ice, snow, grass and weeds from the gutters and sidewalks; the compliance in all respects with the municipal ordinances, and saving the Landlord harmless from all penalties for violation thereof. In the event that the Landlord shall pay for any of the above expenses (agreed to be done or performed by the Tenant), the amounts so paid by the Landlord shall be added
30 to and collectible as rent, under this agreement.

Privilege. The Tenant will permit the Landlord or its Agent to enter said premises to examine them, so as to make such repairs and alterations therein as the Landlord shall deem necessary for the preservation thereof; and to exhibit said premises at any time during the last three months of said term (Sundays excepted) to persons, until rented or sold, between the hours of 10 A. M. and 5 P. M.; and to put
40 notices "To Let" or "For Sale" on any part

thereof, to remain thereon without hindrance or molestation.

DEFAULTS. In case of default in any of the covenants, or in case the said premises shall become vacant the Landlord may resume possession of the premises, either by force or otherwise, without being liable to any prosecution therefor, and re-let the same during the remainder of the term, at the best rent that can be obtained, for account of the Tenant, who will make good any deficiency. 10

FIRE. In case of fire immediate notice shall be given by the tenant to the Landlord, who shall thereupon cause the damage to be repaired as speedily as practicable; Should the premises be so damaged as to be untenantable or the building be practically destroyed by fire, the rent shall be apportioned and paid up to the time of the fire, the Landlord will return the pro rata proportion of any rent paid in advance for the part of the term not included at the time of the fire and will with all convenient speed, restore the Building or part of the premises hereby demised so that the business can be continued as before the fire, and the rent is to be suspended and to commence the same as soon as the restoration has been completed. 20 30

LIABILITY. The Landlord shall not be liable to the Tenant for any loss or damage of any kind happening on or about said premises to the person or property of the Tenant or of any other person from any cause whatever, except the wilful acts of the Landlord.

SECURITY. The Tenant doth hereby pledge and mortgage any and all of his personal property, of any kind whatsoever, which is or shall 40

be in or upon the demised premises, at any time during the said term, and whether exempt by law from distress for rent or sale under execution or not, (which exemption is hereby expressly waived) to and for the faithful and punctual payment of said rent as above reserved; hereby authorizing the said Landlord; its Successors or assigns, in case of any failure in the payment of said rent as aforesaid, to take, seize upon, distrain and sell the said personal property, or any part thereof, rendering the surplus if any, unto the said Tenant.

Quiet Possession. The Tenant upon paying the rent as above agreed, and performing all the other conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid.

Repairs and Improvements: Repairs, Additions and Improvements are to be made in accordance with memorandum agreement made between the representatives of the parties hereto bearing date March 1, 1916, (a copy of which is hereto attached) and made a part hereof, and possession is to be taken and rent commences in thirty (30) days from completion of the same.

Renewal: It is agreed by and between the parties hereto that the Tenant may have and hold the within mentioned premises for the term of ten years from and after the expiration of the term hereinbefore mentioned, subject in all respects to the covenants and stipulations herein contained, (except the renewal clause) and the said lease is continued in force for the said further term of ten years, provided, however, that at least six months before the expira-

Exhibit P. 1.

tion of the lease as hereinbefore provided, the said Tenant shall give to the said Landlord or its legal representatives, notice in writing of their intention to take advantage of this renewal provision, provided that the renewal shall not apply to the drive-way, unless the Landlord shall be able to renew a lease for the same, at the same rental as now paid. 10

Assignment of Lease. In case a Corporation is formed by the said Tenant, the Landlord or its successors will consent to the assignment of this lease to the said Corporation, provided however, it is satisfied with the standing and rating of the said corporation and John R. Evans shall enter into a bond with the Landlord guaranteeing the fulfillment of all the provisions of this lease. 20

The conditions and covenants in this agreement are binding on the parties hereto, and their legal representatives.

In Witness Whereof the said party of the first part has caused these presents to be signed by Henry Berg, their President, and their corporate seal duly attested attached, and the said party of the second part has hereto affixed his name and seal on the day and year first above written; this lease being made and executed in duplicate by the parties hereto. 30

HENRY BERG, Pres.
Landlord.

J. R. EVANS & CO.,
Tenant.
J. R. Evans.
(SEAL)

Witness:—
Newell N. Smith
Horace Stetson 40

Exhibit P. 1.

State of New Jersey, }
County of Essex. } *ss:*—

Be It Remembered, That on this 14th day of March in the year of our Lord One Thousand Nine Hundred and Sixteen, before me, the subscriber, a Master in Chancery of New Jersey,
10 personally appeared, Newell N. Smith who, being by me duly sworn doth depose and make proof to my satisfaction, that he well knows the corporate seal of The Corporate Board of Union Lodge No. 11, F. & A. M., the lessor mentioned in the within Indenture; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said instrument signed and delivered by Henry Berg, who was at the date and exe-
20 cution thereof, the President of said Board, in the presence of the said deponent, as the voluntary act and deed of the said Board, and that the said deponent thereupon signed the same as subscribing witness.

NEWELL N. SMITH.

Sworn and subscribed before me
on the day and year aforesaid.

30 Horace Stetson,
Master in Chancery of N. J.

40

Exhibit P. 1.

State of New Jersey, }
County of Essex. } *ss:*—

Be It Remembered, That on this 14th day of March in the year of our Lord One Thousand Nine Hundred and Sixteen, before me personally appeared, John R. Evans, who, I am satisfied is the Tenant in the within Indenture of Lease named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed: 10

HORACE STETSON,
Master in Chancery of N. J.

20

(Letterhead)

J. R. EVANS & CO.
5, 10 & 25 Cent Stores

Stamford, Conn., Store Mar. 1st. 1916.

Corporate Board of Union Lodge
F. & A. M. of Orange, N. J.

Gentlemen:

The writer agrees to take rental of your property, 301 Main Street (Old Post Office Building) with the changes and improvements which we understand from Mr. Berg and Mr. Vogel with the alterations necessary agreed to by us, and with the alterations suggested by these gentlemen. 30

We agree to take possession 30 days from completion at a rental of $4000 a year for a period of 10 years with the privilege of another 10 years at the same rental. Heat and water 40

to be included in the above rental with the improvements.

The following are the requirements to equip a store suitable for us.

Steel ceiling painted pure white enameled.

Electric Light chandeliers with drop pendant ½x½ oxidized.

10 Gas Lamps 3 or 4.

Electric fan outlets.

Elevated office 10 wide x 15 ft. long w/electric lights. 7 feet clear from floor hung on rods well anchored.

Water connections under candy counter for zink.

Water connections at cone refrigerator.

One dumb waiter 3 feet long by 18 in. wide.

Stair case to office and to basement.

Bars on back rear windows.

20 Tile entrance with our name "EVANS."

Transom over doors Size ? —

6 foot mirrors in windows 2½ to 3 feet wide with doors in each window to enter soffet top over windows.

Prison front on transoms with rope.

Awning hood across front.

Front painted red. See instructions.

All interior woodwork to be finished mahogany to match our fixtures.

30 Moulding 18 inches under copeing all around store.

Side walls painted maroon 7 feet from floor.

Double action doors w/scheuten. with kick and push plates. Oxidized.

Heating radiators where wanted.

Window glass to be insured by owners.

Heat and water included in rent.

Electric light fixtures in windows, and time switch—Hartford.

40 Front stairs if possible.

Exhibit P. 2.

BASEMENT.

2 Toilets one Ladies—one Mens.
1 sink—white lined.
Cement floor.
Slide and steps to rear for freight.
Electric light drops where necessary.
Ladies cloak room 10x15 w/wood floor with one door, about 8 foot high. 10
Candy room 10x12, 8 feet high.
Fixture room 6x8, 8 feet high.
White wash walls and ceiling.

Attached find cheque for One Hundred dollars. ($100)

Signed J. R. EVANS & CO.
(J. R. Evans)

Witnessed L. BAILEY. 20

HENRY BERG,
Pres.

Exhibit P. 2.

This is the defendant's copy of the lease, Exhibit P. 1 with the following addition annexed which addition is not attached to the plaintiff's copy, Exhibit P. 1. 30

J. R. Evans & Co., the within named Tenant, having formed a corporation under the name of J. R. Evans Co., the within lease is hereby sold, assigned, transferred and set over unto J. R. Evans Co., the said corporation so formed, and its successors.

Dated at Stamford, Conn.
March 20, 1924.

J. R. EVANS & CO.
J. R. EVANS. 40

Exhibit P. 3.

The above assignment to J. R. Evans Co., is hereby consented to.

Dated at Orange, N. J.
March , 1924.

The Corporate Board of Union Lodge, #11, F. & A. M., Orange,
10 N. J.

By /......................Pres.

Attest:

..............Secry.

Corporate
Seal.

20

Exhibit P. 3.

(Letterhead)

J. R. EVANS CO.

General Offices — Stamford, Conn.

March 21, 1924.

Mr. Henry Berg,
Corporate Board of Union Lodge #11, F & A M
30 Orange, N. J.

My dear Mr. Berg:

I wish to thank you for your courtesy in calling a Special Meeting of the Corporate Board for this Monday night to formally consent to the assignment of the lease of our store by me to the corporation. As Mr. Hoyt mentioned to you, auditors are always unearthing one thing or another, and not finding much else to do centered
40 their efforts on a few leases.

Exhibit P. 4.

Again thanking you for the action you have taken, and wishing you the best of health, I am,

Yours very truly,

J. R. EVANS

P. S.

Please have the Secretary attach the Corporate Seal. 10

Exhibit P. 4.

SUPREME COURT OF NEW JERSEY.

ESSEX CIRCUIT.

THE CORPORATE BOARD OF UNION LODGE, Number Eleven, of Free and Accepted Masons, of Orange, New Jersey. *Plaintiff,* *vs.* J. R. EVANS CO., a Corporation and JOHN R. EVANS, formerly trading under the name of J. R. EVANS & Co. *Defendants.*	*Stipulation.*

20

30

It is stipulated by and between the undersigned that at the trial of the above entitled action, the Affidavit made by John R. Evans dated March 28, 1924, and sworn to before May Turner, a Notary Public, and the Affidavit of J. Lindsay Hoyt, dated March 25, 1924, and sworn to before Frederick J. Fischer, a Notary Public,

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may be introduced in evidence without calling the Notaries who took the Affidavits.

INSLEY, VREELAND & DECKER,
Attorneys for the Defendants.

AQUILA N. VENINO,
Attorney for the Plaintiff.

10

Exhibit P. 5.

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

J. Lindsay Hoyt being duly sworn according to law deposes and says that he resides in the City of New Rochelle County of Westchester, State of New York.

20

That I am an Attorney licensed to practice in New York State and also the State of Connecticut. I represent Mr. J. R. Evans the tenant mentioned in a lease dated March 14, 1916 covering #301 Main Street, Orange, New Jersey, wherein the Corporate Board of Union Lodge #11 F. & A. M. appears as landlord. I know of my own personal knowledge that a Corporation was formed on March 13, 1922 under the laws of the State of Delaware, known as J. R. Evans Co.

30

That after the Corporation was formed Mr. J. R. Evans transferred to the Corporation all of the assets and good will of approximately six stores, including the assets and good will of the business which J. R. Evans was conducting at #301 Main Street, Orange, New Jersey.

After the assets above mentioned were so transferred the said Company took possession of the same and have been in possession ever

40

since. I know these facts of my own knowledge as I represented Mr. J. R. Evans and the J. R. Evans Co., the Corporation above mentioned in connection with the formation of the Corporation and the transferring of the assets above mentioned. I also am Vice-President of the J. R. Evans Co., the Corporation above mentioned. The assets and good will above mentioned were transferred to the Company and they took possession thereunder on or about March 17th, 1922.

10

J. LINDSAY HOYT

Sworn to before me, this 25th
day of March, 1924.

FREDERICK J. FISCHER,
Notary Public of N. J.

20

Exhibit P. 6.

STATE OF CONNECTICUT, }
COUNTY OF FAIRFIELD. } *ss:—Stamford*

John R. Evans being duly sworn according to law deposes and says that I reside in the City of New Rochelle, County of Westchester, State of New York.

30

I am the tenant mentioned in a lease dated March 14, 1916, covering #301 Main Street, Orange, New Jersey, wherein the Corporate Board of Union Lodge #11 of Free and Accepted Masons of Orange, New Jersey, appears as Landlord. On March 13, 1922, I caused to be incorporated a Corporation under the laws of the State of Delaware known as J. R. Evans Co.

That after this Corporation was formed and on or about March 17, 1922, I transferred to the

40

Exhibit P. 6.

Corporation all of the assets and good will of approximately six stores including the assets and good will of the business which I was conducting under the name of J. R. Evans & Co., at #301 Main Street, Orange, New Jersey.

That after I so transferred the goods and good will the said Corporation took possession of the
10 assets and good will and store located at #301 Main Street, Orange, New Jersey, and have ever since been in possession of said assets and store and have ever since been conducting the said business.

The Corporation known as J. R. Evans Co., was formed by me, I at the present time controlling over Seventeen hundred shares of common stock out of a possible Two thousand shares. Mr. J. Lindsay Hoyt, my son-in-law, is the Vice-
20 President of this Corporation, I being the President of said Corporation.

That hereto attached and made a part of this Affidavit is a financial statement showing the assets and liabilities approximately of the J. R. Evans Co., the Corporation.

J. R. EVANS.

Sworn to before me, this 28th
30 day of March, 1924.

MAY TURNER,
Notary Public.

(SEAL)

40

Exhibit P. 6.

J. R. EVANS CO.

BALANCE SHEET

January 1, to March 31, 1924.

J. R. EVANS CO.
BALANCE SHEET
MARCH 31, 1924.

10

ASSETS

CURRENT ASSETS		
Cash on Hand and in Banks	$ 20,274.25	
Merchandise Inventory, March 31, 1924 (Estimated)	133,570.03	
Supply Inventory	2,038.75	
TOTAL CURRENT ASSETS		$155,883.03
FIXED ASSETS		
Furniture & Fixtures	62,156.00	
Sinking Fund	46.11	
TOTAL FIXED ASSETS		62,202.11
DEFERRED ASSETS		
Alterations—Middletown	8,200.42	
Interest paid in advance	558.93	
Insurance unexpired	1,726.59	
Discount on Stock	5,793.89	
TOTAL DEFERRED ASSETS		16,279.83
LEASEHOLDS & GOOD WILL		130,205.54
		$364,570.51

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Exhibit P. 7.

J. R. EVANS CO.
BALANCE SHEET
MARCH 31, 1924.

LIABILITIES

CURRENT LIABILITIES		
Bills Payable—Banks	$ 45,000.00	
Accounts Payable—Merchandise	24,746.92	
10 TOTAL CURRENT LIABILITIES		69,746.92
RESERVE		
For Depreciation—Furniture & Fixtures		12,055.61
CAPITAL		
Preferred Stock	48,020.00	
Common Stock	200,000.00	
TOTAL CAPITAL		248,020.00
SURPLUS		
Surplus, Jan. 31, 1924...............	39,355.49	
Interest on Deposits................	8.46	
TOTAL SURPLUS	39,363.95	
20	4,615.97	
Net Profit for period Jan. 1 to Mar. 31, 1924		34,747.98
		$364,570.51

J. R. EVANS CO.,
J. L. HOYT, Treas.

Exhibit P. 7.

30 J. R. EVANS CO.

STATEMENT AND DESIGNATION.

The company above named, a corporation organized under the laws of the State of Delaware, does hereby, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations" (Revision of 1896) and the acts amendatory thereof and supplemental thereto, make the fol-
40 lowing statement and designation:

Exhibit P. 7.

FIRST: The total amount of the Capital Stock of said company authorized is $350,000.00, and the amount actually issued is $200,000.00.

SECOND: The character of the business which said company is to transact in the State of New Jersey is to acquire, establish and operate retail stores, shops, etc., singly, collectively or as a chain for the sale of goods, wares and merchandise; also to manufacture the same, and as provided in its certificate of incorporation, a copy of which, attested by its President and Secretary under its corporate seal, is hereto affixed as part hereof.

THIRD: The principal office in New Jersey is at 231 Main Street, Orange, and C. E. HARTER, is hereby designated as the agent upon whom process against this corporation may be served.

IN TESTIMONY WHEREOF, the said corporation has caused its corporate seal to be hereto affixed, and these presents to be signed by its President and attested by its Secretary the 24 day of March, A. D. 1922.

J. R. EVANS CO.,

By J. R. Evans,
President.

(Corporate Seal)

Attest:

ALFRED N. PHILLIPS, JR.,
Secretary.

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20

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Exhibit P. 7.

ANNUAL REPORT.

J. R. EVANS Co., organized under the laws of the State of Delaware, does hereby make the following report in compliance with the provisions of an act of the Legislature of New Jersey entitled "An Act concerning corporations"
10 (Revision of 1896), and the various acts amendatory thereof and supplemental thereto.

FIRST: The name of the corporation is J. R. EVANS Co.

SECOND: The location of the registered office 231 Main Street, Orange, New Jersey, and C. E. HARTER is the agent upon whom process against the corporation may be served.

THIRD: The character of the business is *the*
20 acquire, establish and operate retail stores, shops, etc., singly, collectively or as a chain for the sale of goods, wares and merchandise; also for the manufacture of same; and as otherwise specified in the certificate of incorporation.

FOURTH: The amount of the authorized capital stock is $350,000.00. The amount actually issued and outstanding is $200,000.00.

FIFTH: The names of all the directors and
30 officers and the time when the term of office of each expires are as follows:

Names of Directors and Officers.	Expiration of term.
Director, J. R. Evans,	March 15, 1925.
" J. L. Hoyt,	" " "
" A. N. Phillips, Jr.,	" " "
President, J. R. Evans,	" " "
Vice-President, J. L. Hoyt,	" " "
Secretary, A. N. Phillips, Jr.,	" " "
40 Treasurer, J. L. Hoyt,	" " "

Exhibit P. 7.

The Post Office address of each of the foregoing directors and officers is 272-274 Atlantic St., Stamford, Conn.

Sixth: The next annual meeting of the stockholders for the election of directors is appointed to be held on March 15th, 1923.

10

In Witness Whereof, this report is signed in behalf of the corporation by the President and Secretary of the said corporation, this 24th day of March, 1922.

J. R. Evans, President.
Alfred N. Phillips, Jr., Secretary.

The undersigned, President and Secretary, respectively, of J. R. Evans Co., do hereby certify, that the annexed is a true and correct copy of the certificate of incorporation and the amendment thereto, of the aforesaid company and the whole thereof.

20

In Attestation Whereof, we have affixed our hands and the corporate seal of the Company, this 24th day of March, 1922.

J. R. Evans,
President.

Alfred N. Phillips, Jr.,
Secretary.

30

(Corporate Seal)

40

Exhibit P. 7.

CERTIFICATE OF INCORPORATION
of
J. R. EVANS CO.

First: The name of this corporation is J. R. Evans Co.

10 Second: Its principal office in the State of Delaware is located at No. 7 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is the Corporation Trust Company of America, No. 7 West Tenth Street, Wilmington, Delaware.

Third: The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on are:

To organize, establish, develope, maintain, 20 operate and continue the business of operating and conducting retail stores, shops, booths and stands, whether singly, collectively or as a chain throughout the United States of America and its dependencies, as well as in the colonies and territories of the United States and in the District of Columbia, and in any and all foreign countries, throughout the world for the purchase of or otherwise acquiring, the sale, handling, displaying, advertising and generally trafficking in 30 goods, wares, merchandise and other property, tangible and intangible, of every kind, nature and description.

To manufacture or cause to be manufactured, produce, buy and otherwise acquire, sell, deal and traffic in at wholesale and retail and either as principal or agent or otherwise, goods, wares, commodities, merchandise and personal property of every kind, nature and description.

To carry on the business of buying, selling, 40 manufacturing and otherwise producting, using,

preparing, trafficking in, and in every way dealing in, importing and exporting and distributing goods, wares, merchandise and personal property of every kind, nature and description.

To carry on as principal, agent, factor, commission merchant and consignee, or in any of said capacities or in any other capacity, the said business or businesses hereinbefore referred to, and each and every part thereof, and generally to carry on as principal, agent, factor, commission merchant and consignee or in any of said capacities or in any other capacity, any other business which may lawfully be conducted.

10

To manufacture, purchase or otherwise acquire, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with, goods, wares and merchandise and real and personal property of every class and description.

20

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

30

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by

40

any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership.

To issue bonds, debentures or obligations of this corporation from time to time, for any of the objects or purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To purchase, hold, sell, and transfer the shares of its own capital stock: provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital: and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

In general, to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

Exhibit P. 7.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

FOURTH: The total authorized capital stock of this corporation is Two Hundred Thousand Dollars ($200,000.) divided into two thousand (2,000) shares of the par value of One Hundred Dollars ($100.) each. 10

FIFTH: The amount of capital stock with which this corporation will commence business is One Hundred Fifty Thousand Dollars ($150,000.).

SIXTH: The names and places of resident of the original subscribers to the capital stock and the number of shares subscribed for by each are as follows: 20

Name	Residence	No. of Shares
J. R. Evans,	New Rochelle, New York,	1,498
J. L. Hoyt,	Stamford, Connecticut,	1
A. N. Phillips, Jr.,	Stamford Connecticut,	1
		1,500

SEVENTH: This corporation is to have perpetual existence. 30

EIGHTH: The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH: In furtherance, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make and alter the by-laws of this corporation, to fix the amount to be reserved as work- 40

Exhibit P. 7.

ing capital over and above its capital stock paid in, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation:

From time to time to determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of this corporation, (other than the stock ledger), or any of them, shall be open to inspection of stockholders; and no stockholder shall have any right of inspecting any account, book or document of this corporation except as conferred by statute, unless authorized by a resolution of the stockholders or directors.

If the by-laws so provide, to designate two or more of its number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws of this corporation, have and exercise any or all of the powers of the board of directors in the management of the business and affairs of this corporation, and have power to authorize the seal of this corporation to be affixed to all papers which may require it.

Pursuant to the affirmative vote of the holders of at least a majority of the stock issued and outstanding, having voting power, given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of at least a majority of the holders of the voting stock issued and outstanding, the board of directors shall have power and authority at any meeting, to sell, lease or exchange all of the property and assets of this corporation, including its good will and its corporate franchises, upon such terms and conditions as its board of directors

deem expedient and for the best interests of the corporation.

This corporation may in its by-laws confer powers upon its directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon them by the statute. 10

Both stockholders and directors shall have power, if the by-laws so provide, to hold their meetings, and to have one or more offices, within or without the State of Delaware, and to keep the books of this corporation (subject to the provisions of the statutes), outside of the State of Delaware at such places as may be from time to time designated by the board of directors.

Tenth: This corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. 20

We, The Undersigned, being each of the original subscribers to the capital stock hereinbefore named for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of Delaware, and the acts amendatory thereof and supplemental thereto, do make and file this certificate, hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly have hereunto set 30

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Exhibit P. 7.

our hands and seals this 9th day of March, A. D., 1922.

J. R. EVANS. (SEAL)
J. L. HOYT. (SEAL)
A. N. PHILLIPS, JR. (SEAL)

10 In presence of

ALLEN E. MOORE.

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

BE IT REMEMBERED that on this 9th day of March, A. D. 1922, personally came before me ALLEN E. MOORE, a Notary Public for the State of Delaware, J. R. EVANS, J. L. HOYT, and A. N.
20 PHILLIPS, JR., parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

30 ALLEN E. MOORE,
Notary Public, Kings County No. 235.

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Exhibit P. 7.

Certificate of Amendment
of
J. R. EVANS CO.

J. R. Evans Co., a corporation organized and existing under and by virtue of the provisions of an act of the General Assembly of the State of Delaware, entitled "An Act Providing a General Corporation Law," approved March 10, 1899, and the acts amendatory thereof and supplemental thereto, the certificate of incorporation of which was filed in the office of the Secretary of State of Delaware, on March 13, 1922, and recorded in the office of the Recorder of Deeds for New Castle County, State of Delaware, on March 13, 1922.

10

Does Hereby Certify:

20

First: That at a meeting of the board of di rectors of said J. R. Evans Co., duly held and convened, a resolution was duly adopted setting forth an amendment proposed to the certificate of incorporation of said corporation for the purpose of increasing the capital stock of said corporation as follows:

That the certificate of incorporation of said J. R. Evans Co. be amended by striking out all of the paragraph or article thereof numbered "Fourth" and by inserting in lieu thereof the following:

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"Fourth: The total authorized capital stock of this corporation is Three Hundred Fifty Thousand Dollars ($350,000.) divided into three thousand five hundred (3,500) shares of the par value of One Hundred Dollars ($100.) each.

Of such stock, one thousand five hundred (1,-500) shares shall be preferred stock, and the

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Exhibit P. 7.

balance two thousand (2,000) shares shall be common stock.

The holders of the preferred stock shall be entitled to receive out of the surplus or net profits of the business of the corporation in each year dividends at the rate of seven per centum
10 (7%) per annum and no more, payable in quarterly instalments on the first days of January, April, July and October in each year, beginning July 1, 1922. Such dividends on the preferred stock shall be payable before any dividends shall be paid or set apart on the common stock and shall be cumulative from and after July 1, 1922, so that if dividends for any past dividend period at the rate of seven per centum (7%) per annum shall not have been paid thereon or set apart
20 therefor, the deficiency shall be fully paid or set apart but without interest, before any dividend shall be paid or set apart for the common stock. Whenever dividends at the rate of seven per centum (7%) per annum upon the preferred stock for all past dividend periods shall have been declared and the same shall have been paid by the corporation or the funds for the payment thereof shall have been set aside, the board of directors may declare dividends on the common stock,
30 payable at such time as the board may fix out of any remaining surplus or net profits.

In the event of any liquidation, dissolution or winding up of the corporation, or upon any distribution of its capital, other than the redemption of its preferred stock, the holders of the preferred stock shall be entitled to be paid at the rate of $110. per share, and all unpaid dividends accumulated thereon, before any amount shall be paid or any assets distributed to the
40 holders of the common shares, and after the payment to the holders of the preferred stock of the

amount payable to them as hereinbefore provided, the remaining assets and funds of the corporation shall be divided and paid to the holders of the common stock according to their respective shares.

The preferred stock shall be subject to redemption in whole, or in part, at the option of the board of directors at any dividend date at $110. per share, plus all unpaid accrued or accumulated dividends thereon. The corporation shall give notice of such election to redeem by registered letter directed to the holders of preferred stock, at their respective addresses then appearing on the books of the corporation, mailed at least thirty days prior to the date fixed for redemption, and on such redemption date all rights with respect to such stock, except the right to receive the redemption price thereof shall cease and determine. No dividends shall accrue on such preferred stock after the date named in the notice of redemption.

The holders of the preferred stock shall have no voting power except as may be otherwise provided by law, nor shall they participate in the management and control of the corporation, all voting rights except as aforesaid being vested exclusively in the holders of the common stock, nor shall they be entitled to notice of meetings of stockholders.''

and declaring said amendment advisable and calling a meeting of the stockholders of said corporation for consideration thereof.

SECOND: That thereafter, pursuant to the aforesaid resolution of its board of directors, a special meeting of the stockholders of said J. R. EVANS Co. was duly called and held, in accordance with law and the by-laws of said corpora-

Exhibit P. 7.

tion, at the office of the Company in the City of Stamford, Connecticut on the 17th day of March, 1922, at 11:00 o'clock in the forenoon, at which all of the stockholders of said corporation were present in person or by proxy; that at said meeting a vote of the stockholders by ballot, in
10 person or by proxy, was taken for and against said proposed amendment, which vote was conducted by Messers. B. Goggin and A. Dean, two Judges appointed for that purpose by said meeting; and that at said meeting, by vote conducted as aforesaid, said amendment was adopted, the persons or bodies corporate holding the majority of the stock of said corporation voting for said proposed amendment, to-wit: 2,000 shares of stock were voted for said proposed amendment and no shares of stock were
20 voted against the same, the said 2,000 shares of stock being all the stock issued and outstanding, all as appears by the duplicate certificate made by said Judges, one of which is hereto attached, marked "A," and made a part hereof.

In Witness Whereof, said J. R. Evans Co. has caused its corporate seal to be hereunto affixed and this certificate to be signed by J. R. Evans, its president, and A. N. Phillips, Jr. its
30 secretary, this 17th day of March, 1922.

J. R. EVANS CO.

By J. R. Evans, President.
By A. N. Phillips, Jr., Secretary.

J. R. Evans Co.

Corporate Seal
1922
Delaware

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Exhibit P. 7.

State of Connecticut, }
County of Fairfield. } *ss.—Stamford.*

Be It Remembered that on this 17th day of March, A. D. 1922, personally came before me J. Lindsay Hoyt, a notary public in and for the County and State aforesaid, J. R. Evans, president of J. R. Evans Co., a corporation of the State of Delaware, the corporation described in and which executed the foregoing certificate, known to me personally to be such, and he, the said J. R. Evans, as such president, duly executed said certificate before me and acknowledged the said certificate to be his act and deed and the act and deed of said corporation; that the signatures of the said president and of the secretary of said corporation to said foregoing certificate are in the handwriting of the said president and secretary of said Company, respectively, and that the seal affixed to said certificate is the common or corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering the said certificate was duly authorized by the board of directors and stockholders of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office the day and year aforesaid.

J. LINDSAY HOYT,
Notary Public.

J. Lindsay Hoyt,
Notary Public,
Stamford, Connecticut.

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Exhibit P. 7.

"A"

JUDGES' CERTIFICATE.

To A. N. Phillips, Jr.
Secretary of J. R. Evans Co.

We, The Undersigned, B. Goggin and A. Dean,
10 Do Hereby Certify that at a special meeting of the stockholders of said J. R. Evans Co., held on the 17th day of March, A. D. 1922, at 11:00 o'clock in the forenoon, to consider the resolution duly adopted by the board of directors of said Company at a meeting of said board duly held and convened, proposing and declaring advisable an amendment to the certificate of incorporation of said Company for the purpose of increasing the capital stock, as hereinafter set
20 forth, we were appointed by said meeting of stockholders Judges for the purpose of conducting the vote of the stockholders taken at said meeting for and against the said amendment; that said proposed amendment was as follows:

"Resolved that the proposal of the board of directors that the certificate of incorporation of said J. R. Evans Co. be amended by striking out all of the paragraph or article thereof numbered 'Fourth,' and by inserting in lieu thereof,

30 "Fourth: The total authorized capital stock of this corporation is Three Hundred Fifty Thousand Dollars ($350,000) divided into three thousand five hundred (3,500) shares of the par value of One Hundred Dollars ($100.) each.

Of such stock, one thousand five hundred (1,500) shares shall be preferred stock and the balance two thousand (2,000) shares, shall be common stock.

The holders of the preferred stock shall be
40 entitled to receive out of the surplus or net prof-

Exhibit P. 7.

its of the business of the corporation in such year dividends at the rate of seven per centum (7%) per annum and no more, payable in quarterly instalments on the first days of January, April, July and October in each year, beginning July 1, 1922. Such dividends on the preferred stock shall be payable before any dividends shall be paid or set apart on the common stock and shall be cumulative from and after July 1, 1922, so that if dividends for any past dividend period at the rate of seven per centum (7%) per annum shall not have been paid thereon or set apart therefor, the deficiency shall be fully paid or set apart but without interest, before any dividend shall be paid or set apart, for the common stock. Whenever dividends at the rate of seven per centum (7%) per annum upon the preferred stock for all past dividend periods shall have been declared and the same shall have been paid by the corporation or the funds for the payment thereof shall have been set aside, the board of directors may declare dividends on the common stock, payable at such time as the board may fix out of any remaining surplus or net profits.

In the event of any liquidation, dissolution or winding up of the corporation, or upon any distribution of its capital, other than the redemption of its preferred stock, the holders of the preferred stock shall be entitled to be paid at the rate of $110. per share and all unpaid dividends accumulated thereon, before any amount shall be paid or any assets distributed to the holders of the common shares, and after the payment to the holders of the preferred stock of the amount payable to them as hereinbefore provided, the remaining assets and funds of the corporation shall be divided and paid to the hold-

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ers of the common stock according to their respective shares.

The preferred stock shall be subject to redemption in whole, or in part, at the option of the board of directors at any dividend date at $110; per share, plus all unpaid accrued or accumulated
10 dividends thereon. The corporation shall give notice of such election to redeem by registered letter directed to the holders of preferred stock, at their respective addresses then appearing on the books of the corporation, mailed at least thirty days prior to the date fixed for redemption, and on such redemption date all rights with respect to such stock, except the right to receive the redemption price thereof shall cease and determine. No dividends shall accrue on such preferred stock after the date named in the no-
20 tice of redemption.

The holders of the preferred stock shall have no voting power except as may be otherwise provided by law, nor shall they participate in the management and control of the corporation, all voting rights except as aforesaid being vested exclusively in the holders of the common stock, nor shall they be entitled to notice of meetings of stockholders.''
30 be and the same is hereby adopted and approved, and that said certificate of incorporation be and it hereby is amended accordingly.''

That at said stockholders' meeting the vote of said stockholders by ballot in person or by proxy, was duly taken for and against said proposed amendment; that said vote was conducted by the subscribers as Judges appointed as aforesaid for that purpose; that as said Judges we decided upon the qualifications of the stockholders voting at said meeting for and against the said pro-
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Exhibit P. 7.

posed amendment, and when said vote was completed we did count and ascertain the number of shares voted respectively for or against the proposed amendment and did find and declare that the persons or bodies corporate holding the majority of each class of stock of said corporation had voted for said proposed amendment, to wit: 2,000 shares of stock were voted for said proposed amendment and no shares of stock were voted against the same, the said 2,000 shares of stock being all of the stock issued and outstanding.

10

IN WITNESS WHEREOF, we have made out the foregoing certificate in duplicate and subscribed our names hereto this 17th day of March, 1922.

B. GOGGIN,
A. DEAN,
Judges.

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Endorsed:

"FILED AND RECORDED Mar 25 1922

THOMAS F. MARTIN,
Secretary of State."

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Exhibit P. 7.

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, Do HEREBY CERTIFY that the foregoing is a true copy of Statement, Charter &c., of the J. R. EVANS Co., a corporation organized under the laws of the State of Delaware, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-fifth day of March A. D. 1922, and now remaining on file and of record therein.

10

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Fourth day of December A. D. 1924.

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THOMAS F. MARTIN,
Secretary of State.

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Exhibit P. 8.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

THE CORPORATE BOARD OF UNION LODGE, NUMBER ELEVEN, OF FREE AND ACCEPTED MASONS, of Orange, New Jersey, *Plaintiff,* *vs.* J. R. EVANS CO., a corporation, and JOHN R. EVANS, formerly trading under the name of J. R. EVANS & Co., *Defendants.*	*Stipulation.*

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20

Whereas the above entitled action is an action in ejectment wherein mesne-profit is claimed and whereas it is desirous by both the above mentioned plaintiff and defendants to eliminate the question of mesne-profit in the above entitled action and are desirous of stipulating a certain amount to be paid to the plaintiff in lieu of the claim of mesne-profit which amount so stipulated is to commence from April 1, 1924, and to continue down to the rendering of a verdict by a Jury in the above entitled action, and no longer; it is stipulated as follows:

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1. That the sum of Three hundred thirty-three Dollars and thirty four cents, ($333.34) Dollars is stipulated to be paid to the above mentioned plaintiff by the defendants every month commencing with April 1, 1924, and to be paid in advance on the first of each and every

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month in lieu of mesne-profit claimed in the above entitled action.

2. The payment of the above mentioned amount in lieu of mesne-profit, shall not be regarded as being paid under the lease existing between the plaintiff and the defendant, John R. Evans, dated March 14, 1916, nor shall the same be regarded as payment of rent under said lease, nor is the same to be regarded as creating any new lease or leasehold between the parties. The said money so paid merely being in lieu of claim of mesne-profit in the above entitled action.

Further agreed between the parties that the acceptance of the above mentioned moneys in lieu of mesne-profit, shall not be regarded as a waiver of any of the plaintiff's rights, nor shall it in any way, shape or manner, prejudice any of the plaintiff's rights in connection with the above entitled action, nor shall the acceptance of such moneys be regarded as a ratification by the plaintiff of any act or acts of any kind of nature of the defendants.

This stipulation and the defendant's rights to pay the above mentioned sums of money shall cease upon the rendering of a verdict by a Jury in the above entitled action. In other words, this stipulation shall only remain in effect up to the rendering of a verdict.

Further stipulated that the question of mesne-profit is only eliminated from the above entitled action provided the payments above mentioned are promptly made, and then only up to the time of rendering a verdict as aforesaid.

AQUILA N. VENINO,
Attorney for the Plaintiff.

INSLEY, VREELAND & DECKER,
Attorneys for the Defendants.

Exhibit P. 9.

April 4th, 1924

A Special meeting of the Corporate Board of Union Lodge, No. 11 F. and A. M. was held in Masonic Temple, 235 Main St., Orange, N. J. April 4th, 1924. 10

Present.

Officers and Directors
Henry Berg, Pres A. N. Venino Vice Pres, W. F. Edwards Treas, N. N. Smith Sect'y F. M. Struck, A. M. Hird, G. J. Oltmanns, and Walter W. C. Taylor

Minutes

The minutes of the last meeting of March 24th, were read and approved. 20

Mr. A. N. Venino, reported that an investigation on his part developed that the J. R. Evans Co, A. Corporation was formed on March 13th, 1922 under the laws of the State of Delaware, and that subsequently and on or about March 17th, 1922

Mr. Evans, transferred all of the Assets and good will of the business which he was conducting at 231 Main Street, Orange, N. J. to said 30 corporation, and that said Corporation took possession and has been in possession ever since March, 17th, 1922

The question of w*ea*ther this board should consent to the assignment of the lease was generally discussed, Whereupon on motion duly made, secon*ed* and carried by a unanimous vote the following Resolution was adopted. Namely.

Resolved, that this Board do refuse to consent to the assignment of the lease from, J. R. Evans, 40 to the J. R. Evans Co. A. Corporation. affect-

ing 231 Main Street, Orange, N. J. for the following reasons,

(1) Because Mr. J. R. Evans has not entered into a Bond guaranteeing the fulfillment of all the provisions of the said lease as called for by the said lease.

10 (2) Because the Board Is not satisfied with the standing and rating of the said Corporation of J. R. Evans Co.

(3) Because J. R. Evans, let or under let the premises without the written consent of the Board. thus violating the condition of the lease against, Underletting.

(4) Because by transferring the assets to the Corporation, Mr. J. R. Evans, deprived the board of the security which he gave the board 20 under the lease as set forth on page Four, of the lease under paragraph, "Security"

(5) Because, Mr. J. R. Evans, assigned the lease to the said Corporation, without the consent or knowledge of the Board.

Further, Resolved.

That on account of breach of conditions of the lease, as above set forth, that the Board exercise their right of re-entry and declare the lease Null and Void, and that legal action be 30 taken to recover possession of the leased premises.

Further Resolved,

That the matter be placed in the hands of A. N. Venino, for legal action, and that the Check for April rent, just received, be returned.

On motion duly made, secon*ed* and carried the board adj*u*rned.

NEWELL N. SMITH,
Secretary.

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Exhibit P. 10.

THE CORPORATE BOARD OF UNION
LODGE NO. 11, F. & A. M.
Orange, New Jersey

April 8th, 1924

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J. R. Evans Co.,
231 Main Street,
Orange, N. J.

Gentlemen:—

The Corporate Board of Union Lodge number Eleven of Free and accepted Masons of Orange, New Jersey, a Corporation the owner of Premises known as 231 Main Street Orange, New Jersey. formerly known as 301 Main Street, hereby demand of you the immediate possession of the above mentioned premises, and hereby demand that you immediately quit the said premises for the reason that you are wrongfully and unlawfully occupying the same and in violation of the written express covenants and conditions contained in a certain lease between us and John R. Evans, dated March 14th, 1916 Your wrongful possession just having been brought to our knowledge.

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Your failure to so quit and deliver up possession will result in our instituting an ejectment suit against you wherein we will also demand "Mesne Profits"

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Very truly yours,

The Corporate Board of Union Lodge number Eleven of Free and Accepted Masons of Orange, New Jersey.

By NEWELL N. SMITH,
Secretary.

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Exhibit P. 11.

THE CORPORATE BOARD OF UNION
LODGE NO. 11, F. & A. M.
Orange, New Jersey

April 8th, 1924

10 Mr. John R. Evans,
272 Atlantic Street,
Stamford, Conn.

Dear Sir:—

We are herewith returning to you your check for $333.34 dated March 28th, 1924 but which was just received a few days ago which you sent us for the April rent for number 231 Main Street Orange, New Jersey formerly known as 301 Main Street, Orange, New Jersey,
20 which we cannot accept in view of the following facts; namely:—

A few days ago you informed us that you have assigned your lease effecting 231 Main Street Orange, New Jersey, to a corporation which you had formed by the name of J. R. Evans Co, and asked us to call a meeting of the board to take up the question of consenting to the said assignment. this is the first we knew of the exist*a*nce of a corporation and the first
30 we knew of the assignment of the lease.

At a meeting of the Board no consent to the assignment was given in view of the fact that the lease had certain conditions precedent to be complied with by you before such consent could be Procured and because the Board felt that they should be furnished with certain information by you before they should be requested to act. The information wanted was as follows,

(1) When was the J. R. Evans Co (a corpora-
40 tion)

Exhibit P. 11.

(2) Was this corporation formed by you and what interest have you in the same!

(3) When was the lease asigned to the corporation!

(4) Have you already transfered the assets, good will and business to the corporation which you were conducting at 231 Main Street Orange, N. J. 10

(5) Is the corporation now in possession of the said store, if so since when!

(6) A financial statement of sais corporation? The Board instructed Mr. A. N. Venino who is a member of the same to procure this information and report back to the board.

Mr. A. N. Venino reported back to the board that the corporation was formed on March 18th 1922 under the laws of the State of Delaware 20 and that subsequently and on or about March 17th 1922 you transferred all of the assets, and good will of the business which you were conducting at 231 Main Street, Orange, New Jersey to the said corporation and that said corporation took possession and has been in possession ever since March 17th 1922

The Board after receiving this information immediately passed a Resolution refusing to 30 consent to the assignment of the lease for the following reasons?

1. Because you have not entered into a bond guaranteeing the fulfillment of all the provisions of the said lease as called for by the said lease.
2. Because the Board is not satisfied with the standing and rating of the said corporation.
3. Because you let or under let the premises without the written consent of the landlord, 40

Exhibit P. 11.

thus violating the conditions of the lease against under letting.

4. Because by transfering the assets to the corporation, you deprived us of the security which you gave us under the lease as set forth on page four of the lease under paragraph "Security"

5. Because you assigned the lease to the said corporation without our consent or knowledge.

The Board also passed a Resolution that on account of your breach of the conditions of lease as above set forth, that we exercise our right of re-entry and declare the lease Null and Void and that legal action be taken to recover possession of the premises.

You are therefore hereby informed to immediately quit the said premises and give the same up. Immediate possession of the same being demanded.

Your failure to so quit and deliver up possession will result in our instituting an ejectment suit to regain possession of the property in which suit we will also demand "Mesne Profits.

Very truly yours,

The Corporate Board of Union Lodge number 11 of Free and accepted Masons of Orange, New Jersey.

By NEWELL N. SMITH,
Secretary.

Exhibit P. 12.

THE CORPORATE BOARD OF UNION
LODGE NO. 11, F. & A. M.
Orange, New Jersey.

July 12th, 1923.

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J. R. Evans & Company,
Stamford, Conn.

Gentlemen:—

I am writing to inform you that Mr. George Spottiswoods our old and faithful Treasurer of the Corporate Board, for so many years passed away last month, and the Corporate Board has filled that vacancy, by electing one of its other members in the person of Walter F. Edwards, to whom you can make your checks payable to untill otherwise ordered.

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Perhaps in making out your check, it might be well to add to Mr. Edwards name, Treasurer, of the Corporate Board.

With kind regards, I am.

Very truly yours,

NEWELL N. SMITH
Secretary.

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Exhibit P. 13.

(Letterhead)

J. R. EVANS CO.
5, 10, 25, 50c and $1.00 STORES

10 GENERAL OFFICES—STAMFORD, CONN.

Address all correspondence direct to the firm

Stamford, Conn. July 13, 1923.

Mr. Newell N. Smith,
Corporate Board of Union Lodge,
Orange, N. J.

Dear Sir and Brother:

I was somewhat astonished to read your letter of the 12th in reference to George Spottiswoode.
20 It is certainly to be regretted that a man of his career with a capacity to do things must pass away, but as life is mighty short we must all take this same journey sooner or later.

As per your request we will abide by your advice in regard to our future cheques.

Yours very truly,

J. R. EVANS CO.,

30 Per J. R. Evans.

JRE/BG.

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Exhibit P. 14.

March 24th, 1924

A special meeting of the Corporate Board of Union Lodge No. 11 F. and A. M. was held in Masonic Temple, 235 Main Street, Orange, N. J. March 24th, 1924. 10

Present

Officers & Directors

Henry Berg, Pres. A. N. Venino, Vice Pres, W. F. Edwards, Treas, F. M. Struck, G. J. Oltsmanns, Walter W. C. Taylor, H. N. Montgomery, and Allan M. Hird.

Minutes

The minutes of the last meeting of March 10th, were read approved. 20

President Henry Berg stated that this meeting was called at the request of Mr. J. R. Evans, for the purpose of considering whither we would consent to the assignment of the lease from J. R. Evans, to J. R. Evans Co.—A. Corporation which Mr. Evans alleges he formed and to whom he assigned the lease.

The question was generally discussed whereupon on Motion duly made, seconded and carried by a unanimous vote, the following resolution was adopted. namely. 30

Resolved. That this Board do not give or grant their consent to the said assignment of said lease at this time, because Mr. Evans has not made any provisions about entering into a bond as set forth in the lease, and because the Board has no facts before it with reference to the standing and rating of said corporation, and because the board feels that the following infor- 40

Exhibit P. 14.

mation should be before it, before it should be requested to act?

Namely.

(1) When was the J. R. Evans Co., (a corporation) formed.

(2) Was this corporation formed by Mr. Evans, and what interest has he in the same.

10

(3) When was the lease assigned to the Corporation.

(4) Has Mr. Evans already transferred the Assets, Good will and business to the said Corporation, which he was conducting at 231 Main Street, Orange, N. J.

(5) Is the said Corporation now in possession of the said store, If so, Since when.

(6) A financial statement of said Corporation. Further Resolved,

20

That Mr. A. N. Venino take immediate steps to procure for the Board the above information and report back to the Board.

On motion duly made and carried the Board adjourned.

WALTER F. EDWARDS.
Secretary, acting.

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Exhibit D. 5.

April 14th, 1924.

Regular meeting of the Corporate Board of Union Lodge, No. 11, F. and A. M. was held in Masonic Temple 235 Main Street, Orange, N. J. April, 14th, 1924 10

Present

Officers and Directors

Henry Berg, Pres, A. N. Venino, Vice Pres, W. F. Edwards, Treas, N. N. Smith, Sect'y F. M. Struck, G. J. Oltmanns, H. N. Montgomery, and Walter—W. C. Taylor.

Minutes of last meeting April 4th, were read and approved.

Mr. Venino read copy of letter as sent by the 20 Corporate Board to J. R. Evans Co. 231 Main St, Orange, N. J. demanding immediate pocession of the above named premises and to quit the said premises for the reason that they were wrongfully and unlawfully occupying the same in violation of the written express covanants and conditions contained in a certain lease between us and John R. Evans, dated March 14th, 1916 Their wrongful possession just having been brought to our knowledge, and their fail- 30 ure to so quit and deliver up possession will result in our instituting an ejectment suit against you wherein we will also demand Mesne-Profits.

Mr. Venino also read copy of letter as sent by the Corporate Board to Mr. John R. Evans, 272 Atlantic St, Stamford, Conn. Stating that check for $333.34 dated March 28th, 1924 just received a few days ago, sent for April rent for No. 231 Main St, Orange, N. J. formlally known as 301 Main St, Orange, N. J. we could not ac- 40

Exhibit D. 5.

cept in view of the following facts, as contained in said letter, namely—only a few days ago you informed us that you had assigned your lease effecting 231 Main St, Orange, N. J. to a Corporation which you had formed by the name of J. R. Evans Co. on March 13th, 1922 under the
10 laws of the State of Delaware. and subsequently on or about March 17th, 1922 you transferred all of the Assets, and good will of the Business at 231 Main St, Orange, N. J. to the said Corporation, and said Corporation took possession, and has been in possession since March 17th, 1922. All being done without the knowledge or consent of the Corporate Board. and because of all the facts as set forth in letter you are hereby informed to immediately quit said premises, and give the same up. Immediate possession
20 of the same being hereby demanded.

Your failure to so quit and deliver up possession will result in our instituting an ejectment suit to regain possession of the property, in which suit we will also demand "Mesue Profit" Signed by the Corporate Board of Union Lodge.

President, Henry Berg, then stated that Mr. John R. Evans, and some Gentlemen had called on him to day, and were in waiting to hold a
30 conference with the Board. The Gentlemen were ushered in and introduced to the Board by Mr. Berg, their names as follows, Mr. Evans, Mr. Hoyt, Mr. Harter, Mr. Brinkhoff, and Mr. Decker. Mr. Decker acted as spokesman for these Gentlemen. and Mr. Venino acted as spokesman for the Board.

Mr. Decker stated that while Mr. Evans did form a Corporation about two years ago, and transferred all the Assets and good will of his
40 business at 231 Main St, Orange, N. J. to said

corporation, all in violation of the covenants of said lease, it was all done without meaning any harm and offered to put up a Bond as called for in said lease if we would consent to an assignment of the lease, but no bond was tendered or offered?

Mr. Venino told Mr. Decker, that in view of the fact that the Board had already decided at its last meeting to exercise their right of re-entry as called for in the lease for breach of the conditions etc. it was to late to discuss at this time the assignment of the lease.

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Mr. Venino stated that if they wanted to discuss a new lease on new terms and conditions, he would gladly enter into a discussion with reference to it, but Mr. Decker, did not care to discuss that end of it, so the conference ended.

Mr. Taylor reported that he had interviewed Cheif of Police McGonnell, with reference to the Police Officers having been found in our Kitchen, and said that the Cheif would take the matter up with Commissioner Kearney, and that we would hear from him later.

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On motion the Board adjourned.

NEWELL N. SMITH,
Secretary.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE CORPORATE BOARD OF UNION LODGE, NO. 11 OF FREE AND ACCEPTED MASONS OF ORANGE, NEW JERSEY, a Corporation of the State of New Jersey, *Plaintiff-Appellant,* *vs.* J. R. EVANS CO., a Corporation, and JOHN R. EVANS, formerly trading under the name of J. R. EVANS & Co., *Defendants-Respondents.*	*On Appeal from Supreme Court.*

BRIEF OF THE PLAINTIFF-APPELLANT.

Statement.

This case was commenced in the Supreme Court and tried in the Essex County Circuit Court, resulting in the Trial Court directing a judgment of non-suit against the plaintiff, in favor of the defendants, on motion of the defendants, whereupon the plaintiff appeals from the judgment of non-suit so entered.

Abstract of the Case.

On March 14, 1916, the plaintiff, the Corporate Board of Union Lodge, No. 11 F. & A. M. of Orange, New Jersey, a corporation, as landlord, entered into a written lease with John R. Evans doing business under the firm name of J. R. Evans & Co., of the City of Stamford, in the County of Fairfield, and the State of Connecticut, as tenant, whereby the plaintiff let

to the said tenant, premises known as No. 301 Main street, Orange, New Jersey, being a part of the first floor of a Masonic building, formerly occupied by the Orange Post Office, for the term of ten (10) years, from the first day of May, 1916, until the first day of May, 1926, at a yearly rental of Four thousand ($4,000.00) Dollars, to be paid in equal monthly payments of Three hundred thirty-three Dollars and thirty-four cents ($333.34), each in advance on the first day of each and every calendar month. The said lease after setting forth on the first page the premises, the term and rent, contains the following provisions:

"And it is hereby mutually covenanted and agreed by and between the parties hereto that this letting is upon the following conditions:"

"Use. The tenant will not, without the written consent of the landlord being first had and obtained, let or underlet the premises, or any part thereof."

"Assignment of Lease. In case a corporation is formed by the said tenant, the landlord or its successors, will consent to the assignment of this lease to the said corporation, provided, however, it is satisfied with the standing and rating of the said corporation, and John R. Evans, shall enter into a bond with the landlord guaranteeing the fulfilment of all the provisions of this lease."

"Security. The tenant doth hereby pledge and mortgage any and all of his personal property, of any kind whatsoever, which is or shall be in or upon the demised premises at any time during the said term, and whether exempt by law from distress for rent or sale under execution or not (which exemption is hereby ex-

pressly waived), to and for the faithful and punctual payment of said rent as above reserved; hereby authorizing the said landlord, its successors or assigns, in case of any failure in the payment of said rent as aforesaid, to take, seize upon, distrain and sell the said personal property or any part thereof, rendering the surplus, if any, unto the tenant.''

''Defaults. In case of default in any of the covenants, or in case the said premises shall become vacant, the landlord may resume possession of the premises, either by force or otherwise, without being liable to any prosecution therefore, and relet the same during the remainder of the term, at the best rent that can be obtained for account of the tenant, who will make good any deficiency.''

''The conditions and covenants in this agreement are binding on the parties hereto and their legal representatives.''

The lease also contains a provision for a renewal of ten (10) years more, upon certain conditions therein mentioned.

On March 20, 1924, the tenant's son-in-law, who is also his agent and attorney, namely; Mr. J. Lindsay Hoyt, with a Mr. Harter, who is the tenant's manager in the store on the leased premises, called in person to see Mr. Henry Berg, the president of the plaintiff corporation, and informed Mr. Berg that Mr. Evans had formed a corporation known as J. R. Evans Co., and wanted Mr. Berg to consent in writing on behalf of the plaintiff corporation, to the assignment of the lease, from Mr. John R. Evans to this corporation known as J. R. Evans Co. Mr. Hoyt had with him the tenant's copy of the lease, upon which was endorsed the following:

"J. R. Evans & Co., the within named tenant, having formed a corporation under the name of J. R. Evans Co., the within lease is hereby sold, assigned, transferred, and set over unto J. R. Evans Co., the said corporation so formed, and its successors."

Dated at Stamford Conn.,
March 20, 1924.

J. R. EVANS & CO.,

J. R. Evans.

"The above assignment to J. R. Evans Co., is hereby consented to."

Dated at Orange, N. J.,
March , 1924.

The Corporate Board of Union Lodge, No. 11 F. & A. M., Orange, N. J.

By ....Pres.

Attest:

..................Secry.

Corporate
Seal.

Mr. Berg informed Mr. Hoyt that he could not sign the consent endorsed on the lease as he had no authority to do so, and that no one member of the plaintiff Corporate Board had any authority; and that it would have to be acted upon by the whole membership of the plaintiff Board. Mr. Hoyt then requested Mr. Berg to call a special meeting. Subsequently a special meeting of the plaintiff Corporate Board was called for Monday, March 24, 1924. At this meeting the following minutes and resolutions were adopted (Exhibit P. 14, p. 99, State of Case):

A special meeting of the Corporate Board of Union Lodge, No 11 F. and A. M. was held in Masonic Temple, 235 Main street, Orange, N. J., March 24, 1924.

Present:

Officers and Directors.

Henry Berg, Pres.; A. N. Venino, Vice-Pres.; W. F. Edwards, Treas.; F. M. Struck, G. J. Oltmanns, Walter W. C. Taylor, H. N. Montgomery, and Allan M. Hird.

Minutes.

The minutes of the last meeting of March 10th were read, approved. President Henry Berg stated that this meeting was called at the request of Mr. J. R. Evans, for the purpose of considering whether we would consent to the assignment of the lease from J. R. Evans, to J. R. Evans Co., a corporation which Mr. Evans alleges he formed and to whom he assigned the lease.

The question was generally discussed whereupon on motion duly made, seconded and carried by a unanimous vote, the following resolution was adopted, namely:

Resolved. That this Board do not give or grant their consent to the said assignment of said lease at this time, because Mr. Evans has not made any provisions about entering into a bond as set forth in the lease, and because the Board has no facts before it with reference to the standing and rating of said corporation, and because the Board feels that the following information should be before it, before it should be requested to act.
Namely.

(1) When was the J. R. Evans Co. (a corporation) formed?

(2) Was this corporation formed by Mr. Evans, and what interest has he in the same?

(3) When was the lease assigned to the corporation?

(4) Has Mr. Evans already transferred the assets, good will and business to the said corporation, which he was conducting at 231 Main street, Orange, N. J.?

(5) Is the said corporation now in possession of the said store, if so, since when?

(6) A financial statement of said corporation.

Further Resolved, that Mr. A. N. Venino take immediate steps to procure for the Board the above information and report back to the Board. On motion duly made and carried the Board adjourned.

WALTER F. EDWARDS,
Secretary, acting.

Subsequently and on April 4, 1924, another special meeting of the plaintiff Corporate Board was called, at which meeting the following minutes and resolutions were adopted (Exhibit P. 9, p. 91, State of Case):

A special meeting of the Corporate Board of Union Lodge, No. 11 F. & A. M. was held in Masonic Temple, 235 Main street, Orange, N. J., April 4, 1924.

Present:

Officers and Directors.

Henry Berg, Pres.; A. N. Venino, Vice-Pres.; W. F. Edwards, Treas.; N. N. Smith, Sect'y.; F. M. Struck, A. M. Hird, G. J. Oltmanns, and Walter W C. Taylor.

Minutes.

The minutes of the last meeting of March 24th, were read and approved.

Mr. A. N. Venino, reported that an investigation on his part developed that the J. R. Evans Co., a corporation was formed on March 13, 1922, under the laws of the State of Delaware, and that subsequently and on or about March 17, 1922, Mr. Evans transferred all of the assets and good will of the business which he was conducting at 231 Main street, Orange, N. J., to said corporation, and that said corporation took possession and has been in possession ever since March 17, 1922.

The question of whether this Board should consent to the assignment of the lease was generally discussed. Whereupon on motion duly made, seconded and carried by a unanimous vote the following resolution was adopted. Namely:

Resolved, that this Board do refuse to consent to the assignment of the lease from J. R. Evans to the J. R. Evans Co., a corporation, affecting 231 Main street, Orange, N. J., for the following reasons:

(1) Because Mr. J. R. Evans has not entered into a bond guaranteeing the fulfilment of all the provisions of the said lease as called for by the said lease.

(2) Because the Board is not satisfied with the standing and rating of the said corporation of J. R. Evans Co.

(3) Because J. R. Evans let or under-let the premises without the written consent of the Board, thus violating the condition of the lease against under-letting.

(4) Because by transferring the assets to the corporation, Mr. J. R. Evans deprived the Board of the security which he gave the Board under the lease as set forth on page four of the lease under paragraph "Security."

(5) Because Mr. J. R. Evans assigned the lease to the said corporation without the consent or knowledge of the Board.

Further Resolved, that on account of breach of conditions of the lease, as above set forth, that the Board exercise their right of re-entry and declare the lease null and void, and that legal action be taken to recover possession of the leased premises.

Further Resolved, that the matter be placed in the hands of A. N. Venino for legal action, and that the check for April rent, just received, be returned.

On motion duly made, seconded and carried the Board adjourned.

NEWELL N. SMITH,
Secretary.

At this meeting of April 4, 1924, the affidavit of John R. Evans (Exhibit P. 6, p. 65, State of Case), and the affidavit of J. Lindsay Hoyt (Exhibit P. 5, p. 64, State of Case), were read and considered. The affidavits state in effect that the said John R. Evans on March 13, 1922, caused a corporation to be formed under the laws of the State of Delaware, known as J. R. Evans Co., and that on or about March 17, 1922, the said John R. Evans transferred to the corporation all of the assets and good will of approximately six (6) stores, including the assets and good will of the business which he was conducting under the name of J. R. Evans & Co., at No. 301 Main street, Orange, New Jersey, and that after he so transferred the goods and good will, the corporation took possession of the assets and good will and store located at No. 301 Main street, Orange, New Jersey, and has ever since been in possession of said assets and good will of the store and has

ever since been conducting the said business, and also sets forth a financial statement of the J. R. Evans Co., a corporation. The street number of the premises has been changed since the making of the lease and is now known as No. 231 Main street, Orange, New Jersey. The plaintiff corporation had no knowledge of a corporation by the name of J. R. Evans Co., being in existence until March 20, 1924, when it was requested to consent to an assignment of the lease from John R. Evans to the said corporation; the plaintiff corporation had no knowledge of the fact that a corporation by the name of J. R. Evans Co. was actually in possession of the leased premises until April 4, 1924, when the above affidavits were read at the meeting of the plaintiff Corporate Board.

Subsequently and on April 8, 1924, the plaintiff corporation caused to be served upon the J. R. Evans Co., a corporation, and one of the defendants in this suit, the following written demand (Exhibit P. 10, p. 93, State of Case):

THE CORPORATE BOARD OF UNION LODGE NO. 11, F. & A. M.
Orange, New Jersey.

April 8th, 1924.

J. R. Evans Co.,
231 Main Street,
Orange, New Jersey.

Gentlemen:

The Corporate Board of Union Lodge Number Eleven of Free and Accepted Masons of Orange, New Jersey, a Corporation, the owner of premises known as 231 Main Street, Orange, New Jersey, formerly known as 301 Main Street, hereby demand of you the immediate possession of the above mentioned premises, and hereby demand that you immediately quit the said premises for the

reason that you are wrongfully and unlawfully occupying the same and in violation of the written express covenants and conditions contained in a certain lease between us and John R. Evans, dated March 14th, 1916. Your wrongful possession just having been brought to our knowledge.

Your failure to so quit and deliver up possession will result in our instituting an ejectment suit against you wherein we will also demand "Mesne Profits."

Very truly yours,
The Corporate Board of Union Lodge, Number Eleven of Free and Accepted Masons of Orange, New Jersey.
By NEWELL N. SMITH,
Secretary.

On the same day, April 8, 1924, the plaintiff corporation caused to be served upon John R. Evans, one of the defendants, the following notice and demand (Exhibit P. 11, pp. 94, 95, 96, State of Case):

THE CORPORATE BOARD OF UNION LODGE, NO. 11 F. & A. M.
Orange, New Jersey.

April 8th, 1924.

Mr. John R. Evans,
272 Atlantic Street,
Stamford, Conn.

Dear Sir:

We are herewith returning to you your check for $333.34 dated March 28th, 1924, but which was just received a few days ago which you sent us for the April rent for number 231 Main Street Orange, New Jersey, formerly known as 301 Main Street, Orange, New Jersey, which we cannot accept in view of the following facts; namely:—

A few days ago you informed us that you have assigned your lease effecting 231 Main Street, Orange, New Jersey, to a corporation

which you had formed by the name of J. R. Evans Co., and asked us to call a meeting of the board to take up the question of consenting to the said assignment, this is the first we knew of the existence of a corporation and the first we knew of the assignment of the lease.

At a meeting of the Board no consent to the assignment was given in view of the fact that the lease had certain conditions precedent to be complied with by you before such consent could be procured and because the Board felt that they should be furnished with certain information by you before they should be requested to act. The information wanted was as follows,

(1) When was the J. R. Evans Co., (a corporation).

(2) Was this corporation formed by you and what interest have you in the same?

(3) When was the lease assigned to the corporation?

(4) Have you already transferred the assets, good will and business to the corporation which you were conducting at 231 Main Street, Orange, N. J.

(5) Is the corporation now in possession of the said store, if so since when?

(6) A financial statement of said corporation?

The Board instructed Mr. A. N. Venino who is a member of the same to procure this information and report back to the Board.

Mr. A. N. Venino reported back to the Board that the corporation was formed on March 18th, 1922, under the laws of the State of Delaware, and that subsequently and on or about March 17, 1922, you transferred all of the assets and good will of the business which you were conducting at 231 Main Street, Orange, New Jersey, to the said corporation and that said corporation took

possession and has been in possession ever since March 17th, 1922.

The Board after receiving this information immediately passed a resolution refusing to consent to the assignment of the lease for the following reasons:

1. Because you have not entered into a bond guaranteeing the fulfilment of all the provisions of the said lease as called for by said lease.
2. Because the Board is not satisfied with the standing and rating of the said corporation.
3. Because you let or under-let the premises without the written consent of the landlord, thus violating the conditions of the lease against under-letting.
4. Because by transferring the assets to the corporation, you deprived us of the security which you gave us under the lease as set forth on page four of the lease under paragraph "Security."
5. Because you assigned the lease to the said corporation without our consent or knowledge.

The Board also passed a resolution that on account of your breach of the conditions of lease as above set forth, that we exercise our right of re-entry and declare the lease null and void and that legal action be taken to recover possession of the premises.

You are therefore hereby informed to immediately quit the said premises and give the same up. Immediate possession of the same being demanded.

Your failure to so quit and deliver up possession will result in our instituting an ejectment

suit to regain possession of the property in which suit we will also demand "Mesne Profits."

Very truly yours,

The Corporate Board of Union Lodge Number 11 of Free and Accepted Masons of Orange, New Jersey.

By NEWELL N. SMITH,
Secretary.

Subsequently and on April 14th, 1924, the minutes of the plaintiff Corporate Board, under date of April 4th, 1924, were read and approved. (Exhibit D. 5. p. 101, State of Case.)

This was followed up by the plaintiff corporation commencing an ejectment suit in the Supreme Court, which was tried in the Essex County Circuit Court, resulting in a judgment of nonsuit, from which this appeal is taken.

The questions involved in connection with this appeal are as follows:

1. Does the lease in question prevent the tenant from assigning the lease to a corporation which the tenant formed without first procuring the landlord's consent and until the landlord is satisfied with the standing and rating of said corporation, and until the tenant shall have first entered into a bond with the landlord guaranteeing the fulfilment of all the provisions of the lease?

2. Did the plaintiff's case as presented prove a letting or under-letting by the tenant, in violation of the covenants and conditions against letting and under-letting as contained in the lease, or did it amount to an assignment of the lease?

3. Did the tenant violate the covenants and conditions set forth in the lease under the paragraph headed "Security" and under the paragraph headed "Assignment of Lease," by letting, under-letting, or assigning the lease or by selling out his business, thus putting himself in a position where he is unable to comply with the said covenants and conditions?

4. Did the Trial Court err in directing a judgment of non-suit against the plaintiff, in favor of the defendants?

BRIEF OF THE ARGUMENT.

POINT 1.

Does the lease prevent the tenant from assigning the lease to a corporation, which the tenant formed, without first procuring the landlord's consent and until the landlord is satisfied with the standing and rating of said corporation, and until the tenant shall have first entered into a bond with the landlord guaranteeing the fulfilment of all of the provisions of the lease?

In the case of *West Shore Railroad Company, et al., Plaintiffs-in-Error* v. *William Wenner, etc.,* 70 N. J. L. 233.

Justice Dixon on page 236, says in approving the quotations of Mr. Baron Watson, "It is a proper rule of construction that the object and intent of the covenant must be looked at as well as the words used." "The proviso for re-entry would apply to and embrace negative as well as positive covenants." "Default in performance of covenants to be performed, observed and kept, applies to covenants not to do something as well as to covenants to do something; the abiding by a covenant is the performance of it; the non-abiding is a non-performance."

The lease (Exhibit P. 1, p. 52, State of Case), which is to be considered on this appeal, expressly states (p. 53, State of Case),

"And it is hereby mutually covenanted and agreed by and between the parties hereto, that this letting is upon the following conditions"; it then sets forth (on p. 57, State of Case),

"Assignment of Lease. In case a corporation is formed by the said tenant, the landlord or its successors will consent to the assignment of this lease to the said corporation, provided, however, it is satisfied with the standing and rating of the said corporation, and John R. Evans shall enter into a bond with the landlord guaranteeing the fulfilment of all the provisions of this lease."

The Trial Court in granting the defendants a non-suit referring to the above paragraph says (pp. 50 and 51, State of Case):

"There is nothing in this lease from which the Court would have a right to find that the assignment of the lease is forbidden by its terms. The usual form of a lease from which I read in Honeyman's New Jersey Law Forms, which is substantially the same in all the forms where such alienation is provided against, is in these words, 'And the said party of the second part further covenants that he will not assign this lease, or underlet the said premises or any part thereof, to any person or persons whomsoever without first obtaining the consent of the party of the first part.' When this lease in question was drawn, there was no difficulty in placing in it a provision with reference to under-letting, the words being, 'The tenant will not, without the written consent of the landlord be first had and obtained let or under-let the premises or any part thereof.' If this lease was intended to prohibit

the assignment, it would have been perfectly easy to have first inserted those words in that paragraph. They were not inserted. They are in all law forms. There must have been some reason why they were not inserted and, if not inserted, the Court must now assume that it was not intended to prohibit the assignment of the lease, since the sub-letting is prohibited. Under this title 'Assignment of Lease' there certainly is no prohibition against the lessee assigning that lease to anybody else except the corporation which he formed. It could have been assigned to an individual. It could have been assigned to any other corporation. What would be the reason for saying that the Court ought to read into that paragraph a prohibition that the lease could not be assigned to such a corporation as Evans might form? The question then may be asked why then put it in there at all, why was it put in there if it was not put in there for the purpose of forbidding the assignment to a corporation which Evans might form without the consent of the lessor, after being satisfied that the standing and rating of the corporation and unless Evans should enter into a bond? It seems to me that the reason for that is quite evident. The consent of the lessor to such an assignment would be, as has been suggested, to change the obligation of Evans from the principal debtor under the lease to that of surety. When we can discover in such a provision in the lease a reason for it, the Court ought not read into the lease a covenant or condition which is not expressly stated in the lease, and certainly one which is against public policy. That being the view of the Court the non-suit must follow and an exception to that ruling of the Court as ground of appeal will be noted."

Where the parties to a lease have expressly contracted for the landlord's consent with reference to a contemplated assignment of the lease to a corporation which the tenant might form upon certain express terms and conditions, it seems almost impossible to construe or give the said paragraph any rational force which would not include a covenant against assigning the lease to the said corporation until the consent had first been procured and until the conditions precedent had been complied with, especially so where the lease states that the above is a condition and reserving a right of re-entry for the breach of said covenants.

The plaintiff contends that the reason the said paragraph was inserted was to prevent the assignment of the lease to the corporation to be formed by the tenant until the conditions precedent had been complied with; this gave the landlord an opportunity of passing upon the standing and rating of the corporation and gave the landlord an opportunity of making the said corporation agree to be bound by all of the covenants and agreements contained in the lease; it also guaranteed to the landlord the said bond before the assignment could be made, provided the standing and rating of the corporation was satisfactory to the landlord or provided the landlord was willing to accept the corporation as the tenant in place of Mr. Evans.

The Trial Court seems to have taken the view that there was only one reason for inserting the said paragraph in the lease, namely, to change the obligation of Evans from the principal debtor under the lease to that of surety.

To construe this paragraph, so as to permit the tenant to assign the lease to the said cor-

poration without complying with the conditions precedent, seems to make the paragraph inoperative, useless, without force and a mere waste of words. This does not seem to be the proper construction, especially where the paragraph is prefaced by the title "Assignment of Lease." If the parties inserted this paragraph in the lease for the reason that the Trial Court gives, namely, to change the obligation of Mr. Evans from the principal debtor under the lease to that of surety, why then were the words "Assignment of Lease" used as a title in connection with this paragraph? Is it a fair construction to say that the intent of the parties was to turn Mr. Evans' obligation from a primitive obligation, namely, as principal to that of a surety which is a secondary liability without any further intent of preventing the assignment so as to safeguard the landlord and assure to the landlord the bond, etc. Surely such additional intent is not inconsistent with the Trial Court's views but is in harmony with it. It must be born in mind that Mr. Evans is a non-resident and was a non-resident when the lease was made, and under the lease he pledged all his personal property as security for the payment of the rent which would not be the case if the tenant formed a corporation and assigned the lease to said corporation. (Exhibit P. 1. p. 55, State of Case, fol. 40.)

Since the said paragraph is made a condition in the lease and since the lease contains a re-entry clause for a breach, it seems to follow that the tenant's failure to put up a bond as called for in said lease and his failure to procure the landlord's consent is a breach of one of the covenants for which a re-entry is provided for.

In the case of *Upton* v. *Hosmer,* "1900" N. H. 493, reported also in 49 Atlantic Reporter 96, it appeared that the lease in addition to the covenant, that the lessee would not "under-let" to any person unless with the consent of the landlord; further provided that the lessee and his heirs would have the right at any time to remove a cottage which the lessee had built on the premises, but that the lessee should not "sell" the property, to remain on the premises without the consent of the landlord. The Court construed these provisions and held that they restrain an assignment, saying, "besides the lessee's covenants, not to under-let without the lessor's consent, the lease provided that the lessee and its heirs should have the right at any time to terminate their lease and remove his cottage; also that with the consent of the lessor they might sell the same to be occupied on the premises. No restrictions were placed upon the sale of the cottage after the removal of a termination of the lease, but the lessee, his heirs and assigns, were not permitted to make a sale of it, to remain upon the premises without the consent of the landlord, his heirs and assigns. The purpose of the restrictive clause appears to have been not so much to control the sale of the cottage as to prohibit the lessee, his heirs and assigns, from making an assignment of the lease without first obtaining the consent of the lessor, his heirs and assigns.

In the case now considered on appeal, the tenant, Mr. John R. Evans, construed this clause in the lease as a prohibition against assignment, because he applied to the landlord for his consent to the assignment, thus giving expression of his construction of the meaning of the para-

graph and as to why it was inserted in the lease. This attitude has been followed up all the way through the trial of this case for (on p. 13, State of Case, fol. 30), the defendant's counsel objected to the introduction of the assignment endorsed on the tenant's copy of the lease (Exhibit P. 2, pp. 61 and 62, State of Case), on the ground that it was not shown that this was a properly executed assignment by Evans, individually, or ever was accepted by the Evans Corporation. In other words, to be in effect an assignment, there not only must be an execution, but also be an acceptance. Again after the plaintiff rested his case, the defendant's attorney gave as one of his grounds for his motion for non-suit, "that no proof of acceptance of the assignment was proven," (p. 47, State of Case.) The Court in granting the non-suit, however, (on p. 48, State of Case, fol. 20), held that the affidavits in evidence of Mr. Evans and Mr. Hoyt show an assignment.

The Trial Court seems to be under the impression that in order to prevent a transfer or assignment of the lease by the tenant, that the landlord was under obligation to follow the form in Honeymans or to insert the express word used in his opinion (p. 50, State of Case, fol. 20). The law in this State and the cases supporting it holds that it is not necessary to use the express words that the lease cannot be assigned, but any language strong enough will prohibit the transfer and the assignment.

In the case of *Field* v. *Mills,* 33 New Jersey Law, page 254, Chief Justice Beasley, on page 259 at the bottom of the page says, "An Agreement not to under-let for the whole term was in effect, an Agreement not to assign. A principle

acted upon in the recent case of *Beardman* v. *Wilson,* L. R. 4 B. C. 57." While the case of *Field* v. *Mills,* 33 New Jersey Law, page 254, in effect holds that an assignment of a lease is not a violation of a provision in the lease against under-letting, it must be borne in mind that it has reference to the word "under-letting" only, and has no reference to a clause wherein the words are strong enough to prevent an assignment. This case is an illustration that the Trial Court was wrong in relying upon his opinion that the wording in Honeymans ought to have been followed.

In the case of *West Shore Railroad Company* v. *Wenner,* 70 Law, page 233 (at p. 240), Justice Dixon says:

"That the assignment of a lease and sub-letting for part of the term are totally distinct transactions."

It should be noted that Justice Dixon says "for part of the term," he does not state for the whole term, and he also cites *Field* v. *Mills,* 33 New Jersey Law, page 254. So that the question is, is the language used in a lease strong enough to prevent an assignment, either to a certain stated person or generally. Parties to a lease have a perfect right to restrain the assignment to a particular person by using language strong enough and at the same time permitting it to be assigned generally to others.

If the language, therefore, in the lease to be considered on this appeal is strong enough to prevent an assignment or transfer to the corporation which was anticipated to be formed by the tenant, then, of course, it is not necessary to read any prohibition into the lease as it already is there.

The object and intent of a landlord to prevent an assignment is very well set forth in the case of *Muller* v. *Beck*, 94 N. J. L. 311.

Justice Swayze in writing the opinion on page 313 says, in construing a lease as follows:

> "This case, like all other cases, must be decided upon its own facts. We have to deal with a lease that prohibits under-letting or assignment. Such a provision demonstrates that the landlord meant to have a right to choose his tenants, a right which might be of great importance to him in the proper care and management of his property. The tenant had an estate for years but it was an estate qualified by this right of the landlord to prevent its transfer. The reserved right of the landlord would be of no value if the tenant could vacate the premises and terminate the obligation to pay rent by finding someone who might be willing to take the estate for years. The proposed tenant might be insolvent, or, at best, weaker financially than the lessee; he might be of improper character; or propose to conduct an improper business; or a business that the landlord disliked or feared might, in the long run, be a damage to the property. For any of these reasons, or for other reasons or for no reason at all, the landlord might properly say: I do not like the proposed tenant. He cannot have an estate in my property. The landlord in refusing consent is acting within his right expressly reserved by the lease, and such a reservation is inconsistent with the claim that he must accept the new tenant and forego his rent. The terms of the lease are equally inconsistent with the claim that the landlord must make an effort to secure a tenant in order to minimize the damages his present tenant is subject to by reason of his contract."

The above is a good illustration of why landlords prevent sub-letting, and assignment of the lease, and when you consider this reason which is in harmony with the plaintiff's contention in the case on appeal, the two are practically identical. The reason for contracting for the landlord's consent in case of an assignment of a lease to a corporation which the tenant might form, clearly appears upon the face of that provision of the lease with reference to it; and as above stated, not only the object but the intent for inserting the provision must be considered and, just as Justice Swayze says, "Each case must be decided upon its own facts."

POINT 2.

Did the plaintiff's case as presented prove a letting or under-letting by the tenant, in violation of the covenants and conditions against letting and under-letting as contained in the lease, or did it amount to an assignment of the lease?

If the language used in the lease is strong enough to prevent an assignment of the lease to a corporation, which the tenant may form without first complying with the pre-requisites or conditions precedent therein mentioned, then of course, whether the case as presented proves a letting, under-letting, or an assignment, is immaterial. For in that case, whether it is an under-letting or an assignment, it would have the same effect.

The plaintiffs contend, however, that they have made out a prima facie case because the affidavit of Mr. Evans (Exhibit P. 6, p. 65, State of Case), and the affidavit of Mr. J. Lindsay Hoyt (Exhibit P. 5, p. 64, State of Case), show that there was a letting or under-letting of the

premises in violation of the express covenants in the lease which reads as follows:

"USE. The tenant will not, without the written consent of the landlord being first had and obtained, let or under-let the premises, or any part thereof."

The plaintiffs contend that the two affidavits do not mention anything about an assignment of the lease, but they do show that the tenant did let or under-let the premises, because the affidavits show that the tenant let this corporation known as J. R. Evans Co., into possession, who have been conducting a business which was turned over to them by the tenant and that they have been in possession ever since March, 1922.

The assignment which was endorsed upon the tenant's copy of the lease, was dated March 20, 1924. There is no proof that this assignment was ever accepted or delivered to J. R. Evans Co., but, on the contrary, the tenant's attorney at the trial objected to the admission of this assignment on the ground that it did not appear that this assignment was ever delivered by the tenant to the corporation, or accepted by the corporation (p. 11, State of Case, fol. 10).

The tenant's attorney at the trial also stated as one of his grounds for a non-suit that the plaintiffs failed to prove an assignment of the lease (p. 47, State of Case, ground No. 5).

The affidavits above mentioned do not show that the entire term was parted with by Mr. Evans to the corporation, and, therefore, no assignment of the lease has been proven. The assignment which appears on the copy of the tenant's lease (Exhibit P. 2, p. 61, State of Case) is dated March 20, 1924. The corporation did not occupy the premises under this

assignment, since the affidavits above stated show that they have been in possession running the business since March, 1922.

POINT 3.

Did the tenant violate the covenants and conditions set forth in the lease under the paragraph headed "Security" and under the paragraph headed "Assignment of Lease," by letting, under-leting or assigning the lease or by selling out his business, thus putting himself in a position where he is unable to comply with the said covenants and conditions.

The tenant by the terms of his lease, which terms are made a condition by the lease itself, and upon the breach of which condition a re-entry is provided for, states as follows:

"SECURITY: The tenant doth hereby pledge and mortgage any and all of his personal property, of any kind whatsoever, which is or shall be in or upon the demised premises at any time during the said term, and whether exempt by law from distress for rent or sale under execution or not (which exemption is hereby expressly waived), to and for the faithful and punctual payment of said rent as above reserved; hereby authorizing the said landlord, its successors or assigns, in case of any failure in the payment of said rent as aforesaid, to take, seize upon, distrain and sell the said personal property or any part thereof, rendering the surplus, if any, unto the tenant" (Exhibit P. 1, p. 55, fol. 40).

The affidavits of Mr. Evans and Mr. Hoyt expressly show that the tenant, Mr. Evans, sold out his entire business and assets and personal

property which he had on the leased premises, which act placed him in a position where he was unable to comply with the conditions above stated, especially so where the person to whom he sold the goods was not and has not been recognized as a tenant of the plaintiff and in violation of the terms of the lease.

It is a contention of the plaintiffs that if this lease had nothing whatever in it with reference to sub-letting or assigning the lease, that if the lease was made upon certain conditions and provided a re-entry for the breach of those conditions, that then upon the breach of such conditions or condition, the landlord may exercise his right of re-entry and that if a sub-letting or assigning of the lease is in effect a breach of such condition, notwithstanding the fact that nothing is said in the lease about under-letting or assigning, then the landlord's right of re-entry should be enforceable because it is immaterial how the tenant violates the condition, whether by sub-letting, assigning or otherwise, as long as the condition is broken, it is immaterial how it was broken. The landlord's right to possession should be upheld.

The tenant agreed to pledge and mortgage his personal property of any kind whatever, at any time during the said term; the tenant is not in a position today to comply with this condition; he has placed himself in a position which is inconsistent with the object and intent of placing this condition in the lease.

In most of the cases which hold that a lease may be assigned or sub-let, unless there is a prohibition against it in the lease, deals with leases which have no covenants therein, such as the one in question.

POINT 4.

Did the Trial Court err in directing a judgment of non-suit against the plaintiffs, in favor of the defendants?

The Trial Court did err in granting the non-suit for the reasons set forth under Points 1, 2 and 3 of this brief.

The plaintiffs have proven their lease, have proven their right of re-entry, by showing the breach of the conditions contained therein, as heretofore argued in this brief, as more fully appears by the affidavit of Mr. John R. Evans and Mr. J. Lindsay Hoyt.

The question as to whether the Trial Court was right or wrong in granting the non-suit seems to be based entirely upon the construction of the lease, which is dealt with heretofore in this brief. The Trial Court seemed to have found one of the objects of inserting the clause under "Assignment of Lease," was to change the liability of Mr. Evans from principal to surety. He does not state, however, in his opinion, as to who was to assume the principal liability if Mr. Evans' liability was changed to that of a surety, and he also fails to find that if that was the case, it was also the object of inserting this provision to prevent an assignment until the plaintiff had an opportunity of satisfying himself of the standing and rating of the corporation whom the Court evidently assumed was going to take the place of the principal debtor; surely it was not the intention to release one man as principal and assume him as surety without having the opportunity of passing upon the standing and rating of the new principal.

There seems to have been an error made by the Trial Court in construing the lease in ques-

tion and in granting the non-suit. It is therefore, respectfully submitted, that the plaintiff's appeal should be upheld and the decision of the Trial Court reversed.

AQUILA N. VENINO,
Attorney for and of Counsel
with Plaintiff-Appellant.

New Jersey Court of Errors and Appeals

CORPORATE BOARD OF UNION LODGE, etc., Appellant, vs. JOHN R. EVANS, *et al.*, Respondents.	

BRIEF FOR RESPONDENT.

Statement.

This is an ejectment suit by a landlord (the appellant) to recover possession of leased premises before the expiration of the term, for alleged violations of the lease which it claims has worked a forfeiture thereof.

At the conclusion of the appellant's case in the court below it contended that the lease under which the tenant (the respondent) held possession contained covenants (1) forbidding the assignment of the lease, (2) forbidding the sub-letting of the premises and (3) required certain security from the tenant; that said covenants had the force of conditions because of the clause contained in the lease giving the landlord the right to re-enter for breach of any of the covenants; that the tenant had either assigned or sub-let the premises and had violated the security clause; and that the landlord had in fact declared the lease at an end.

Respondent (the tenant) moved a non-suit on the ground there was no proof in the case that any of the covenants of the lease had been broken and therefore the landlord had no right to re-enter.

The trial judge (Judge Dungan) being of the opinion that no covenant had been broken granted a non-suit. He set forth his reasons for so doing. They are printed commencing on page 47 of the State of Case at line 36.

Hereafter we have referred to the parties as landlord (the appellant) and tenant (the respondent).

I.

The assignment of the lease was not forbidden by the terms thereof, consequently the tenant could assign without the landlord's consent.

The rule of law is established that a tenant may assign his term of years without his landlord's consent and against his landlord's wishes unless he (the tenant) is expressly restrained from so doing by the lease.

> *Braunstein* vs. *McGrory,* 93 N. J. Eq. 49 (Er. & Ap.);
> *Farmer* v. *Davies,* 116 At. Rep. 706 (Er. & Ap.); (*Not in official reports.*)

In construing a covenant dealing with the assignment of a lease or the sub-letting of the premises the construction will be strictly against the landlord because such covenants are not favored by the law and will not be extended by implication.

> *Christ* vs. *Rake,* 122 N. E. 854;
> *35 Corpus Juris,* p. 978.

The only provision contained in the lease that deals with the subject of assignment is as follows:

> *"In case a corporation is formed by the said "tenant, the landlord or its successors will con- "sent to the assignment of this lease, to the said "corporation, provided, however, it is satisfied "with the standing and rating of the said cor- "poration and John R. Evans shall enter into "a bond with the landlord guaranteeing the "fulfillment of all the provisions of this lease."*
>
> *Case, page 57, line 10.*

There is nothing in the words of the preceding paragraph (and they are the only words which the landlord contends forbids an assignment and the only words in the lease dealing with the subject of assignment) that forbid the tenant from assigning the lease. Nor is there anything therein that forbids by implication the assignment of the lease. It is the landlord's contention that while the lease may not forbid the assignment thereof expressly, still by implication it forbids the assignment thereof to a corporation organized by the tenant. In other words that there is contained therein a negative covenant on the part of the tenant that he will not assign to a corporation organized by himself.

In arriving at the meaning of this paragraph the first rule to apply is; what does the paragraph say, and upon determining what it has said it can not by implication be extended; for (1) the policy of the law is opposed to restraints on alienation and courts will construe documents to give effect to the policy of the law; (2) an implied covenant will not be read into a lease in opposition to this policy; (3) in construing a covenant dealing with assignments the construction will be strictly against the landlord for such covenants are not favored in law; (4) if the purpose can be determined from the express provisions of the lease, that is the construc-

tion that will be given. That purpose is plain from the words of this paragraph. If it had not been written in the lease there would have been no doubt in any one's mind in view of the cases above cited, that the tenant could have assigned his lease to anybody without the landlord's consent. However, had he have made such an assignment he would still have been liable to his landlord for the payment of rent, and the performance of the covenants of the lease and the landlord could have refused to recognize the assignee and held the tenant to his lease. The purpose of the above quoted paragraph is to provide a means whereby the tenant, Evans, may be released from his obligation as tenant and thereby become surety for the new tenant. The relationship that the tenant would then stand to his landlord would be an entirely different relationship in the eyes of the law. Instead of he being primarily liable to the landlord for the payment of rent and for the performance of the covenants of the lease he would become secondarily liable as surety. This situation would result in advantages for both the tenant and the landlord. Judge Dungan said:

> "The question, then, may be asked why then "put it in there at all, why was it put in there "if it was not put in there for the purpose of "forbidding the assignment to a corporation "which Evans might form without the consent "of a lessor, after being satisfied that the stand-"ing and rating of the corporation and unless "Evans should enter in a bond? It seems to "me that the reason for that is quite evident. "The consent of the lessor to such an assign-"ment would be, as has been suggested, to "change the obligation of Evans from the prin-"cipal debtor under the lease to that of surety."
>
> *Case, page 51, line 10.*

When we can discover in such a provision in the lease a reason for it, the Court ought not read into

the lease a covenant or condition which is not expressly stated in the lease, and certainly one which is against public policy.

That this is the correct construction is borne out by the following significant fact; in the eighth paragraph of the lease, headed "Use" (page 53, line 40), there is an express provision whereby the tenant undertakes that he will not "let" or "underlet" the premises or any part thereof without the landlord's written consent.

If it had been the intention of the parties to forbid the assignment of the lease such restraint would have ordinarily been placed in the paragraph forbidding the sub-letting, because: (1) that paragraph states a number of acts that the tenant covenants he *will not* do; and (2) such a paragraph is the place where a restraint of assignment is usually inserted in a lease. Judge Dungan called attention to the fact (case, p. 50, line 15) that the usual form of lease contained in the law forms restrains the assignment and sub-letting in the same paragraph and said:

> "When this lease in question was drawn "there was no difficulty in placing in it a provi-"sion with reference to underletting, the words "being. 'The tenant will not, without the writ-"ten consent of the landlord be first had and "obtained let or underlet the premises or any "part thereof."
>
> *Case, page 50, line 23.*

If this lease were intended to prohibit the assignment, it would have been perfectly easy to have inserted those words in that paragraph. They were not inserted. They are in all law forms. There must have been some reason why they were not inserted and, if not inserted, the Court must now assume that it was not intended to prohibit the assignment of the lease, since the sub-letting is prohibited.

Appellant states on page 21 of its brief that the question is whether the language of the lase is *strong enough* to prevent an assignment thereof. The question is does the language prevent an assignment. Appellant's argument is founded on the assumption that the language of that paragraph does forbid an assignment when in fact the paragraph contains no prohibition of an assignment nor does it require of the tenant the doing of any act whatever unless he wants to obtain the landlord's recognition of the corporation as tenant in his place. Appellant's argument overlooks the fact that a landlord is not bound when a tenant assigns his lease to recognize the assignee as tenant. He may disregard the assignment and disregard the assignee.

There is another answer to the appellant's argument: The clause headed "Assignment" is not a condition for which a forfeiture can be declared. Before that clause can be coupled with the clause giving the landlord the right to re-enter and thereby giving it the force of a condition that clause must be construed to be a covenant on the tenant's part i. e. an undertaking on his part to do or to refrain from doing something. The tenant did not undertake to do anything, nor did he undertake to refrain from assigning the lease. This being so there was no covenant on the tenant's part and consequently nothing to which the re-entry clause could be coupled to give the landlord the right to declare the lease forfeited.

II.

The tenant did not let or underlet the premises, consequently this can not be urged as a ground of forfeiture.

The eighth paragraph of the lease forbids the letting or under letting of the premises without the landlord's consent. The proof in the case showed that Evans the tenant *assigned* the lease to J. R. Evans Co., i. e. according to the affidavit of Hoyt after Evans organized the corporation he

> *"transferred to the corporation all of the assets "and good will of approximately six stores in- "cluding the assets and good will of the busi- "ness which J. R. Evans was conducting at 301 "Main Street, Orange, New Jersey",*
>
> *Case, page 64, line 33.*

also:

> *"after the assets above mentioned were so transferred the said company took possession of the same and have been in possession ever since."*
>
> *Case, page 64, line 38.*

The defendant Evans, in his affidavit, stated that after the corporation was formed:

> *"I transferred to the corporation all of the assets and good will of approximately six stores including the assets and good will of the business which I was conducting under the name, J. R. Evans & Co., at 301 Main Street, Orange, New Jersey. That after I so transferred the goods and good will the said corporation took possession of the assets and good will and store located at 301 Main Street, Orange, New Jersey, and have ever since been in possession of said assets and store and have ever since been conducting said business."*
>
> *Case, page 65, line 40.*

Exhibit P-2 (Case, p. 61), introduced by the appellant, is a copy of the assignment which is as follows:

> *"J. R. Evans & Co., the within named tenant, have formed a corporation under the name of J. R. Evans & Co., the within lease is hereby sold, assigned, transferred and set over unto J. R. Evans & Co., the said corporation so formed and its successors."*
>
> *Case, page 61, line 31.*

There was a transfer of the entire premises for the entire term. No reversion was retained. This in law is an assignment.

> *Tiffany on Real Property,* Vol. 1, p. 170;
> *Ruling Case Law,* Vol. 16, p. 825;
> *Proprietors* v. *State,* 21 N. J. L. 384;
> *Potts* v. *Trenton,* 9 N. J. Eq. 592.

A sub-letting takes place where part of the premises are assigned for the remainder of the term *or* all of the premises are assigned for part of the term. This is not the case here. The entire premises were assigned for the entire term.

The law has been settled since the case of *Field* v. *Mills* that a covenant against sub-letting is not broken by an assignment or a covenant against an assignment is not broken by sub-letting. There was no proof in this case that there was a sub-letting, consequently the plaintiff failed in its contention that it could work a forfeiture on this ground.

> *Field* v. *Mills,* 33 N. J. L. 254;
> *West Shore R. R. Co.* v. *Wenner,* 70 N. J. L. 233.

III.

There was no violation of the so-called "security" clause of the lease.

This provision is as follows:

> "SECURITY. The Tenant doth hereby pledge and mortgage any and all of his personal property, of any kind whatsoever, which is or shall be in or upon the demised premises, at any time during the said term, and whether exempt by law from distress for rent or sale under execution or not, (which exemption is hereby expressly waived) to and for the faithful and punctual payment of said rent as above reserved; hereby authorizing the said Landlord, its successors or assigns, in case of any failure, in the payment of said rent as aforesaid, to take, seize upon, distrain and sell the said personal property, or any part thereof, rendering the surplus, if any, unto the said Tenant."
>
> *Case, page 55, line 38.*

The reason or the purpose of it is not clear. It gives the landlord nothing more than the law would give him.

The landlord did not need this clause to give it a right to distress for non-payment of rent or to give it its landlord's lien for the law gives such rights irrespective of the lease. It was not intended that the personal property in the store should remain there until the termination of the lease for the lease provides (Case, p. 53, line 35) that the tenant will occupy the premises *"only as and for "the purpose of store and general merchandise and "for no other purpose."* It must be presumed that the landlord knew the stock in the store would go out as it was sold to customers. It is hard to determine what this paragraph means. It is a mean-

ingless paragraph without any purpose other than spreading confusion. It is not a chattel mortgage for it lacks the elements thereof.

But assume it to be a mortgage (and this assumption is a violent one) the assignment of the lease would be nothing more than a transfer of the tenant's equity of redemption and that would not deprive the landlord of whatever "security" the clause gave it. No one would contend that the maker of a chattel mortgage violated its terms if he transferred his equity of redemption. There is no act required to be done by this clause that the tenant has omitted to do. In fact it required nothing of the tenant.

As giving a ground of forfeiture this clause was mentioned but not urged in the court below. Judge Dungan made no comment on it. It is not strongly contended for by appellant now. We submit there is no merit to it.

For the foregoing reasons we submit the judgment of the court below should be affirmed.

INSLEY, VREELAND & DECKER,
Attorneys.

WILLIAM E. DECKER,
Of Counsel.