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(Filed Feb. 9, 1924)

In Chancery of New Jersey

BILL OF COMPLAINT

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

The complainant, Charles W. Ulrich, a resident
of the City of Paterson, County of Passaic, and
State of New Jersey, respectfully shows that: 10

(1) During the month of December, 1919, the
complainant was the owner of certain lands lo-
cated in the City of Elizabeth, County of Union
and State of New Jersey, known as 43 and 45
Westfield Avenue, and consisting of approximate-
ly 42 feet front on the northerly side of Westfield
Avenue, and approximately 22 feet in depth on the
easterly boundary line, and approximately 18 feet
in depth on the westerly boundary line, on which
premises at the aforementioned time, one Louis 20
C. Ulrich, the brother of the complainant, was in
the employ of his son, John J. Ulrich, who at that
time, was conducting a business known as an au-
tomobile supply and accessory business on said
premises.

(2) During the said month of December, 1919,
the said Louis C. Ulrich was desirous of securing
the permission of complainant to construct a build-
ing upon the premises hereinbefore described for
the purpose of the aforesaid John J. Ulrich using 30
a portion of the said building as a store on the
ground floor of the said building, in order that the
said John J. Ulrich could carry on the said busi-
ness of retaining supplies and accessories, and
that the upper portion, or first floor above said
store could be used by said Louis C. Ulrich and his
family, consisting of Catherine N. Ulrich, and his
said son, John J. Ulrich, occupying the same, as
dwelling quarters.

(3) Being so desirous of constructing said

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building on the premises of complainant at the time stated, the said Louis C. Ulrich did obtain the consent of the complainant to cause to be constructed on said premises the aforesaid referred to building, the understanding being on the part of complainant, the owner of said premises, and said Louis C. Ulrich, that said building should be constructed at the expense of said Louis C. Ulrich. It was estimated and calculated at said time that the cost of construction of said building by the said Louis C. Ulrich would be approximately \$9,000.00. The said Louis C. Ulrich not having sufficient funds to finance the construction of said building, only having had approximately \$5000.00, requested complainant to become endorser upon a certain promissory note, to be executed by said Louis C. Ulrich as maker, payable to said maker's order and endorsed by Charles W. Ulrich, your complainant, which said note, the said Louis C. Ulrich stated he could have discounted at the National State Bank of the City of Elizabeth, and State of New Jersey.

(4) The complainant further states that he did agree at the times hereinbefore stated, to permit the said Louis C. Ulrich to cause to be constructed the aforesaid referred to building at the expense of said Louis C. Ulrich, with the understanding that the complainant would endorse the aforesaid mentioned note, as requested by said Louis C. Ulrich, so that said Louis C. Ulrich could receive the proceeds of said note by discounting the same at the bank as aforesaid, and your complainant did further agree with Louis C. Ulrich that the moneys so received by the discounting of said note, would be used by the said Louis C. Ulrich for the purpose

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of using same in connection with the expense of constructing the aforesaid referred to building.

(5) Your complainant further says that he did agree with said Louis C. Ulrich to permit the said Louis C. Ulrich to construct said building in manner stated, and did further agree to endorse the note of said Louis C. Ulrich in manner stated, upon condition that after the said building was so constructed the said Louis C. Ulrich and his family, consisting of the persons aforementioned, could occupy the upper portion of said building as a dwelling, and that Louis C. Ulrich would receive the permission of complainant to permit the son of said Louis C. Ulrich, John J. Ulrich, to occupy the store beneath the dwelling quarters, for the purpose of carrying on the business of John J. Ulrich as aforementioned, and that the further understand was that the occupancy of said dwelling quarters and the occupancy of said store by the persons stated would be without the payment of any rent by said Louis C. Ulrich or his family or John J. Ulrich for a period of time consisting of ninety months from the time the said building was completed, with the further understanding that said Louis C. Ulrich would pay the taxes on the building, and the land upon which said building was located, and all repairs, both outside and inside, as might be required during the term of ninety months, and also any and all charges for fire insurance, water charges, assessments, and any other charges that might be incident to the use and occupancy of the building by the persons stated, during the said period of ninety months; it being further understood and agreed between said Louis C. Ulrich and Charles W. Ulrich that at the expiration of ninety months, the said John J. Ulrich

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Bill of Complaint

would cause to be delivered up to said Charles W. Ulrich the possession of the dwelling quarters, and the premises used as a store, the further understanding being that in connection with the note endorsed by said Charles W. Ulrich in the sum of \$4000.00, as hereinbefore mentioned, that said Louis C. Ulrich would meet the payment of said note by paying the same when it became due, by the payment of \$250.00 every three months, or the sum of \$1000.00 a year, and interest, the said Charles W. Ulrich agreeing that he would endorse the new notes every three months in the reduced sum of \$250.00 every quarter.

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(6) Complainant further states that subsequent to the aforesaid mentioned agreement, and during the month of January, 1920, and before the said building was completed, the said Louis C. Ulrich, did request the complainant to execute and deliver to said Louis C. Ulrich, a lease of the aforesaid mentioned premises, 43 and 45 Westfield Avenue, which said Louis C. Ulrich had caused to be prepared by someone unknown to the complainant, and presented the same to complainant for his signature, stating to said complainant that he desired complainant to execute said lease, so that Louis C. Ulrich would be granted the right to continue to have his family and his son occupy the dwelling and store premises, in the building as aforesaid, for the term of the agreement originally entered into between the said complainant and Louis C. Ulrich, or ninety months, the said Louis C. Ulrich stating to the complainant that he desired to be assured of the possession of the premises for a term of ninety months, and desired to protect himself against the possibility of being forced to vacate said premises consisting of the

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dwelling premises, and his son, John J. Ulrich being forced to vacate the store premises, in the event of the death of Charles W. Ulrich prior to the expiration of said term of ninety months, the said Louis C. Ulrich having stated to complainant that he was fearful of the fact that Charles W. Ulrich, the complainant would die before the expiration of the said term of ninety months, and if said Charles W. Ulrich did so die before the expiration of ninety months, he was further fearful of the fact that in such event the nephews and nieces of Charles W. Ulrich might claim possession of said premises. At the time stated, the said Louis C. Ulrich did present a document which said Louis C. Ulrich stated to complainant was a lease of the premises, without stating to complainant what the period of time covered by the lease amounted to, but complainant was of the opinion that said lease was for a period of time consisting of the time referred to in the agreement made in December, 1919. Believing that the lease was for a period of approximately ninety months, the complainant executed a document. At the time the said lease was presented to complainant for signature, the said Louis C. Ulrich informed complainant that he would never use the lease during its term, except in the event of the death of Charles W. Ulrich, before the expiration of ninety months, and he further agreed with complainant that he would retain the lease, and never allow same to go out of his possession or control, so that any other person might obtain possession or control of such. Complainant, believing that the said Louis C. Ulrich was presenting to complainant a lease for a period of ninety months, and at the

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request of said Louis C. Ulrich, did affix his signature to said document as so presented to him, at the time by said Louis C. Ulrich, complainant never having retained a copy of said lease, as only one copy of said lease was furnished for execution by complainant by the said Louis C. Ulrich.

10 (7) Subsequently, the construction of the aforesaid referred to building was completed, and on or about the first of April, 1920, said Louis C. Ulrich, and his family, consisting of Catherine E. Ulrich, his wife, and his son, John J. Ulrich, did take possession of the dwelling quarters on the first floor above the store of said building, and the said John J. Ulrich, the son of Louis C. Ulrich did take possession of the store beneath the said dwelling quarters, and the said dwelling quarters continued to be occupied by said Louis C. Ulrich and family until the times hereinafter stated, and the said John J. Ulrich continued to occupy the said store until the times hereinafter stated.

20 (8) Subsequently, the business conducted by John J. Ulrich, was conducted by Louis C. Ulrich and his son, John J. Ulrich, in the store of the premises hereinbefore referred to.

30 (9) Your complainant further states that in connection with the note of \$4000.00 originally executed by said Louis C. Ulrich as maker, and endorsed by your complainant, and which said note was in the sum of \$4000.00, the said Louis C. Ulrich did reduce said note at the National State Bank of Elizabeth, every three months, but such reductions were not in the amount originally agreed upon by said Louis C. Ulrich with complainant, the said reduction being at times in sums less than \$250.00 every three months. On each oc-

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casation when said Louis C. Ulrich would reduce said note, he would request complainant to endorse a new note for the reduced amount, which said Charles W. Ulrich agreed to until on or about the 15th day of July, 1921, the said Louis C. Ulrich did request complainant to execute a mortgage on the premises referred to as 43 and 45 Westfield Avenue, and in addition other premises adjoining said premises, which said complainant was the owner of at the time, the said Louis C. Ulrich having stated to complainant that he desired to secure the sum of \$3000.00 so that Louis C. Ulrich, upon securing the said \$3000.00 in manner hereinafter stated, could pay the money then owing by said Louis C. Ulrich on the note to the said National State Bank of Elizabeth, N. J., and which said note at the time bore the endorsement of complainant. The said complainant did agree with said Louis C. Ulrich to execute a mortgage, and the usual bond to accompany same, and on or about the 15th of July, 1921, executed and delivered to Louis Menge and Jane V. Menge, which said mortgage covered the premises hereinbefore referred to, the said complainant never having met the said Louis Menge and Jane V. Menge, and the said bond and mortgage was presented to complainant by Louis C. Ulrich, for the purpose of execution, and that said complainant did execute said mortgage and bond, and after doing so, returned the same to said Louis C. Ulrich so that Louis C. Ulrich could obtain the said \$3000.00, which said Louis C. Ulrich wished to use in paying off the note due to the National State Bank of Elizabeth, N. J., and which note, a previously stated, had been endorsed by complainant.

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(10) Subsequently, complainant learned from said Louis C. Ulrich that he did not so use the \$3000.00 realized on the mortgage executed by complainant for the purpose of paying the aforesaid referred to bank the said note of said Louis C. Ulrich, and at a time when the note which should have been paid in manner stated by Louis C. Ulrich, became due, just a day or so before the said note became due, said Louis C. Ulrich sent to complainant a blank note, requesting him to endorse same and return it. When complainant received said note, he communicated with said Louis C. Ulrich, and wanted to know whether said Louis C. Ulrich desired complainant to endorse a blank note, and said Louis C. Ulrich informed complainant that he desired him to so endorse said note, so that he could realize a small sum of money which he needed, and which he could so realize by executing the note as maker, and having the same discounted at the National State Bank of Elizabeth. At intervals of every three months thereafter, at about a day or so before the said note became due, the said Louis C. Ulrich would similarly send a new blank note to complainant for the purpose of his endorsing the same, complainant always believing that the aforesaid mentioned \$3000.00 realized on the mortgage, the proceeds of which had been retained by said Louis C. Ulrich, had been used by him in paying the original note, which complainant had endorsed, and which was due on the 15th of July, 1921. Subsequently, and at the times hereinafter stated, complainant learned that this had not been done by Louis C. Ulrich, but that he had retained the said \$3000.00 for his own use.

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(11) Complainant further says that on or about the 29th day of October, 1923, and while said Louis C. Ulrich and his family were occupying the dwelling quarters, and the said John J. Ulrich and Louis C. Ulrich were in possession of the store in the premises aforesaid, the said Louis C. Ulrich died, and on or about the 15th of November, 1923, John J. Ulrich, the son of Louis C. Ulrich, communicated with complainant, and informed him that a note which had been executed by Louis C. Ulrich, the father of said John J. Ulrich, under date of August, 1923, at the National State Bank of Elizabeth, N. J., was due on that date, and advised complainant to go to the bank and take care of the note. Upon being so informed, the complainant went on the same day to said National State Bank, and ascertained what note of Louis C. Ulrich complainant was liable for the payment of, and learned that Louis C. Ulrich under date of August 15th, 1923, had discounted at said National State Bank, a note for \$1200.00, due three months from that date, and which said note had been previously endorsed by complainant, although when endorsed, it was endorsed in blank at the request of Louis C. Ulrich. Complainant at that time was informed by one of the officials of the National State Bank that the \$1200.00 due on said note as executed by Louis C. Ulrich was the balance then owing on the original note of \$4000.00 which had been endorsed by complainant during the month of January, 1920. Complainant then arranged with the bank to take up said note, by reason of his endorsement thereon, and complainant has possession of said note.

(12) At the same time that the said John J. Ulrich communicated to complainant the fact that

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there was a note due the National State Bank of Elizabeth, N. J., which note John J. Ulrich informed complainant had been endorsed by complainant, the said John J. Ulrich informed the complainant that he had in his possession a lease which said John J. Ulrich stated had been executed by complainant for a term of fifteen years from January, 1920. This statement of John J. Ulrich regarding the said lease for fifteen years was the first information that complainant received from anyone that such a lease had been signed by complainant.

(13) Subsequently, complainant made an investigation and ascertained that on the 15th of November, 1923, at one minute past two of the afternoon of said date, a lease had been recorded in the Register's office of the County of Union, and State of New Jersey, in Book 920 of Deeds, page 76, and upon investigation, secured a copy of said lease from the aforesaid referred to recording official, and upon examination of same, it appears that the said document was executed by Charles W. Ulrich, and purported to be a lease dated January 19th, 1920, between Charles W. Ulrich, as party of the first part, and Louis C. Ulrich and Katherine Ulrich and John J. Ulrich as joint tenants, and not as tenants in common, for premises 43 and 45 Westfield Avenue, Elizabeth, N. J., for a term of fifteen years, at the yearly rent of \$10.00, payable yearly in advance on the 19th day of January of each and every year during the life of said lease, and with the further condition recited therein that said parties of the second part would erect on the land as aforesaid, a building, and that the parties of the second part would pay the yearly

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taxes to be assessed against the property, and also all charges in connection therewith, to commence with the year of 1920, and further the said alleged lease contained a provision that upon the expiration or termination of said lease, the parties of the second part would quit and surrender the premises in as good a state and condition as reasonable use and wear thereof would permit, damages by the elements excepted. The examination of said document recorded with the official as aforesaid disclosed that said document bearing the name of your complainant, and further the name of Kate E. Ulrich, and John J. Ulrich, being the widow and son respectively of Louis C. Ulrich, did not bear the signature of Louis C. Ulrich, and upon an investigation subsequently undertaken by complainant, complainant learned that the said Kate E. Ulrich and John J. Ulrich had executed the said document on the 15th of November, 1923, before one Frank J. Pfaff, a counsellor-at-law of the State of New Jersey, with offices in Elizabeth, County of Union, and State of New Jersey.

Complainant attaches hereto a copy of said document as recorded with the recording official as aforesaid, marked Exhibit "A", and makes the same a part of this bill of complaint.

(14) Complainant further states that the said Kate E. Ulrich and said John J. Ulrich should never have executed the document as aforesaid and caused the same to be recorded in manner stated, and the execution by said persons and the recording of the document was a fraud upon complainant, as complainant never entered into said lease with said individuals.

(15) Complainant further states that on or

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about the 13th day of December, 1923, the said John J. Ulrich was adjudicated a bankrupt in the United States District Court, for the District of New Jersey, in connection with the business which had been conducted by said John J. Ulrich and his father in the store of the premises hereinbefore referred to, and which said business as heretofore particularly stated being that of the automobile supply and accessory business, and that on or about the 13th day of December, 1923, one Francis Gordon was appointed Receiver of the goods and chattels, rights and credits of said John J. Ulrich, and the said Francis Gordon subsequently qualified as Receiver by filing with the aforesaid United States District Court a bond as required by him in connection with his appointment as Receiver of the goods and chattels, rights and credits of said John J. Ulrich, Bankrupt, and in connection with the performance of the duties of said Francis Gordon as Receiver as aforesaid, he took possession of the premises formerly occupied by said John J. Ulrich and his father, Louis C. Ulrich, and which premises have heretofore been referred to as store in the building known as 43 and 45 Westfield Avenue, Elizabeth, N. J.

(16) Your petitioner further states that under date of January 18th, 1924, the aforesaid referred to Francis Gordon was elected trustee by the creditors of the said John J. Ulrich, and uly qualified by filing the bond required by him in connection with his election as trustee of the estate of John J. Ulrich, Bankrupt.

(17) Under date of the 16th day of January, 1924, an order was duly made and entered by one Atwood L. De Coster, a Referee in Bankruptcy of

Bill of Complaint

the United States District Court, and having charge, as Referee of the administration of the estate of said John J. Ulrich, wherein and whereby the said Referee as aforesaid did grant leave and permission to your complainant to make Frances Gordon, Trustee of the estate of said John J. Ulrich, bankrupt, a co-defendant in certain proceedings then about to be instituted by Charles W. Ulrich, your complainant, against Francis Gordon, trustee of the estate of John J. Ulrich, a copy of which order is hereby attached, and made a part hereof, and marked as Exhibit "B", to have the aforesaid mentioned lease executed by Kate E. Ulrich, and John J. Ulrich, set aside, and cancelled by reason of the fraud exercised upon said Charles W. Ulrich by said Kate E. Ulrich and John J. Ulrich.

(18) This suit is instituted in the Court of Chancery of New Jersey, against the said Francis Gordon, Trustee of John J. Ulrich, Bankrupt, as one of the defendants, pursuant to the aforesaid referred to order made by the Referee in Bankruptcy in said bankruptcy proceedings, authorizing and ordering that the complainant have leave to bring this suit against said Francis Gordon, trustee of John J. Ulrich, bankrupt, as one of said defendants.

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

(1) That Kate E. Ulrich, otherwise known as Catherine E. Ulrich, and Francis Gordon, trustee in bankruptcy of John J. Ulrich, the defendants, may answer the bill of complaint without oath, and each and every statement therein.

(2) That said instrument, purporting to be a lease between complainant, and Kate E. Ulrich

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and John J. Ulrich, dated January 19th, 1920, and recorded in the Register's office of the County of Union, State of New Jersey, in Book 920 of Deeds for said County, on page 76, may be declared by the order and decree of this Honorable Court, as null and void, and for nothing holden, and be cancelled, surrendered up, and discharged of record by said order and decree.

(3) That by the order and decree of this Honorable Court, the said Kate E. Ulrich, otherwise known as Catherine E. Ulrich, and the said Francis Gordon, Trustee of John J. Ulrich, bankrupt, be compelled to make an accounting, showing in detail the amount of rentals received from the premises referred to in the aforesaid mentioned lease, if any.

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

(5) And that your complainant may have such further and other relief as the nature of his case requires and as may be agreeable to equity.

J. Vincent Barnitt,
Solicitor for and of Counsel
with Complainant.

30 EXHIBIT "A"

Charles W. Ulrich
to
Kate E. Ulrich, et als.

This agreement, made the nineteenth day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty, Between Charles Ulrich,

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Bill of Complaint

single, of the City of Paterson, in the County of Passaic and State of New Jersey, party of the first part, and Louis C. Ulrich and Katherine Ulrich, his wife, and John J. Ulrich, as joint tenants and not as tenants in common of the City of Elizabeth, in the County of Union, and State of New Jersey, of the second part;

Witnesseth, That the said party of the first part, has hereby let, and rented to the said party of the second part, and the said party of the second part has hereby hired and taken from the said party of the first part,

All that certain tract now owned by the party of the first part on Westfield Avenue, Elizabeth, New Jersey, known as 43 and 45 Westfield Avenue, Elizabeth, New Jersey, being forty-two feet front and being twenty-two feet in depth on the one side line and eighteen feet in depth on the other side line. The rear width being — feet for the term of Fifteen years, to commence on the Nineteenth day of January, A.D. 1920, at the yearly rent of Ten (10) dollars payable yearly in advance on the 19th day of January each and every year during the life of this lease.

It is hereby understood and agreed between the parties hereto that the parties of the second part will erect on said land a building, and that the parties of the second part will pay all charges in connection therewith and also pay the yearly taxes to be assessed against said property to commence with the year of 1920.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-

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enter the said premises and to remove all persons therefrom.

And the said party of the second part covenants to pay to the said party of the first part, the said rent as herein specified to wit:

10 And at the expiration of the said term or the termination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good a state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part covenant, that the said party of the second part, on paying the said rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

20 It is also understood that the parties of the second part being husband and wife and son, should any of them die, the lease is to be in force and effect in the survivor or survivors.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of

30 Frank J. Pfaff
as to K. E. U. & J. J. U.

Charles W. Ulrich (L.S.)
Kate E. Ulrich (L.S.)
John J. Ulrich (L.S.)

State of New Jersey }
County of Passaic } ss

Be it remembered that on this 21st day of January, in the year of our Lord, One Thousand Nine

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Hundred and Twenty, before me, an Attorney at Law of New Jersey, personally appeared Charles Ulrich, single, who I am satisfied, is the Lessor 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.

J. Vincent Barnitt,
An Attorney at Law of N. J.

Rec. Nov. 15, 1923.

At 2.01 P.M. No. 76.

Recorded at request of Frank J. Pfaff.

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Bill of Complaint

EXHIBIT "B"

UNITED STATES DISTRICT COURT

For the District of New Jersey

In the matter of John J. Ulrich, individually, and as surviving partner of the firm of John J. Ulrich, and Louis Ulrich, trading as John J. Ulrich & Co.,
In Bankruptcy
Bankrupt.

ORDER

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It appearing that an order to show cause was issued by this Court on the 22nd day of December, 1923, on the application of J. Vincent Barnitt, solicitor for Charles W. Ulrich, in which said order, Francis Gordon, the receiver of this estate, was required to show cause before this Court at Newark, N. J., on the 9th day of January, 1924, why said Charles W. Ulrich should not obtain leave from this Court to make the said Francis Gordon, receiver, or a trustee who may be subsequently elected in this estate, a co-defendant in a certain Chancery proceeding about to be instituted by said Charles W. Ulrich, against one Catherine C. Ulrich, and the said receiver or trustee of this estate, and it appearing that proof of the service of said order to show cause was duly filed, and it further appearing that the matter was moved before this court this date, the said Charles W. Ulrich being represented by J. Vincent Barnitt, and the said Francis Gordon, receiver, being

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represented by William Harris, esquire, attorney for said receiver, appearing specially by Israel B. Greene, who objected to the jurisdiction of the referee to entertain and consider said application and to the sufficiency of the petition filed on said application, and to the propriety to grant the application made, and after hearing the said attorneys representing the respective parties aforesaid,

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It is, on this sixteenth day of January, A.D., 1924, Ordered that the said Charles W. Ulrich is hereby permitted and is given leave to make Francis Gordon, trustee of this estate, a co-defendant in certain proceedings about to be instituted by Charles W. Ulrich, against one Catherine C. Ulrich, and the said Francis Gordon, trustee, and which said proceeding is to be brought in the Court of Chancery of the State of New Jersey, and

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It is further Ordered that the said trustee be hereby authorized to rent the premises which the bankrupt was seized of a right therein, and which said premises are located at 43 and 45 Westfield Avenue, in the City of Elizabeth, County of Union, and State of New Jersey, for a term not exceeding one year, with the understanding that in the event that the said Charles W. Ulrich is successful in his application to be made to said Court to set aside a certain lease which is more particularly referred to in the petition upon which the order to show cause in this matter was granted, and by reason of such action and decision, if the Court having jurisdiction of the said matter determines that the said lease as referred to is void, and inoperative insofar as any rights of the said trustee is concerned, in that event, any moneys realized by said trustee by reason of renting said premises for

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the term referred to, shall be payable to the said Charles W. Ulrich, the petitioner herein, or such other person as may be entitled to the premises, in the event that said lease is determined void and of no effect, less, however, the reasonable expenses of the said trustee in renting said premises, and such expenses as might necessarily be incurred and re-
10 quired to be expended by said trustee in connection with the use and occupancy of said premises by a tenant of said trustee, and less such amount as shall be allowed to the receiver, and the trustee herein, and their attorneys on account of administration expenses.

Atwood L. De Coster,
Referee in Bankruptcy.

A true copy
20 Atwood L. De Coster,
Referee in Bankruptcy.

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Answer of Kate E. Ulrich
(Filed March 13, 1924.)

IN CHANCERY OF NEW JERSEY

Between
Charles W. Ulrich,
Complainant,
and
Francis Gordon, Trustee of
John J. Ulrich, Bankrupt, and
Kate E. Ulrich, otherwise
known as Catherine E. Ulrich,
Defendants.

On Bill, &c.,

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ANSWER OF KATE E. ULRICH

Defendant, Kate E. Ulrich, of the City of Elizabeth, Union County, New Jersey, answering the Bill
20 of Complaint filed herein, says:-

1. She admits paragraphs 1 and 2.
2. She admits so much of paragraph 3 to the effect that complainant consented to the construction of the building referred to in said paragraph, same to be at the expense of Louis C. Ulrich; she has no knowledge or information sufficient to form a belief as to the other allegations in said paragraph.
3. She has no knowledge or information sufficient to form a belief as to paragraph 4
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4. She admits so much of paragraph 5 to the effect that complainant consented to the construction of said building by Louis C. Ulrich upon the terms, covenants and conditions set forth in the lease, a copy whereof is annexed to the Bill of Complaint, and market Exhibit "A"; but she has no knowledge or information sufficient to form a belief as to the other allegations in said paragraph.

Answer of Kate E. Ulrich

5. She denies paragraph 6, except that in consideration of the construction and maintenance of said building the complainant made, executed and delivered to the said Louis C. Ulrich, now deceased, for the benefit of said Louis C. Ulrich, and John J. Ulrich, and herself, the lease, a copy whereof is annexed to the Bill of Complaint and marked Exhibit "B".

6. She admits paragraphs 7 and 8.

7. She has no knowledge or information sufficient to form a belief as to paragraphs 9 and 10.

8. She admits that the said Louis C. Ulrich died on the 29th day of October, 1923, while the said Louis C. Ulrich and John J. Ulrich were in possession of the premises in question; that she has no knowledge or information sufficient to form a belief as to the other allegations of the 11th paragraph.

9. She has no knowledge or information sufficient to form a belief as to paragraph 12.

10. She has no knowledge as to paragraph 13, except that she admits that said lease was duly executed by herself, and John J. Ulrich after the death of said Louis C. Ulrich, and was duly recorded in the Register's Office of the County of Union, New Jersey, in Book 920 of Deeds, page 76, on November 15th, 1923; as to the provisions of said lease she begs leave to refer to said instrument as if same were herein set forth for greater certainty.

11. She denies paragraph 14.

12. She admits paragraphs 15, 16, 17 and 18.

13. This defendant further answering says:-

That said lease, a copy whereof is annexed to the Bill of Complaint filed herein and marked Exhibit "B", was made, executed and delivered to Louis C.

Answer of Kate E. Ulrich

Ulrich, deceased, this defendant's late husband, for the benefit of said Louis C. Ulrich and this defendant, and John J. Ulrich in consideration of the construction of the building now located on the lands mentioned in the Bill of Complaint, and for other consideration mentioned in said lease, which consideration has been fully paid and satisfied according to the true intent and tenor thereof.

14. This defendant further answering says:-

That no fraud was practiced upon the complainant by the said Louis C. Ulrich, and that said lease was made, executed and delivered by complainant to the said Louis C. Ulrich for the benefit of himself, this defendant, and John J. Ulrich in consummation of an oral agreement theretofore agreed upon.

15. This defendant further answering says:-

That complainant at the time of the execution of said Lease, and at all times since said time, has known of the contents of said lease, and has accepted the rents and profited by the benefits and consideration therein provided, and has therefore fully ratified and confirmed same, and is and should therefore be estopped from maintaining this suit.

16. That if any fraud was practiced upon complainant by the said Louis C. Ulrich as charged in the Bill of Complaint, which this defendant denies, said complainant, after discovering said alleged fraud accepted the rent provided in said lease and profited by the benefits and other considerations therein provided, and in all respects fully ratified and confirmed said lease, and therefore is and should be estopped from maintaining this suit.

17. This defendant further answering says:-

That if any fraud was practiced upon complainant by the said Louis C. Ulrich as alleged in the Bill

Answer of Kate E. Ulrich

of Complaint, which this defendant denies, complainant is not entitled to maintain this suit because of the lack of diligence in bringing the suit during the lifetime of the said Louis C. Ulrich; that complainant has been guilty of laches.

18. This defendant further answering says:-

10 That complainant is not entitled to maintain this suit because said suit is an attempt to vary by parol the terms of the written lease entered into by the complainant and the said Louis C. Ulrich.

By way of Couter-claim this defendant says:-

1. That on or about the 19th day of January, 1920, complainant being seized in fee of certain lands in the City of Elizabeth, Union County, New Jersey, commonly known as Numbers 43—45 Westfield Avenue, in the said City, made, executed and delivered a lease to the said Louis C. Ulrich, the late husband of this defendant, for a period of fifteen years from the 19th day of January, 1920, for the benefit of said Louis C. Ulrich, this defendant, and John J. Ulrich, her son, a copy of which lease is annexed to the Bill of Complaint filed herein and marked Exhibit "A" in consideration among other things, of the Agreement on the part of the said Louis C. Ulrich to build and construct on said lands a two story brick building at a cost of not less than \$9,000, and to pay all the charges in connection therewith, and also to pay the yearly taxes to be assessed against the said property beginning with the year 1920, and in further consideration of an annual rental of \$10.00 to be paid in advance on the 19th day of January of each and every year during the life of said lease.

2. That pursuant to said lease, said Louis C. Ulrich did enter upon said lands and did in the year

Answer of Kate E. Ulrich

1920, build and construct a two story brick building in accordance with plans and specifications approved by complainant at a cost exceeding the sum of \$9,000, and since said time down to the present day has paid all the charges and assessments thereon, including all taxes, water charges, insurance and interest on mortgages amounting to a further sum of \$2,500, and has paid the annual rental of \$10.00 for each and every year during said lease and down to the present time; that complainant refused to accept the annual rental of \$10.00 for the year 1924, which was duly tendered to him by this defendant on the 19th day of January 1924; and the said Louis C. Ulrich and this defendant, and the said John J. Ulrich have at all times fully performed the terms, covenants and conditions of said lease.

3. That on the 29th day of October 1923, the said Louis C. Ulrich departed this life intestate, leaving him surviving this defendant and her son John J. Ulrich, his son, by reason whereof and pursuant to the Statutes of this State in such case made and provided this defendant became entitled to one-half of all the personal property whereof the said decedent died seized.

4. That if this Court decree that the said lease is null and void, as prayed for in the Bill of Complaint, then the said expenditures made by the said Louis C. Ulrich in the erection and construction of said building, and the payment of taxes, interest on mortgages, assessments, water charges, etc., should be declared an equitable lien or mortgage against the said lands and premises, and complainant should be accountable therefor.

This defendant therefore prays:-

Answer of Kate E. Ulrich

First. That complainant may answer this Counterclaim and each statement therein made without oath.

10 Second. That if said lease is declared to be null and void, as prayed for in the Bill of Complaint, then that an accounting may be had of the moneys expended by the said Louis C. Ulrich in the erection and construction of said building on the land of complainant and the taxes, water charges, insurance premiums, repairs, assessments and all other charges in connection therewith, and that the amount found due on such accounting may be decreed to be an equitable lien or mortgage against said lands and premises, and that complainant may be decreed to pay to this defendant her share or interest in said amount, pursuant to the Statutes of this State in such case made and provided, or that 20 said lands and premises be sold, and that this defendant's interest in said equitable lien or mortgage may be paid and satisfied out of the proceeds realized from the sale thereof.

Third. That a Writ of Subpoena issue out of this Honorable Court directing complainant to answer this Counterclaim and abide by such decree as may be made in the premises.

30 Fourth. That defendant may have such other and further relief as may be just in the premises, and

Take Notice, that this defendant objects to the Bill of Complaint on the ground that same does not set forth a cause of action, for which reason she reserves the right to move to strike out said Bill of Complaint at or before the final hearing herein.

William Harris,

Solicitor for and of Counsel with
Defendant, Kate E. Ulrich.

Answer of Francis Gordon

(Filed March 13, 1924.)

IN CHANCERY OF NEW JERSEY

Between

Charles W. Ulrich,

Complainant,

and

Francis Gordon, Trustee of

John J. Ulrich, Bankrupt, and

Kate E. Ulrich, otherwise

known as Catherine E. Ulrich

Defendants.

On Bill, &c.,

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ANSWER OF DEFENDANT FRANCIS GORDON

Defendant, Francis Gordon, as Trustee in Bankruptcy of John J. Ulrich, Bankrupt, of the City of Elizabeth, Union County, New Jersey, answering the Bill of Complaint filed herein says:- 20

1. He admits paragraphs 1 and 2.

2. He admits so much of paragraph 3 to the effect that complainant consented to the construction of the building referred to in said paragraph, same to be at the expense of Louis C. Ulrich; he has no knowledge or information sufficient to form a belief as to the other allegations in said paragraph.

3. He has no knowledge or information sufficient to form a belief as to paragraph 4. 30

4. He admits so much of paragraph 5 to the effect that complainant consented to the construction of said building by Louis C. Ulrich upon the terms, covenants and conditions set forth in the lease, a copy whereof is annexed to the Bill of Complaint, and marked Exhibit "A"; but he has no knowledge or information sufficient to form a be-

Answer of Francis Gordon

lief as to the other allegations in said paragraph.

5. He denies paragraph 6, except that in consideration of the construction and maintenance of said building the complainant made, executed and delivered to the said Louis C. Ulrich, now deceased, for the benefit of said Louis C. Ulrich, and John J. Ulrich, and Kate E. Ulrich, the lease, a copy whereof is annexed to the Bill of Complaint and marked Exhibit "B".

6. He admits paragraphs 7 and 8.

7. He has no knowledge or information sufficient to form a belief as to paragraphs 9 and 10.

8. He admits that the said Louis C. Ulrich died on the 29th day of October 1923, while the said Louis C. Ulrich and John J. Ulrich were in possession of the premises in question; that he has no knowledge or information sufficient to form a belief as to the other allegations of the 11th paragraph.

9. He has no knowledge or information sufficient to form a belief as to paragraph 12.

10. He has no knowledge as to paragraph 13, except that he admits that said lease was duly executed by Kate E. Ulrich and John J. Ulrich after the death of said Louis C. Ulrich, and was duly recorded in the Register's Office of the County of Union, New Jersey, in Book 920 of Deeds, page 76, on November 15th, 1923; as to the provisions of said lease he begs leave to refer to said instrument as if same were herein set forth for greater certainty.

11. He denies paragraph 14.

12. He admits paragraphs 15, 16, 17 and 18.

13. This defendant further answering says:-

That said lease, a copy whereof is annexed to the Bill of Complaint filed herein and marked Exhibit "B", was made, executed and delivered to Louis C.

Answer of Francis Gordon

Ulrich, deceased, for the benefit of said Louis C. Ulrich, Kate E. Ulrich, and John J. Ulrich, now bankrupt, in consideration of the construction of the building now located on the lands mentioned in the Bill of Complaint and for the other consideration mentioned in said lease, which consideration has been fully paid and satisfied according to the true intent and tenor thereof.

14. This defendant further answering says:-

That no fraud was practiced upon the complainant by the said Louis C. Ulrich, and that said lease was made, executed and delivered by complainant to the said Louis C. Ulrich for the benefit of said Louis C. Ulrich, Kate E. Ulrich and John J. Ulrich, now bankrupt, in consummation of an oral agreement theretofore agreed upon.

15. This defendant further answering says:-

That complainant at the time of the execution of said lease, and at all times since said time, has known of the contents of said lease, and has accepted the rents and profited by the benefits and consideration therein provided, and has therefore fully ratified and confirmed same, and is and should therefore be estopped from maintaining this suit.

16. That if any fraud was practiced upon complainant by the said Louis C. Ulrich as charged in the Bill of Complaint, which this defendant denies, said complainant, after discovering said alleged fraud accepted the rent provided in said lease and profited by the benefits and other considerations therein provided, and in all respects fully ratified and confirmed said lease, and therefore is and should be estopped from maintaining this suit.

17. This defendant further answering says:-

Answer of Francis Gordon

That if any fraud was practiced upon complainant by the said Louis C. Ulrich as alleged in the Bill of Complaint, which this defendant denies, complainant is not entitled to maintain this suit because of the lack of diligence in bringing the suit during the lifetime of the said Louis C. Ulrich; that complainant has been guilty of laches.

10 18. This defendant further answering says:-

That complainant is not entitled to maintain this suit because said suit is an attempt to vary by parol the terms of the written lease entered into by the complainant and the said Louis C. Ulrich.

19. This defendant further answering says:-

20 That by virtue of the provisions of the Acts of Congress relating to bankruptcy, he, as Trustee of the estate of John J. Ulrich, became and is vested with all the property of said bankrupt of whatever kind, character, nature and description whatsoever, as of this date that the said bankrupt was adjudicated such, and also of all rights of action, which the creditors of said bankrupt had at the time of said adjudication; and as against the assets and property of said bankrupt, and particularly as against the interest of said bankrupt in the lease, a copy whereof is annexed to the Bill of Complaint filed herein and marked Exhibit "B", this defendant, as Trustee
30 aforesaid, by virtue of the provision of said Bankruptcy Act, the amendments thereto and supplements thereof, stands in the position of attaching creditors holding a lien by attachment or levy, and that as against this defendant complainant cannot maintain this suit irrespective of what rights or equities there may exist as between complainant and the said Louis C. Ulrich, deceased, or John J. Ulrich, bankrupt, and as against this defendant the

Answer of Francis Gordon

Bill of Complaint does not set forth a cause of action.

By way of Counter-claim this defendant says:-

1. That on or about the 19th day of January 1920, complainant being seized in fee of certain lands in the City of Elizabeth, Union County, New Jersey, commonly known as Numbers 43—45 Westfield Avenue, in the said City, made, executed and delivered a lease to the said Louis C. Ulrich, for a period of fifteen years from the 19th day of January 1920, for the benefit of said Louis C. Ulrich, Kate E. Ulrich, and John J. Ulrich, bankrupt, a copy of which lease is annexed to the Bill of Complaint filed herein and marked Exhibit "A", in consideration, among other things, of the Agreement on the part of the said Louis C. Ulrich to build and construct on said lands a two story brick building at a cost of not less than \$9,000, and to pay all the charges in connection therewith, and also to pay the yearly taxes to be assessed against the said property beginning with the year 1920, and in further consideration of an annual rental of \$10.00 to be paid in advance on the 19th day of January of each and every year during the life of said lease.

2. That pursuant to said lease, said Louis C. Ulrich did enter upon said lands and did in the year 1920, build and construct a two story brick building in accordance with plans and specifications approved by complainant at a cost exceeding the sum of \$9,000, and since said time down to the present day has paid all the charges and assessments thereon, including all taxes, water charges, insurance and interest on mortgages amounting to a further sum of \$2,500, and has paid the annual rental of \$10.00

Answer of Francis Gordon

for each and every year during said lease and down to the present time; that complainant refused to accept the annual rental of \$10.00 for the year 1924, which was duly tendered to him by Kate E. Ulrich on the 19th day of January 1924; and the said Louis C. Ulrich, Kate E. Ulrich, and the said John J. Ulrich, now bankrupt, have at all times fully performed the terms, covenants and conditions of said lease.

10 3. That on the 29th day of October 1923, the said Louis C. Ulrich departed this life intestate, leaving him surviving Kate E. Ulrich and his son, John J. Ulrich, now bankrupt, by reason whereof, and by reason of the provisions of the Bankruptcy Act of the United States, the amendments thereto and supplements thereof, this defendant became entitled to one-half of all the personal property where-
20 of the said decedent died seized (which one-half interest represents the interest of John J. Ulrich, now deceased).

4. That if this Court decree that the said lease is null and void, as prayed for in the Bill of Complaint, then the said expenditures made by the said Louis C. Ulrich in the erection and construction of said building, and the payment of taxes, interest on mortgages, assessments, water charges, etc., should be declared an equitable lien or mortgage against
30 the said lands and premises, and complainant should be accountable therefor.

This defendant therefore prays:-

First. That complainant may answer this Counterclaim and each statement therein made without oath.

Second. That is said lease is declared to be null and void, as prayed for in the Bill of Complaint, then

Answer of Francis Gordon

that an accounting may be had of the moneys expended by the said Louis C. Ulrich in the erection and construction of said building on the land of complainant and the taxes, water charges, insurance premiums, repairs, assessments and all other charges in connection therewith, and that the amount found due on such accounting may be decreed to be an equitable lien or mortgage against said lands and premises, and that complainant may be decreed to pay to this defendant his share or interest in said amount, pursuant to the Statutes of this State in such case made and provided, or that said lands and premises be sold, and that this defendant's interest in said equitable lien or mortgage may be paid and satisfied out of the proceeds realized from the sale thereof.

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20 Third. That a Writ of Subpoena issue out of this Honorable Court directing complainant to answer this Counterclaim and abide by such decree as may be made in the premises.

Fourth. That defendant may have such other and further relief as may be just in the premises, and

Take Notice, that this defendant objects to the Bill of Complaint on the ground that same does not set forth a cause of action, for which reason he reserves the right to move to strike out said Bill of
30 Complaint at or before the final hearing herein.

William Harris,

Solicitor for and of Counsel with Defendant, Francis Gordon, Trustee in Bankruptcy of John J. Ulrich, Bankrupt.

Replication to Kate E. Ulrich
(Filed March 20, 1924.)

IN CHANCERY OF NEW JERSEY

	Between	
	Charles W. Ulrich,	
		Complainant,
		and
10	Francis Gordon, Trustee of	
	John J. Ulrich, Bankrupt, and	On Bill, &c.,
	Kate E. Ulrich, otherwise	
	known as Catherine E. Ulrich,	
	Defendants.	

REPLICATION TO KATE E. ULRICH

Complainant joins issue on the answer of the defendant, Kate E. Ulrich, otherwise known as Catherine E. Ulrich.

As to the counterclaim contained in said answer, complainant says:

1. He admits that on or about the 19th day of January, 1920, he was seized in fee of certain lands in the City of Elizabeth, Union County, New Jersey, commonly known as 43—45 Westfield Avenue, in said City, but denies that on said date, he made, executed and delivered a lease to Louis C. Ulrich, the late husband of Kate E. Ulrich, otherwise known as Catherine E. Ulrich, for a period of fifteen years from the 19th day of January, 1920, for the benefit of the said Louis C. Ulrich, Kate E. Ulrich, and John J. Ulrich his son, in accordance with the lease as annexed to the bill of complaint filed herein, and marked "Exhibit A", and denies that he executed and delivered said lease to the said Louis C. Ulrich, for the benefit of the said Louis C. Ulrich, and Kate E. Ulrich, and John J. Ulrich, in consideration,

Replication to Kate E. Ulrich

among other things, of the agreement on the part of the complainant to build and construct on said lands a two story brick building at a cost of not less than \$9,000.00, and to pay all the charges in connection therewith, and also to pay the yearly taxes assessed against said property, beginning with the year 1920, and also in consideration of an annual rental to be paid on the 10th of January of each and every year during the life of said lease.

2. He denies that pursuant to said lease said Louis C. Ulrich did enter into said lands, but admits that in the year 1920, the said Louis C. Ulrich did complete a two story brick building, but denies that said building was constructed in accordance with plans and specifications approved by complainant, but denies that the building was to cost exceeding the sum of \$9,000.00, and denies that since said date, down to the present date, said Louis C. Ulrich paid all the charges and assessments thereon, including all taxes, water charges, insurance and interest on mortgages, amounting to a further sum of \$2,500.00, and denies that said Louis C. Ulrich has paid the annual rental of \$10.00 for each and every year during said lease and down to the present time. Complainant further denies that he refused to accept the annual rent of \$10.00 for the year 1924, and denies that said sum was duly tendered to him by this defendant on the 19th day of January, in the year 1924. Complainant denies that the said Louis C. Ulrich, Kate E. Ulrich and John J. Ulrich have at all times performed the terms, covenants and conditions of the lease as aforesaid, and further says that the lease referred to was never intended to be a lease for the benefit of Louis C. Ulrich, Kate E. Ulrich and the said John J. Ulrich.

Replication to Kate E. Ulrich

3. This defendant admits that on the 29th day of October, 1923, the said Louis C. Ulrich departed this life, but has no knowledge or information sufficient to form a belief as to whether said Louis C. Ulrich departed this life intestate, leaving him surviving this defendant and her son, John J. Ulrich, and by reason whereof and pursuant to the statute of this State in such case made and provided, this defendant became the owner of one-half the property of which said Louis C. Ulrich died deceased.

4. This complainant states that in the event that this Court decree that the said lease is null and void, as prayed for in the bill of complaint, that this complainant denies the right of said defendant being entitled to an equitable lien or mortgage against the said lands and premises, and that complainant should be accountable for same, by reason of the expenditures made by the said Louis C. Ulrich in the erection and construction of the said building, and the payment of taxes, interest on mortgages, assessments, water charges, etc.

Complainant further answering, says:-

1. That the agreement between complainant and Louis C. Ulrich, was such that the said Louis C. Ulrich was permitted to construct the building aforesaid on the premises aforesaid, upon condition that if the said building was so constructed, the said Louis C. Ulrich and his family, consisting of this defendant and their son, John J. Ulrich, could occupy the upper portion of said building as a dwelling, and that said Louis C. Ulrich would receive the permission of complainant to permit the son of said Louis C. Ulrich, being John J. Ulrich, to occupy the store underneath the dwelling quarters, for the purpose of conducting a business known as an automobile

Replication to Kate E. Ulrich

supply and accessory business; and the further understanding was that the occupancy of said dwelling quarters and the occupancy of said store, by the persons stated, would be without the payment of any rent by said Louis C. Ulrich or his family or John J. Ulrich, for a period of time consisting of ninety months from the time the said building was completed, with the further understanding that said Louis C. Ulrich would pay the taxes on the building, and the land upon which said building was located and all repairs, both outside and inside, as might be required during the term of ninety months, and also any and all charges for fire insurance, water charges, assessments, and any other charges that might be incident to the use and occupancy of the building by the persons stated, during the said period of ninety months; it being further understood and agreed between said Louis C. Ulrich and Charles W. Ulrich, that at the expiration of said ninety months, the said John J. Ulrich would cause to be delivered up to said Charles W. Ulrich the possession of the dwelling quarters and the premises used as a store, the further understanding being that in connection with the note endorsed by the said Charles W. Ulrich in the sum of \$4,000.00, that the said Louis C. Ulrich would meet the payment of said note by paying the same when it became due, in the manner heretofore referred to in the bill of complaint.

2. That the said Louis C. Ulrich and his family and the said John J. Ulrich did occupy the premises referred to as a dwelling and store from on or about the first day of April, 1920, and have ever since occupied said dwelling and store, and continued in

Replication to Kate E. Ulrich

possession of such, the said Louis C. Ulrich having occupied with his wife and son as aforesaid, the dwelling quarters above the store from the first of April, 1920, down to the date of the death of said Louis C. Ulrich, this defendant and John J. Ulrich having continued to occupy said premises up to this time, and the said John J. Ulrich having occupied the said store ever since the first of April, 1920, down to the time that a receiver was appointed, on December 13th, 1923, and the receiver, Francis Gordon, and the trustee duly elected. Francis Gordon, having occupied the said premises ever since the said receiver was appointed by the United States District Court, in bankruptcy proceedings, up to this time.

3. That at the time the agreement as aforesaid, was made between complainant and Louis C. Ulrich, it was further agreed that the occupancy of said premises for the period of ninety months was figured on the basis that said Louis C. Ulrich would have invested in the construction and erection of the building, \$9,00.00, and it was determined that the rental which said Louis C. Ulrich and his family and said John J. Ulrich would be required to pay or have credited to them on account of the investment of Louis C. Ulrich as aforesaid, would be the sum of \$100.00 a month.

4. That subsequently complainant executed a mortgage for \$3,000.00 on the premises aforesaid, at the request of Louis C. Ulrich, who took the proceeds of same, and at the time of his death, this complainant was an accommodation endorser on a note of said Louis C. Ulrich, in the sum of \$1,200.00, and was required, after the death of Louis C. Ulrich, by reason of his failure to have paid the same to the

Replication to Kate E. Ulrich

bank which purchased said note, the said bank being the National State Bank of Elizabeth, N. J., to pay said note. This note is particularly referred to in the eleventh paragraph of the complainant's bill of complaint. This complainant further says that by reason of this complainant having executed the said mortgage as aforesaid, in the sum of \$3,000.00, the proceeds of which were turned over to said Louis C. Ulrich, and by reason of this complainant being required to meet the note as aforesaid for \$1,200.00, the total of these two items being \$4,200.00, should be credited to this defendant to the extent of forty-two months of the term which said complainant agreed with said Louis C. Ulrich, that he and his family could occupy the dwelling quarters and the store in manner heretofore stated.

5. This complainant further says the original agreement having been such that Louis C. Ulrich and his family could occupy the dwelling quarters, and the store as aforesaid, for a term of ninety months, and by reason of the action aforesaid of Louis C. Ulrich, which resulted in he and his estate being benefited to the extent of \$4,200.00, this complainant says that he is entitled to have that sum of money credited against the said \$9,000.00 invested in said building by said Louis C. Ulrich, at the time of the construction of such. This complainant further claiming that if said \$4,200.00 is credited to complainant on the term of the said ninety months, in that event, the said Louis C. Ulrich, had he lived, would only have been entitled to remain in possession of the premises, and John J. Ulrich, would only be entitled to remain in possession of the same until forty-two months had elapsed from April 1st, 1920.

Replication to Kate E. Ulrich

6. Complainant further states that in the event that the lease is declared null and void, and in the further event that the Court decrees that any moneys which said Louis C. Ulrich invested in the construction of the building should be determined as an equitable lien on the premises, in that event, this complainant makes claim for the sum of \$4,200.00 as hereinbefore referred to, in addition to any other claims which said complainant may have in such event.

J. Vincent Barnitt,
Solicitor for and of Counsel
with Complainant.

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Replication to Francis Gordon

(Filed March 20, 1924.)

IN CHANCERY OF NEW JERSEY

Between
Charles W. Ulrich,
Complainant,
and
Francis Gordon, Trustee of
John J. Ulrich, Bankrupt, and
Kate E. Ulrich, otherwise
known as Catherine E. Ulrich,
Defendants.

On Bill, &c.,

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REPLICATION TO FRANCIS GORDON

Complainant joins issue on the answer of the defendant, Francis Gordon, Trustee of John J. Ulrich, Bankrupt.

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As to the counterclaim contained in said answer complainant says:

1. He admits that on or about the 19th day of January, 1920, he was seized in fee of certain lands in the City of Elizabeth, Union County, New Jersey, commonly known as 43—45 Westfield Avenue, in said City, but denies that on said date, he made, executed and delivered a lease to Louis C. Ulrich, the late husband of Kate E. Ulrich, otherwise known as Catherine E. Ulrich, for a period of fifteen years from the 19th day of January, 1920, for the benefit of the said Louis C. Ulrich, Kate E. Ulrich, and John J. Ulrich, his son, in accordance with the lease as annexed to the bill of complaint filed herein, and marked "Exhibit A", and denies that he executed and delivered said lease to the said Louis C. Ulrich for the benefit of the said Louis C. Ulrich and Kate E. Ulrich, and John J. Ulrich, in consideration, among other things of the agreement on the part

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Replication to Francis Gordon

of the complainant to build and construct on said lands a two story brick building at a cost of not less than \$9,000.00, and to pay all the charges in connection therewith, and also to pay the yearly taxes assessed against said property, beginning with the year 1920, and also in consideration of an annual rental to be paid on the 10th of January of each and every year during the life of said lease.

10 2. He denies that pursuant to said lease said Louis C. Ulrich did enter into said lands, but admits that in the year 1920, the said Louis C. Ulrich did complete a two story brick building, but denies that the said building was constructed in accordance with plans and specifications approved by complainant, but denies that the building was to cost exceeding the sum of \$9,000.00, and denies that since said date, down to the present date, said Louis C. Ulrich
20 paid all the charges and assessments thereon, including all taxes, water charges, insurance and interest on mortgages, amounting to a further sum of \$2,500.00, and denies that said Louis C. Ulrich has paid the annual rental of \$10.00 for each and every year during said lease and down to the present time. Complainant further denies that he refused to accept the annual rent of \$10.00 for the year 1924, and denies that said sum was duly tendered to
30 him by this defendant on the 19th day of January, in the year 1924. Complainant denies that the said Louis C. Ulrich, Kate E. Ulrich, and John J. Ulrich have at all times performed the terms, covenants and conditions of the lease as aforesaid, and further says that the lease referred to was never intended to be a lease for the benefit of Louis C. Ulrich, Kate E. Ulrich and the said John J. Ulrich.

3. This defendant admits that on the 29th day of October, 1923, the said Louis C. Ulrich departed

Replication to Francis Gordon

this life, but has no knowledge or information sufficient to form a belief as to whether said Louis C. Ulrich departed this life intestate having him surviving Kate E. Ulrich and her son John J. Ulrich and by reason whereof, and pursuant to the statute of this State in such case made and provided, this defendant became the owner of one-half the property of which said Louis C. Ulrich died deceased.

10 4. This complainant states that in the event that this Court decree that the said lease is null and void, as prayed for in the bill of complaint, that this complainant denies the right of said defendant being entitled to an equitable lien or mortgage against the said lands and premises, and that complainant should be accountable for same, by reason of the expenditures made by the said Louis C. Ulrich in the erection and construction of the said building, and the
20 payment of taxes, interest on mortgages, assessments, water charges, etc.

Complainant further answering, says:

1. That the agreement between complainant and Louis C. Ulrich, was such that the said Louis C. Ulrich was permitted to construct the building aforesaid on the premises aforesaid, upon condition that if the said building was so constructed, the said Louis C. Ulrich and his family, consisting of the wife of said Louis C. Ulrich, Kate E. Ulrich, and
30 their son, John J. Ulrich, could occupy the upper portion of said building as a dwelling, and that said Louis C. Ulrich would receive the permission of complainant to permit the son of said Louis C. Ulrich, being John J. Ulrich, to occupy the store underneath the dwelling quarters, for the purpose of conducting a business known as an automobile supply and accessory business; and the further understanding was that the occupancy of said dwelling quarters and the

Replication to Francis Gordon

10 occupancy of said store, by the persons stated, would be without the payment of any rent by said Louis C. Ulrich or his family, or John J. Ulrich, for a period of time consisting of ninety months from the time the said building was completed, with the further understanding that said Louis C. Ulrich would pay the taxes on the building, and the land upon which said building was located, and all repairs both outside and inside, as might be required during the term of ninety months, and also any and all charges for fire insurance, water charges, assessments, and any other charges that might be incident to the use and occupancy of the building by the persons stated, during the said period of ninety months; it being further understood and agreed between said Louis C. Ulrich and Charles W. Ulrich, that at the expiration of said ninety months, the said John J. Ulrich would cause to be delivered up to said Charles W. Ulrich, the possession of the dwelling quarters and the premises used as a store, the further understanding being that in connection with the note endorsed by the said Charles W. Ulrich in the sum of \$4,000.00, that the said Louis C. Ulrich would meet the payment of said note by paying the same when it became due, in the manner heretofore referred to in the bill of complaint.

20
30 2. That the said Louis C. Ulrich and his family, and the said John J. Ulrich did occupy the premises referred to as a dwelling and store from on or about the first day of April 1920, and have ever since occupied said dwelling and store, and continued in possession of such, the said Louis C. Ulrich having occupied with his wife and son as aforesaid, the dwelling quarters above the store from the first of April, 1920, down to the date of the death of said Louis C. Ulrich, and this defendant, John J. Ulrich,

Replication to Francis Gordon

and Kate E. Ulrich, having continued to occupy said premises up to this time, and the said John J. Ulrich having occupied the said store ever since the first of April, 1920, down to the time that a receiver was appointed, on December 13th, 1923, and the receiver, Francis Gordon, and the trustee duly elected, Francis Gordon, having occupied the said premises ever since the said receiver was appointed by the United States District Court, in bankruptcy proceedings, up to this time. 10

3. That at the time the agreement as aforesaid was made between complainant and Louis C. Ulrich, it was further agreed that the occupancy of said premises for the period of ninety months was figured on the basis that said Louis C. Ulrich would have invested in the construction and erection of the building, \$9,000.00, and it was determined that the rental which said Louis C. Ulrich and his family and the said John J. Ulrich would be required to pay or have credited to them on account of the investment of said Louis C. Ulrich, would be the sum of \$100.00 a month. 20

4. That subsequently complainant executed a mortgage for \$3,000.00 on the premises aforesaid, at the request of Louis C. Ulrich, who took the proceeds of same, and at the time of his death, this complainant was an accommodation endorser on a note of said Louis C. Ulrich, in the sum of \$1,200.00, and was required, after the death of Louis C. Ulrich, by reason of his failure to have paid the same to the bank which purchased said note, the said bank being the National State Bank of Elizabeth, N. J., to pay said note. This note is particularly referred to in the eleventh paragraph of the complainant's bill of com- 30

IN CHANCERY OF NEW JERSEY

Between	
Charles W. Ulrich,	
Complainant,	
and	
10 Francis Gordon, Trustee of	On Bill, &c.
John J. Ulrich, Bankrupt,	
and Kate E. Ulrich, other-	
wise known as Catherine E.	
Ulrich,	
Defendants.	

TESTIMONY

20 Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Paterson, New Jersey, on the twenty-third day of April, nineteen hundred and twenty-four, before Hon. Vivian M. Lewis, Vice Chancellor.

Appearances: James Vincent Barnitt, Esq., for the complainant; William Harris, Esq., (by Israel B. Greene, Esq.) for the defendants.

30 MRS. KATE E. ULRICH, being duly sworn, testified as follows: (This witness' testimony was taken at this time because she was going to California.)

Direct Examination by Mr. Greene:

Q. Mrs. Ulrich, you are one of the defendants in this suit? A. Yes, sir.

Q. And you are the wife of Louis Ulrich, now dead? A. Yes, sir.

Q. Your husband is a brother of the complainant in this case? A. Yes, sir.

Q. You are also the administratrix of your husband's estate? A. Yes, sir.

Q. Now, you lived with your husband, did you, up to the time of his death? A. Yes, sir.

Q. Where did you live with him? A. 45 Westfield Avenue, Elizabeth, New Jersey. 10

Q. Is that the land to which Mr. Charles Ulrich has title? A. Yes, sir.

Q. What sort of a house is built on that lot? A. It is a hollow tile, a store, and a small flat above it.

Q. Who built the house? A. A man named Mr. Thorpe.

Q. Who paid for the building? A. My husband.

Q. Your husband built the house? A. Yes, 20 sir.

Q. When did he build it? A. It was four years ago.

Q. What season of the year was it? A. He began, I think, in the spring of the year, about now.

Q. Was it 1920? A. Yes, sir.

Q. And do you know the cost of the house? A. It was \$9,000 or over.

Q. Is there a mortgage on the house? A. Yes, 30 sir.

Q. Who holds the mortgage? A. A man named Mr. Menge.

Mr. Barnitt—I object to this as not the best evidence.

Mr. Greene—I will withdraw the question.

Mrs. Kate E. Ulrich—direct

Q. When was the house completed? A. It was, I think, in the last of June or July, 1920.

Q. And you and your husband and your son, John Ulrich, moved into the house? A. Yes, sir.

Q. You lived in the apartment upstairs? A. Yes, sir.

Q. All together? A. Yes, sir.

10 Q. Who occupied the store below? A. My husband for a while, and then he rented part of it to Mr. Cooley.

Q. In the store occupied by your husband, what kind of a business did he conduct there?

A. An automobile accessory.

Q. Was your son John engaged in business with him? A. Yes, sir.

Q. Now, do you know whether your husband paid any taxes or assessments on that property?

20 A. He kept them all paid up to the time of his death.

Q. Who has the receipts for the payment of taxes and for assessments on the property? A. I think my lawyer, Mr. Pfaff, of Elizabeth.

Q. Do you know whether your husband paid the fire insurance on the property? A. Everything was paid up to the time of his death, as I understand.

30 Q. Now, do you know whether your husband paid any rent to Mr. Charles Ulrich, the complainant in this suit? A. He was supposed to; I had nothing to do with that.

The Court—Strike that out.

Q. Was your husband friendly with the complainant up to the time of his death? A. Yes, sir.

Mrs. Kate E. Ulrich—direct

Q. Did your family visit Mr. Charles Ulrich? A. Yes, sir.

Q. Frequently? A. Yes, sir.

Q. Did Mr. Charles Ulrich visit you in Elizabeth? A. Yes, sir.

Q. Did he ever talk to you about you and your husband or your son not having a lease on that property? A. No, sir, there was never anything 10 31 said to me about it.

Q. Always very friendly? A. Yes, sir.

Q. Did you know of the existence of this lease?

A. I knew there was a lease, yes, sir.

Q. Did you know the terms of the lease? A. No, sir, I did not.

Q. Did you know where your husband kept the lease? A. Yes, sir.

Q. Where? A. He had a strong box, of course, he kept it locked in that. 20 32

Q. You found the lease after he died? A. Yes, sir.

Q. You signed the lease after he died? A. Yes, sir.

Q. And your son also signed the lease, after he died? A. Yes, sir.

Q. And then you had the lease recorded? A. Yes, sir.

Q. And that lease is the lease for fifteen years on the property? 30 33

Mr. Barnitt—Objected to.

Q. And that lease is on the property which you occupy? A. Yes, sir.

Mrs. Kate E. Ulrich—cross

Cross Examination by Mr. Barnitt:

Q. Mrs. Ulrich, you moved into this property in April, 1920, didn't you? A. It was around that time.

10 Q. Do you know whether your late husband and your son moved into the store below at about the same time that you moved upstairs? A. Yes, sir.

Q. And you have continued in possession of the dwelling quarters above the store ever since the house was completed up to the present time? A. Yes, sir.

Q. And your husband and your son continued in possession of the store below until the death of your husband? A. Yes, sir.

20 Q. And then, after your husband died, in the fall of 1923, approximately October 29, 1923, your son continued in possession of that store, didn't he, until he was adjudicated a bankrupt? A. Yes, sir.

Q. After your husband died you know, don't you, that your son went into bankruptcy? A. Yes, sir.

Q. And since that time you have still been upstairs in the dwelling quarters? A. Yes, sir.

30 Q. Referring to the lease which you say you found in your husband's strong box, you did not find that in his strong box until after he died? A. No, sir.

Q. And before that, you had never seen that paper, had you? A. Not to my knowledge, no, sir.

Q. When was it, after his death, that you first saw this paper in his strong box? A. When we opened the box.

Mrs. Kate E. Ulrich—cross

Q. When was that? A. Well, I suppose it was about four days after he died.

Q. Approximately the early part of November, 1923? A. Yes, sir.

Q. Who was with you when you did that? A. My son, John J. Ulrich.

10 Q. The young man that went into bankruptcy? A. Yes, sir.

Q. Do you know whether he had ever seen that paper before that time when you discovered it in that box? A. He did not either.

Q. After you saw the paper which you afterwards found out to be a lease, what did you do with that paper, if anything? A. I took it to my lawyer.

Q. When was that, Mrs. Ulrich? A. I suppose about a week after.

20 Q. Was your son John J. Ulrich with you when you took it to your lawyer? A. Yes, sir.

Q. Was your lawyer, Mr. Pfaff, of Elizabeth? A. Yes, sir.

Q. And at the time you took that paper which you found out to be a lease, to Mr. Pfaff, what did you do, if anything, about signing it then? A. We signed it.

Q. Who told you to sign it? A. My lawyer.

Q. Mr. Pfaff? A. Yes, sir.

30 Q. Was Mr. Ulrich, the complainant, there? A. No, sir.

Q. Now, did Mr. Pfaff at the same time also tell your son John J. to sign that paper, too? A. Yes, sir.

Q. Now, do you recall whether you signed that paper on the 15th of November, 1923? A. Well, I could not tell; I have no figures for that.

Q. After you had signed the paper which you

Mrs. Kate E. Ulrich—cross

found out to be a lease (withdrawn). Did you ask Mr. Pfaff to read the paper to you? A. He gave it to me to read.

Q. Hadn't you read it before that time? A. No, sir.

Q. Was John there when Mr. Pfaff read it?

A. Yes, sir.

10 Q. And did you read it? A. Yes, sir.

Q. Did you read it out loud?

Mr. Greene—We admit in our pleadings that this paper was signed after the husband died.

Q. Did you read it out loud? A. No, sir.

Q. After you read it—did you read it all through? A. I suppose I did.

20 Q. Did you read it through? A. I don't think I did at that time.

Q. What part of the lease did you read, if you remember? A. I read so that I would know what I was signing.

Q. Tell me what you read; do you remember what you read? A. I cannot remember now.

Q. Do you remember any part of the lease that you read? A. I could not remember it to say it over to you.

30 Q. Do you remember any part of it? A. No, sir.

Q. Do you know whether John J. Ulrich then read the lease after you read it? A. I don't know whether he read it at that time or not, but I suppose he did.

Mr. Barnitt—I ask to have that struck out.

Mrs. Kate E. Ulrich—cross

The Court—Strike it out.

Q. After that, when you signed it, did Mr. Pfaff tell you what he was going to do with the lease? A. Record it.

Q. Did you have it recorded? A. I know it is recorded.

Q. Did you ever get the lease back from Mr. Pfaff after that? A. I don't know whether I have that lease, or whether he has it in his possession. 10

Q. Mr. Pfaff? A. Yes, sir.

Q. You also don't know whether you ever got it back from him from that time to this? A. If I have it, I have it at home in my strong box, but I don't remember whether he gave it to me.

Q. Now, you said that your husband paid all the taxes and assessments up to the time he died on this property, didn't you? A. Yes, sir. 20

Q. How do you know that? A. Only by what he told me.

Q. When did he tell you that? A. Each time that he paid me he would tell me.

Q. Do you know whether he paid the taxes for 1923 before he died? A. I could not tell that.

Q. Don't you know that he did not pay the taxes in 1923, don't you know that? A. I could not tell; he transacted all his own affairs. 30

Q. Don't you know, Mrs. Ulrich, that your son did not pay the 1923 taxes on this property? A. I could not tell.

Q. So you are not correct when you stated in answer to your counsel, that your husband paid all the taxes and assessments on this property up to the time of his death; is that true?

Mrs. Kate E. Ulrich—cross

Mr. Greene—I object to that.

The Court—She says she does not know.

Q. Now, Mrs. Ulrich, you found out, didn't you, in Mr. Pfaff's office, when he read this lease to you, that it provided for the payment of ten dollars a year on this property? A. Yes, sir.

10 Q. Do you know whether your husband ever paid that ten dollars? A. I don't know.

Q. You never paid anything? A. No, sir.

Q. Do you know whether John J. Ulrich ever paid any? A. I don't know.

Q. Do you know whether it was ever offered by you or your husband or your son—do you know whether it was ever offered by yourself or your husband or John J. Ulrich to Charles W. Ulrich, the complainant, your brother-in-law? A. I don't
20 know.

Q. You knew in 1920, at the time this building on Westfield Avenue was started to be constructed, that Mr. Ulrich, your brother-in-law, owned that property? A. Yes, sir.

Q. Were you living across the street from this property at that time? A. No, sir.

Q. You knew your husband had a store across the street, an accessory store? A. Yes, sir.

30 Q. You don't know anything with reference to the particulars of any transaction between your late husband and Mr. Ulrich about that building that was being constructed on his property which you afterwards lived in, do you? A. I don't know anything about it.

Q. You spoke of a mortgage being on this property before, didn't you? A. Yes, sir.

Q. Now, did your husband ever speak to you about that mortgage? A. Yes, sir.

Mrs. Kate E. Ulrich—cross

Q. Did he tell you how much it was for?

A. Yes, sir.

Q. Did he tell you where he got the money from? A. Yes, sir.

Q. What did he tell you?

Mr. Greene—Objected to, because counsel objected to any testimony on this mortgage on direct examination, and I do not think it
10 is proper cross examination.

The Court—Objection overruled.

Q. What did he tell you?

Mr. Greene—I object.

Q. Where did he get the money from; do you know where he got the money from? A. Yes, sir. 20

Q. From whom did he get the money?

Mr. Greene—Objected to.

A. He got it from a man named Menge.

Q. Do you know Louis Menge? A. Yes, sir.

Q. Do you know how much the mortgage was for? A. \$3000.

Q. Do you know whether Mr. Ulrich signed the mortgage on his property to Mr. Menge for
30 the \$3,000? A. I think he did.

Q. Do you know, as a matter of fact, whether Mr. Menge gave the \$3,000 to your husband? A. I don't know.

Q. Do you know anything about the note transactions of your husband with the bank, the National State Bank of Elizabeth, in connection with this property?

Mrs. Kate E. Ulrich—redirect

Mr. Greene—I think that is objectionable.
The Court—Objection overruled.

A. Well, I knew he had notes.

Q. Did he ever tell you he had the complainant endorse those notes for him? A. Yes, sir.

Q. Do you know whether he did indorse them
10 for him? A. I could not tell you.

Q. Do you know whether one of the notes was for \$4,000?

Mr. Greene—Objected to.
The Court—Objection overruled.

A. I don't know.

Q. Mrs. Ulrich, in your answer filed in this
20 suit, this proceeding, you said that you tendered to Mr. Ulrich, the complainant, on the 19th of January, 1924, ten dollars rent for the year 1924; did you do that? A. You say I said I did?

Q. Yes, ma'am.

Mr. Greene—This was a tender made by counsel for the other defendant.

Mr. Barnitt—And we deny that; I am asking her now whether she did.

30 A. No, sir, I did not.

Q. Did you authorize anybody on your behalf to make a tender of ten dollars to Mr. Ulrich in January, 1924, or any other time? A. No, sir.

Redirect Examination by Mr. Greene:

Q. Mrs. Ulrich, you were present at a meeting held between your husband and Mr. Charles W.

Mrs. Kate E. Ulrich—redirect

Ulrich at Singac, New Jersey, were you not? A. Yes, sir.

Q. You were present, were you not? A. Yes, sir.

Q. When was that? A. Well, it was previous to the building, but I could not tell you the time.

Q. Approximately, how long before the building was started? A. Well, it was in the summer. 10

Q. The summer of the year in which the building was begun? A. Yes, sir, it was in the summer as it was built in the fall or winter time.

Q. Who lived in Singac at that time? A. Mr. Charles Ulrich.

Q. Do you remember any conversation with reference to this lease at that time? A. No, sir; they were talking, but I was not interested.

Q. Do you remember any part of the conversation at all at that time? A. Nothing more than I
20 remember that he could have a lease on the property, if he wanted.

Q. Who could? A. My husband could have a lease on his property to build.

Q. Who said he could have such a lease? A. Mr. Charles Ulrich.

Q. Was anything said at that time as to the length of that lease?

Mr. Barnitt—Objected to as leading. I
30 think counsel should be restricted.

Q. Will you tell us the gist of that conversation, the best you can remember? A. There was no conversation that I had taken any interest in, because it was between two brothers.

Q. You did not hear it at all? A. I did not hear the conversation any more than I heard them

Mrs. Kate E. Ulrich—recross

speaking of taking a lease in that way and building on it.

Q. That is all you remember? A. Yes, sir.

Q. You remember no terms being mentioned at all? A. Not any more than he said he could have it for fifteen years or longer, if he wanted to.

Q. Who said that? A. Mr. Charles Ulrich.

10 Q. You remember that? A. Yes, sir.

Recross Examination by Mr. Barnitt:

Q. Who was present at the time that conversation took place, when you heard Mr. Ulrich tell that to your husband? A. Nobody but us three.

Q. Where was that conversation when it was held at Singac? A. It was in the house.

Q. Whose house? A. His house.

20 Q. Whose? A. The house that was not finished.

Q. Was it in the house of your brother-in-law? A. Yes, sir.

Q. What time of the day was it that conversation took place? A. In the daytime.

Q. Do you remember what time of the day it was; do you remember what month it was? A. No, sir.

Q. Do you remember what year it was? A. It must have been the year that we built.

30 Q. Do you know what year it was? A. No, sir, I do not.

Q. Do you know whether it was in the spring, fall, summer or winter? A. Well, it was the summer.

Q. Do you know whether it was the summer before the house was started to be constructed on Westfield Avenue in Elizabeth? A. I could not

Mrs. Kate E. Ulrich—recross

say that because I have no figures, no data with me.

Q. Can you say approximately how many months it was before the building was started on Westfield Avenue in Elizabeth? A. I could not say the exact weeks of the year.

Q. You do know that the building was not started on Westfield Avenue until January, 1920, 10 don't you? A. Yes, sir.

Q. Now, do I understand you to say that the conversation that you referred to took place about this lease before that building was started; is that right? A. Certainly.

Q. Yet you cannot say what year it was before that, that that conversation took place? A. I could not.

Q. Why not? A. It might have been two or three years before. 20

Q. Have you a good memory? A. No, sir.

Q. What recalls to your mind so distinctly the fact that Mr. Ulrich said to your husband at the time you say this conversation took place, that he, your husband, could have a lease on a building which was not then started, for fifteen years? A. Well, he proposed it; as I understand, my husband asked Mr. Ulrich about that, and they agreed that it would be nice. That is the only thing I knew about it. They agreed it 30 would be very nice to have a building on the property; he said he could have a lease.

Q. Who did? A. Mr. Ulrich; he would not, naturally, build on a piece of property without any lease.

The Court—Strike that out.

Mrs. Kate E. Ulrich—recross

speaking of taking a lease in that way and building on it.

Q. That is all you remember? A. Yes, sir.

Q. You remember no terms being mentioned at all? A. Not any more than he said he could have it for fifteen years or longer, if he wanted to.

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Mrs. Kate E. Ulrich—recross

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Q. Who did? A. Mr. Ulrich; he would not, naturally, build on a piece of property without any lease.

The Court—Strike that out.

Mrs. Kate E. Ulrich—recross

Q. I am asking you what was there about that conversation that you now recall so distinctly that your husband had the privilege from Mr. Ulrich of having a lease on a building for fifteen years that was not then started yet; what was there about it? A. I could not answer those questions, because that is all I remember.

10 Q. Do I understand you to say that you remember nothing else about this conversation except that Mr. Ulrich, your brother-in-law, said to your husband that he could have a lease on this place for fifteen years, and your husband said that would be very nice? A. That is right.

Q. How long did that conversation take place? A. I don't know how long they were talking; I went out.

20 Q. Speaking of the day your husband had this conversation with Mr. Ulrich, your brother-in-law— A. We were up there all day, but how long we were in that building I cannot say; possibly an hour.

Q. Did you ever ask your husband after that whether he got the lease for fifteen years on the building which was subsequently erected? A. I knew he had.

30 Q. How did you know that he had it? A. Because he could not build if he did not have it; he had to have a lease in order to build on that property.

Q. Your husband never told you that he had the lease? A. He did not have it at that time.

Q. What time was it you are now speaking of? A. The time he was talking about it.

Q. I ask you if he ever said to you afterwards that he had a lease on this property; did

Mrs. Kate E. Ulrich—recross

he ever tell you that? A. At the time he got the lease he told me.

Q. When did he get the lease? A. That I cannot say.

Q. You say "At the time he got the lease"; do you mean the physical possession of the lease, handed to him, is that what you mean? A. Yes, sir. 10

Q. When was that? A. I should have brought my notes with me.

Q. Do you know whether it was after the building was finished—(interrupted).

By the Court:

Q. Have you got notes? A. I have papers at home.

Further Recross: 20

Q. Isn't it a fact that you never knew that your husband had a lease on this building until after you found the document in the strong box four days after he died? A. I knew he had the lease, but I never saw it before that day.

The Court—Have this testimony written up for me, and the case will go on later.

Adjourned. 30

Motion to Dismiss Bill

MOTION TO AMEND PLEADINGS

Transcript of testimony taken in the above entitled cause, at the Chancery Chambers, Paterson, New Jersey, on June 18, 1924, before Hon. Vivian M. Lewis, Vice Chancellor.

Same appearances as before noted.

10

Mr. Greene—I have two motions addressed to this suit, on behalf of the defendant; and the first application is an application for leave to join Mrs. Kate E. Ulrich, the administratrix of the estate of her late husband, Louis C. Ulrich, deceased, as a party defendant in this suit. I have written to Mr. Barnitt on the 11th, telling him I would make this application before your Honor today, and join her as a party defendant. I have discussed this matter with Mr. Barnitt some time back, and I gave the matter considerable study and thought, and I think she should be made a party.

20

MOTION TO DISMISS BILL

The second motion is addressed to the sufficiency of the bill, and I will move to dismiss the bill.

30

This bill is filed by Charles W. Ulrich, a brother of the deceased, to have decreed null and void a certain lease which he executed in 1920 for certain property in Elizabeth. The theory of the bill is, that this lease, which was for fifteen years, was executed and delivered to Louis C. Ulrich, the deceased; the name of Kate E. Ulrich

Motion to Dismiss Bill

and John J. Ulrich, the widow and son of the deceased, being also named as grantees in the lease. The theory of that is, that it was given to him under an agreement entered into contemporaneously with the execution and delivery of this lease, whereby it was agreed that the decedent should remain in possession of the lands and premises in question for a period of ninety months from the date thereof, upon certain conditions, namely, that he should build a piece of property, a building on the land in question, which is owned by the complainant at his own expense, and to pay taxes and interest and water charges in connection with this property, and that in consideration of his doing this he should remain in peaceable possession for ninety months. That is the contention of the complainant.

10

20

Now, the lease provides, that in case of the death of the decedent, that is, Louis C. Ulrich, his wife, Kate Ulrich, and the son, John J. Ulrich, should receive the benefit of the lease, or the survivors of them.

Now, four years, almost, after the lease was executed, and after the death of Louis C. Ulrich, the decedent, a bill was filed in this Court to set it aside on the ground that there was fraud in procuring this lease, and that the lease should have been for ninety months instead of for fifteen years.

30

Now, we, in behalf of John J. Ulrich, the son, and on behalf of Kate, the widow, filed answers denying the allegations in the bill,

Motion to Dismiss Bill

10 setting forth that there was no fraud, and that the contract or lease sets forth the true intention between the parties, that the building was erected, that we have paid the taxes and all the other overhead expenses provided for in this lease, and that in equity there can be no decree setting aside, unless the parties are established in the same status that they would have been if this agreement had not been entered into, and we say, that if a decree is made that we are entitled to an accounting for the moneys that were expended in the erection of this building.

20 This is a suit, essentially a suit against the representative of a deceased, and for that reason the widow, the administratrix, should be made a party, because she has an interest; because she is entitled to administer all the goods and chattels, rights and credits, etc., of this decedent, she has an interest in this lease. If this lease is decreed to have been actually given the deceased, it was given to the decedent; it was not intended to be given to the widow and John J., the son, who are mesne grantees; that being so, it must follow as a natural consequence, that she, in her representative capacity, has an interest in this lease. That being so, it seems to me only proper that she be made a party defendant, otherwise, I cannot see what value the decree would be, if the right of the administratrix were not determined. Suppose a decree is made in favor of the complainant, that decree will only run against Kate E.

Motion to Dismiss Bill

Ulrich individually, and against her son. It does not set forth a cause of action.

Secondly: That the bill of complaint shows that the complainant has been guilty of such laches that this Court should not grant relief.

10 And the third is, that the entire bill, as framed, is an attempt to vary the terms of a written instrument as being an agreement entered into contemporaneously with this lease.

The decedent, Louis C. Ulrich, dying, his lips are sealed; any testimony this complainant may give will deprive us of a right of explanation as to just what was the relationship between the parties. A similar case was passed upon in this court by Vice Chancellor Garrison, *Kelsey vs. The Agricultural Insurance Company*, which was subsequently cited with approval by Vice Chancellor Lane. I would like to cite a portion of this opinion, which is reported in 79 Atlantic.

As I understand, under the rules now, the court may reserve a motion to strike out a bill.

30 The Court—Yes, the Court may reserve it; the rule is to give five days' notice to strike out the bill; it acts as a demurrer. Now, you move to strike out. If you and Mr. Barnitt agree that this motion should be heard preliminary to anything else, all right; the proper course is when the complainant puts in his case; if you want to move to dismiss, you rest, but you are putting the cart before the horse.

Motion to Dismiss Bill

(Mr. Greene then read the case he had cited.)

The Court—Is that on final hearing?

Mr. Greene—This was on a preliminary application.

The Court—Was this on a preliminary application? Just look and tell me.

10 Mr. Greene—It was on a preliminary application. How can we possibly meet the burden of proof in this case when the brother has died?

(Further argument.)

Mr. Greene—There certainly cannot be any harm in joining her as a party defendant.

The Court—I will retain the motion; you may proceed to trial.

20 (Mr. Barnitt opens for the complainant):

Mr. Barnitt—On November 15, 1923, after the death of Louis C. Ulrich, who died in October of that year, these two defendants, that is, John J. Ulrich, the son of the decedent, and his mother, Kate E. Ulrich, went to the office of Mr. Pfaff and presented him with this document which we now ask to have the Court set aside, and they, for the first time, signed that paper on November 15, 1923. Now, their act in that respect, in doing what they did, we will prove was an improper one, and that their act in so doing created here a situation where a lease has been recorded for a term of 15 years, with an annual rental of \$10.00 a year, covering these premises on Westfield Avenue in Elizabeth. (Continues opening.)

30

Frank J. Pfaff—direct

FRANK J. PFAFF, sworn in behalf of the complainant, testified as follows:

Direct Examination by Mr. Barnitt:

Mr. Barnitt—I offer in evidence a certified copy of a document purporting to be a lease between Charles W. Ulrich and Louis C. Ulrich and Catherine Ulrich, his wife, and John J. Ulrich, as joint tenants and not as tenants in common, which has been certified by the Register of Deeds of the County of Union, and I ask that it be marked as an exhibit.

10

Marked "Exhibit C-1½."

Q. What is your business? A. I am a counsellor at law of the State of New Jersey. 20

Q. You have your offices in Elizabeth, New Jersey? A. Yes, sir.

Q. Do you know Catherine Ulrich? A. Yes, sir.

Q. Do you know her son, John J. Ulrich? A. Yes, sir.

Q. Did you know Mr. Louis C. Ulrich, the gentleman who died in October, 1923? A. Yes, sir.

Q. Do you recall at any time having presented to you a document such as the one— 30

Mr. Greene—I will admit that this document which has been offered in evidence was executed by John J. Ulrich and Catherine Ulrich, after the death of the decedent, and that it was recorded as charged in the bill; that is admitted in the answer.

Frank J. Pfaff—direct

Q. Showing you "Exhibit C-1½" you will note that there appears the following in this document: "Signed, sealed and delivered in the presence of Frank J. Pfaff as to K. E. U. & J. J. U." Was that signed by you in that fashion? A. Yes, sir.

Q. And do you recall when it was signed?

A. I think the date that was recorded, which I
10 heard you say was November 15th.

Q. November 15th, 1923, at two o'clock P. M. it is stated in this document that it was recorded? A. Yes, sir.

Q. Do you recall Kate Ulrich and John J. Ulrich signing this document on that day? A. It was signed in my presence.

Q. You will note that there does not appear on this lease the name of Louis C. Ulrich? A. I know that.

20 Q. Did you notice that fact when Kate E. Ulrich and John J. Ulrich presented this paper to you on November 15, 1923? A. Yes, sir, I knew the name was not on there.

Q. I note the document was recorded the same day? A. Yes, sir.

Q. Do you know who caused it to be recorded? A. I did.

Q. And were Kate E. Ulrich and John J. Ulrich your clients on that day? A. They were in
30 my office, yes, sir.

Q. You will note that Charles W. Ulrich's name appears on that paper, "Exhibit C-1½"; did you notice whether his name was on it that day that it was presented to you? A. Yes, sir; I have the other copy of the lease.

Q. And this other copy of the lease which you are showing me, was the one which was recorded by you, or which you had caused to be recorded

Frank J. Pfaff—cross

in similar form to the one I now show you, before it was executed by— A. Before I signed it.

Q. And before it was executed by Catherine Ulrich and John J. Ulrich? A. Yes, sir.

Mr. Barnitt—I offer that in evidence and ask that it be marked as an exhibit.

Marked "Exhibit C-2½."

10

Q. Did you have any conversation with Mrs. Ulrich and her son that day about this paper?

A. They said they had, with Mr. Charles W. Ulrich, and that there appeared to be some bad feeling between them. I said, "If that is the case, you had better record this paper;" they brought in the two leases to me that day, and that is the reason it was recorded that day.

Q. Did they say anything else to you? A. 20 No, sir, we had talked about her being appointed as administratrix.

Q. I mean with reference to this lease? A. Nothing further.

Q. Did you note that the lease was dated the 19th of January, 1920? A. I think so.

Cross Examination by Mr. Greene:

Q. Did you draw this lease originally? A. 30 Yes, sir.

Q. At whose request did you do that? A. At the request of Mr. John J. Ulrich, the son of the deceased.

Q. The son of the deceased? A. Yes, sir.

Q. John Ulrich? A. Yes, sir.

Q. The man that has the original lease, a copy of which you have offered in evidence and

Frank J. Pfaff—cross-redirect

marked "Exhibit C-21½?" A. Yes, sir.

Q. You drew that lease? A. Yes, sir.

Q. And who was present at your office when this lease was drawn? A. Mr. John J. Ulrich gave me the information; I drew it and gave it back to him in duplicate, and told him to have it signed, and acknowledged before a Notary Public or an attorney and bring it back to me, and I would record it.

Q. Who were in the office? A. John J. Ulrich.

Q. Was Charles W. Ulrich, the complainant, in your office? A. No, sir, he was not.

Q. Had you ever met him in connection with this lease? A. No, sir, only since the time of this trial.

20 Redirect Examination by Mr. Barnitt:

Q. After you drew the lease up and gave it to John J. Ulrich, that was about the time that it was dated? A. It was at that time, yes, sir.

Q. Did you ever get the lease back until Mrs. Catherine Ulrich and her son brought it to you after the death of her husband? A. No, sir.

Q. No one ever gave it to you? A. No, sir; but I gave instructions to John J. Ulrich to bring it back to me for recording, but he did not do that until after his father died in October, 1923.

Q. Were you, at the time this lease was drawn, Mr. Pfaff, down at the legislature in Trenton—January 19, 1920? A. I was not.

Q. Were you in the legislature at that time? A. No, sir, I was not.

Q. Did Mr. Charles W. Ulrich ever ask you to make up any portion of that lease? A. No, sir.

Q. Did you ever talk to Charles W. Ulrich

Frank J. Pfaff—redirect

with reference to any of the provisions of that lease, until after the death of his brother? A. No, sir.

Q. Did his brother, Louis C. Ulrich, ever ask you to prepare an agreement other than this lease appertaining to premises 43 and 45 Westfield Avenue?

Mr. Barnitt—Objected to as wholly immaterial.

Q. Did Mr. Louis C. Ulrich, the deceased, ever talk to you with reference to the preparation of any paper other than this lease in connection with the premises in question?

Mr. Barnitt—Objected to because it is leading, and secondly, because it is wholly immaterial.

The Court—Objection sustained.

Q. Was there any further conversation with Louis C. Ulrich other than that appertaining to this document? A. Only with reference to the lease; I advised it.

CHARLES W. ULRICH, sworn in his own behalf, testified as follows: 30

Direct Examination by Mr. Barnitt:

Q. What is your business? A. Piano dealer.

Q. Where do you live? A. At Singac, New Jersey.

Q. Do you know Louis C. Ulrich? A. Yes, sir.

Charles W. Ulrich—direct

Q. And was he any relation to you? A. My brother.

Q. And do you know Catherine Ulrich, his wief? A. Yes, sir.

Q. And John J. Ulrich? A. He is his son.

Q. Now, do you recall in the month of December, 1919, were you the owner of any property at 10 43 and 45 Westfield Avenue, Elizabeth? A. I wife? A. Yes, sir.

Q. Was there any building on the premises in December, 1919? A. No, sir.

Q. Vacant lot? A. Yes, sir.

Q. Was there any building erected on the premises subsequent to that? Was there any building erected on the premises in December, 1919? A. Yes, sir.

Q. And did you have that building constructed 20 on those premises? A. No, sir, my brother did.

Q. Louis? A. Yes, sir.

Q. What arrangement did you have with reference to the construction of this building?

Mr. Greene—I object to this question, because it tends to bring out conversations between this man and the decedent, and there is nobody to contradict it.

30 By the Court:

Q. Was there anyone present? A. No, sir.

The Court—I will let it stand, but I think it will be ruled out eventually.

Q. Where was the conversation had? A. First in my store here.

Charles W. Ulrich—direct

Q. And was there another conversation after that? A. Four or five conversations.

Q. What was said in your store on the occasion of the first conversation? A. His place of business was sold and he had to get out and he had to have a place to go to, and there was no place near by that he could get, and he came to me and wanted to know if he could put a 10 building on my lot. I said, "Louis, you haven't money enough to put it on."

The Court—Your objection goes to all of this?

A. (continued) I said, "You haven't money enough to put a building up there; how much money have you got?" and he said, "I have \$5,000;" and I said, "I will have to raise a mortgage of four 20 thousand dollars;" he had the plans and specifications all drawn up before he came to see me; he was notified on December 1st to get out, and about the 20th of December he came to see me, and he had the plans. I said, "Louis, are you sure you can make the thing go?" he said, "Sure;" I said, "Bring up your books;" he brought the books up the following Sunday to my house, and I went over them, and I saw the poorest year that they had had— 30

Mr. Greene—Objected to; the books are the best evidence.

Q. State any further conversation you had with your brother on the first occasion in Paterson. A. Then I went to Elizabeth to raise a mortgage.

Charles W. Ulrich—direct

Q. Did you have any further conversation with your brother the first time he came to you? A. No, sir.

Q. Is that all the conversation you had with him that day? A. That is about all.

Q. Did you have any conversation with him after that about the construction of the building?

10 A. Several times.

Q. Do you remember what those conversations were? A. I went down to Elizabeth then to raise a mortgage—

Q. I am speaking of the conversations with your brother; what conversations did you then have with your brother after that? A. We made an agreement. The agreement was, that he was to put in his \$5,000, and I was to put in \$4,000; and he was to pay off this \$4,000 in forty months.

20 Q. In what way? A. I went to get a mortgage, and they told me I did not need it—that they would take my note in the National State Bank; then he was to pay \$250.00 every three months on the note.

Q. Were you the indorser on the note? A. Yes, sir; and he was the maker; then he paid on it \$1,000; that took him about a year and a half to do that.

30 Mr. Greene—I object to this as immaterial.

The Court—I will note your objection.

Mr. Greene—My objection is this: First, I object to this alleged agreement, because it is wholly irrelevant to the subject; secondly, because it is a collateral agreement, which tends to vary the terms of a written document; and thirdly, it is an

Charles W. Ulrich—direct

attempt to set forth conversations and transactions with the decedent, when the decedent is dead.

Q. Now, in connection with the note of \$4,000 that you stated your brother was to execute as maker and you as indorser, in pursuance of that agreement, did you subsequently indorse notes for 10 reduced sums on that agreement?

Mr. Greene—Objected to as leading.

A. Yes, sir, he sent me notes for two or three—

Q. Who paid off the notes? A. I am paying it yet.

Q. At the time of your brother's death—when did he die? A. The 29th of October, 1923.

Q. At that time, was the note paid off? A. 20 No, sir.

Q. How much, if anything, was due on the note then? A. \$1200.00 on the note and \$3,000 on the mortgage, and the interest.

Q. Now, did you subsequently make any arrangements with reference to paying this note off?

A. I went to the bank and told them I would take it over.

Q. Since that time, have you received anything from the estate of Louis C. Ulrich with 30 reference to that \$1200.00? A. No, sir.

Q. Speaking of this conversation with your brother at the time the building was talked about—subsequent to that did you have any conversation with your brother about a mortgage on the premises?

Charles W. Ulrich—direct

Mr. Greene—Objected to on the same ground.

A. I did not want to place a mortgage on it.

Q. Did you talk with your brother about a mortgage on the premises, or did he talk to you?

A. He talked to me.

10 Q. And do you recall what was said about the mortgage? A. He said, "I won't have to be bothered every three months going down to pay this mortgage, if I put a mortgage on it;" and he said, "I can use that money, instead of paying \$250 every three months, I shall only have to pay \$90.00 every six months, and I can be using that money;" and I said, "That shows me you want me to pay this mortgage."

20 Q. Was there a mortgage then? A. No, sir, it was before it was made.

Q. When he came to you and spoke to you about that, did you know what he referred to, this payment of \$250.00? A. No, sir.

Q. Didn't you know what he was referring to—the \$250.00? A. He did not want to use that \$250.00 every three months; he wanted to pay \$90.00 twice a year.

30 Q. What did you understand he had reference to when he spoke of the \$250.00?

Mr. Greene—Objected to.

The Court—Objection sustained.

Q. What did he say? A. He said he would like to take up a mortgage, and wanted to know if I would allow him to do it—to pay off the note, and then he would only have \$90.00 every six months to pay.

Charles W. Ulrich—direct

Q. As a result of that, did you execute a mortgage on the premises? A. Yes, sir, I did it to help him out.

Q. How much? A. \$3,000.

Q. Who got the money? A. He did.

Q. As far as you know, did he pay off the note with the money? A. No, sir.

Q. When did you first learn after that that he 10 did not? A. He was to pay the note with the mortgage money, but he did not do it.

Q. Did you speak to him about it? A. He always told me he did do it.

Q. Why didn't you call up the bank? A. I trusted him.

Q. Did you afterwards learn he had not paid off the note? A. Yes, sir.

Q. How soon after you had executed the mortgage and he had received the \$3,000 did you learn 20 that he had not paid the note? A. Not until the day this lease was recorded; his son called me up on the 15th of November at twenty minutes to twelve; that was John J. Ulrich.

Q. And what was said by him? A. He said, "Uncle Charlie," he said "there is a note due at the bank today, and you had better come down and take it over;" I said, "Is that so?" and he said "Yes;" he said "It is the note you recorded for pap;" and he said, "It is due today;" and I 30 said, "What note is it?" and he said, "Well, I don't know anything about pap's business;" and I said, "You must have got ten days' notice from the bank that the note was due; why didn't you tell me that?" I said, "I will come down there;" and I called up the bank; and I went down the next day and saw the cashier, and I had to go and make a new note and get an indorser.

Charles W. Ulrich—direct

Q. Did you have any further talk with John J. Ulrich about anything on the wire that day that he telephoned you about the note? A. He told me he was taking account of stock then and going to sell out and rent out the building.

Q. What further conversation did you have with him on the telephone that day? A. I said, "You have no business renting that building out," and he said, "We have a 15 years' lease at \$10.00 a year;" I said, "You have no lease at all."

Q. What time of the day was this telephone conversation? A. The 15th of November, at 11:40, 1923.

Q. What did you say then? A. I said there was no lease at all.

Q. Was there any further conversation with John J. Ulrich at that time? A. He asked me if I wanted to talk to his mother, and he said, "The lease is down at Lawyer Pfaff's office;" he said, "Do you want to talk to mother?" and I said, "No;" and I hung up the receiver.

Q. Did you talk to him after that? A. No, sir.

Q. Now, going to this document referred to as "Exhibit C21½," I note that your signature appears here: "Charles W. Ulrich;" that is your signature? A. Yes, sir.

Q. It is not witnessed? A. No, sir.

Q. But I note on the back here there is an acknowledgement of mine that is was taken on the 21st of January, 1920? A. Yes, sir.

Q. Do you recall, at the time this acknowledgement was taken, the circumstances in connection with the execution of that lease by you?

Mr. Greene—Objected to.

Charles W. Ulrich—direct

The Court—Objection will be overruled.

A. He came to me, and I said, "Have you got that agreement between us?" and he said "No."

Q. What agreement was that? A. My agreement was, that he was to pay the note off the first forty months at \$100.00 a month, and the next fifty months he was to pay himself back his \$5,000; and then from there on he was to pay me rent for the building according to how the taxes ran and according to what the building was worth in ninety months; it was to be \$100 a month—

Q. When you told him that about the agreement, what did he say? A. He said, "The lawyers are down in Trenton, the assembly is in session, and I cannot get hold of him."

Q. Did he have that paper, referred to as "Exhibit C-21½" with him? A. He said, "I have a lease;" he said "Let me have a lease;" I said, "Have you got a lease?" and he said "Yes;" and I said, "Why didn't you have the agreement drawn up in place of this lease?" he said "The lawyer said it would take five times as long to draw up the agreement as it would the lease, that he only had to fill this in;" I said, "Lou, you are not doing what you ought to do;" he said, "Suppose you got killed by an automobile or die, what protection will I have?" I said, "You ought to have had that agreement drawn up;" he said, "If anything should happen to you, the nieces and nephews would put me out of that house;" and they had a good reason to put him out, too, as far as that was concerned. And he cried; and I was sitting in my swivel chair, and he cried and went on, and then I signed it in the store.

Charles W. Ulrich—direct

- Q. Did you go in then with him after that?
 A. I went up to your office.
 Q. Was he there? A. Yes, sir.
 Q. And was there any conversation had between you and him in my office? A. Not that I know of.
 Q. Was there anything said that you recall?
 10 A. I said, "I came up here and want to acknowledge this lease."
 Q. Then, as far as you know, it was acknowledged? A. Yes, sir.
 Q. Now, then, what did you do with the document then? A. I said, "I want you to take an affidavit—"
 Q. What did you do with the paper? A. I acknowledged it.
 Q. What did you do with the paper after that?
 20 A. Gave it to him.
 Q. Did you have any talk to him? A. No, sir, he went home.
 Q. Did he say anything to you about what he would do with it? A. He said he would never use it; he said, "I swear by all that is good and holy, that I will never, never use that lease."
 Q. What did he say he wanted it for? A. For protection in case anything happened to me— if anything had happened to me, he would have
 30 used it; he wanted that for protection.
 Q. I thought that "Exhibit C-1½" provided for the leasing of these premises at a yearly rent of ten dollars a year; did you ever receive any rent? A. Not a cent.
 Q. I notice the lease provides—it is stated here that "the parties of the second part will erect on said land a building, and that the parties of the second part will pay all charges in connection

Charles W. Ulrich—direct

therewith, and also pay the yearly taxes to be assessed against said property, to commence with the year 1920." Were you ever required to pay any charges or taxes in connection with the building? A. I had to pay the fire insurance, which was ten months' behind due, and I had to pay the interest on the mortgage.

- Q. Did you know for how long a time you had to pay the interest on the mortgage? A. I paid it the first time for six months—\$90.00; and they were going to foreclose the mortgage on the 21st of March of this year, and I paid the mortgage.
 Q. How much? A. \$3,000.
 Q. How much interest did you pay? A. At that time \$45.00.
 Q. How much interest in all did you pay? A. \$135.00 all together.
 Q. How much fire insurance did you pay? A. 20 \$51.10.
 Q. What taxes, if any, did you have to pay? A. The taxes are not paid for 1923, the taxes for 1921 and 1922; it was advertised to sell the property; he did not pay that either—
 Q. I show you tax bills for the year 1923.

Mr. Greene—Objected to unless they are authenticated; those papers don't mean anything; they are not evidential.

Mr. Barnitt—They are liens on his property.

The Court—Objection sustained.

Q. Now, do you recall anyone being present at the time this alleged lease, "Exhibit C-1½", was signed by you? A. Yes, sir.

Q. Who was it? A. Mr. George C. Stein.

Charles W. Ulrich—cross

Q. Now, I don't believe I asked you this: In reference to the building, what does it consist of?

A. A store and a little dwelling flat upstairs.

Q. Who has lived in the flat? A. The widow.

Q. And who before her? A. No one but the widow and the son and husband.

Q. And the store downstairs, who is occupying that? A. My daughter and John J. Ulrich, the son.

Q. Have you ever received any rent for the place ever since it has been constructed? A. No, sir.

Mr. Barnitt—Now, I believe it is admitted by counsel in their answer, that John J. Ulrich was adjudicated a bankrupt in the United States District Court on December 13, 1923, and that Francis Gordon, one of the defendants, was elected trustee, and that an order was obtained from the United States Court permitting the institution of this suit and making the trustee a co-defendant.

Mr. Greene—Yes, that is all admitted.

Cross Examination by Mr. Greene:

Mr. Greene—Now, I want to have this understood before I begin cross examining the witness—if the effect of my cross examination with reference to the alleged conversations with the decedent is to operate as a waiver of the privilege under the statute, I would rather not cross examine him on those matters. If I may cross examine him simply for the purpose of having the facts before your Honor, I will do

Charles W. Ulrich—cross

so. I don't want to go the merits and then have it operate as a waiver.

The Court—I think you are entitled to cross examine him without waiving your objections.

Q. Mr. Ulrich, you and your brother were very friendly? A. Yes, sir. 10

Q. You used to help him along in a great many things? A. Yes, sir.

Q. He was living across the street from 43 and 45 Westfield Avenue before he began the construction of this building? A. Yes, sir.

Q. This building was erected at a cost of \$9,000? A. Yes, sir.

Q. You know that to be a fact? A. Yes, sir.

Q. Now you own considerable real estate, don't you? A. A little, yes, sir. 20

Q. And you have had a good deal of experience in real estate matters and giving leases? A. No, sir.

Q. You can read and write? A. Yes, sir.

Q. And you read this lease which he gave you to sign? A. No, sir, I did not read it.

Q. Why did you tell your brother not to record that lease, if you did not read it? A. Because I did not want him to record any lease.

Q. Did you know the contents of that lease? A. No, sir; I walked right up and took the pen; I was mad because he bothered me so much. 30

Q. Did he tell you it was for fifteen years?

A. No, sir, I thought it was for 90 months.

Q. Didn't you say something about not having any other agreement present at that time? A. I did not have any—only verbal.

Charles W. Ulrich—cross

Q. He told you this was a lease you were signing? A. Yes, sir.

Q. You went to Mr. Barnitt to have an acknowledgment added to it? A. Yes, sir.

Q. Who ever told you about the acknowledgment before this time; how did you know this lease had to be acknowledged? A. My brother
10 said I had to go to an attorney to get it acknowledged.

Q. Do you know the effect of an acknowledgment? A. I suppose it is evidence.

Q. And you went to your attorney and he took your acknowledgment? A. Yes, sir; I thought my brother would be honest enough to have the agreement drawn up—

The Court—Strike that out.

20 Q. Now I am going to read to you this acknowledgment and ask you whether this acknowledgment is a true acknowledgment or not.

Mr. Barnitt—Objected to; it speaks for itself.

The Court—Objection overruled.

30 Q. "State of New Jersey, County of Passaic, ss: Be it remembered, that on this 21st day of January in the year of our Lord One Thousand Nine Hundred and Twenty, before me, an Attorney at law of N. J., personally appeared Charles Ulrich, single, who, I am satisfied is the Lessor 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

Charles W. Ulrich—cross

deed, for the uses and purposes therein expressed." Now, did Barnitt tell you the contents of that paper before he acknowledged it? A. He was reading the contents.

By the Court:

Q. Answer the question. A. He read the contents, but I was looking out of the window at
10 the time.

Further Cross:

Q. He was your solicitor? A. Yes, sir.

Q. Was he your attorney at that time? A. When I had anything to do.

Q. So you did not sign this without knowing exactly what was in it; you don't mean to say that Mr. Barnitt did not make known to you its contents? A. He read it, but I was busy looking
20 down at the roof.

Q. Did you acknowledge then and there that you signed, sealed and delivered this paper as your voluntary act and deed? A. Yes, sir.

Q. Now, you said something about the understanding being that this lease was to be for 90 months? A. Yes, sir.

Q. Now, I show you a paper purporting to be a true copy of a petition filed by you in the
30 District Court of the United States for the District of New Jersey, in which you prayed for leave to join Francis Gordon, the Trustee in Bankruptcy of John J. Ulrich, Bankrupt, as party defendant in this suit; and I ask you if this is a true copy of the petition, signed and sworn to by you? A. (Witness reads it over to himself.)

Q. Did you sign this; is this a true copy? A. I did not write that.

Charles W. Ulrich—cross

Q. You did file the petitioner? A. Yes, sir.

Mr. Greene—Perhaps Mr. Barnitt will admit this is a true copy.

Mr. Barnitt—Yes, I will admit that.

Mr. Greene—I offer this petition and order for identification.

10 Marked "Exhibit D-1½ for identification."

Q. I call your attention to the following statement:

Mr. Barnitt—You may offer it in evidence.

Mr. Greene—I will offer this in evidence. Marked "Exhibit D-1½."

20

Q. You say you understood that instrument to be for ninety months? A. Yes, sir.

Q. I call your attention to your allegation in this petition, duly sworn to by you on page 2 of the petition, which reads as follows: "Your petitioner further shows and alleges that your petitioner only consented to sign the document in question which the said L. Ulrich had informed the petitioner would be for a short term lease, and your petitioner understood would be for a year or two at no rental whatsoever, upon the understanding that Louis C. Ulrich would not sign said lease at that time." How can you reconcile your statement? Why did you say here you understood his lease was to be for a short term of two or three years? A. I thought it would be, according to our agreement—the agreement was for ninety months.

30

Q. Why did you say here you understood his

Charles W. Ulrich—cross

lease was to be for a short term of two or three years? A. There was four years gone then.

Q. Which is correct? A. From January, 1920 to January, 1924, there is four years gone.

Q. You are evading the question; are you telling us the truth now, or did you tell the truth in this petition? A. I am telling you the truth now.

10

Q. Then this statement in this petition sworn to by you is not the truth? A. It had only three years to go.

Q. You did not say that in this petition; you say here that you consented to sign this lease, understanding as you did that it was only for two or three years; how do you reconcile it? A. The whole thing should have been seven and a half years, and when we sent this petition to the court, there was four years, of the seven years, gone.

20

Q. Had you ever recorded any deeds or mortgages or leases? A. Yes, sir.

Q. How many times did you do that before this lease was executed? A. Two or three times.

Q. You knew no lease could be recorded unless it was acknowledged? A. I did not know that, no, sir. When I got a lease I was told to go and record it by the counsel.

Q. Now, subsequent to the execution of this lease you signed a mortgage to a man named Menge? A. Yes, sir.

30

Q. Did you tell Mr. Menge that there was a lease on the property? A. I never saw him.

Q. Have you got the mortgage? A. Yes, sir.

Q. Where is it? A. It is in my store; my brother attended to all that; he did it all. An attorney named Atwater, of Elizabeth, drew that mortgage.

Charles W. Ulrich—cross

Q. Now, you said you paid some fire insurance on this property? A. Yes, sir.

Q. When did you pay it? A. In February, 1924.

Q. That is the fire insurance after the death of your brother? A. It was due on the 31st day of March, 1924; I did not know whether it was insured or not, and I got a letter.

Q. You said you paid interest on the mortgage; when did you pay that? A. Last December, \$90.00.

Q. That was after you filed this suit in the Court of Chancery; after you started this suit; after you filed this suit in this court? A. It might have been November.

Q. It was after your brother's death? A. Yes, sir.

Q. And after you told the son this lease was no good? A. Yes, sir.

Q. Now, beside fire insurance and interest on mortgage, what other moneys did you pay out? A. I am paying on the note now.

Q. How much have you paid? A. About \$750.00.

Q. Have you got checks to show you made the payments? A. Yes, sir.

Q. Where are they? A. In the store.

Q. You have not got them here? A. No, sir, I paid the \$3,000 mortgage, and I have that round at the store; I never received one cent of rent.

Q. Do you remember on or about in the month of January, 1924, a tender having been made to you on behalf of the trustee in bankruptcy for the sum of \$10.00? A. Yes, sir.

Q. There was a tender of ten dollars in cash made to you for the rent for 1924? A. Yes, sir.

Charles W. Ulrich—recross

Mr. Barnitt—Objected to.

The Court—Objection overruled.

Q. And did you take it? A. No, sir.

Re-direct Examination by Mr. Barnitt:

Q. The tender that was made to you, do you also recall whether this letter accompanied the ten dollars? 10

Mr. Greene—We admit that.

Mr. Barnitt—Will you admit the answer?

Mr. Greene—Yes.

Marked "Exhibit C-4½."

Re-cross Examination by Mr. Greene:

Q. Isn't it a fact, Mr. Ulrich, that you decided to try to break this lease after you learned these notes had not been paid at the bank? A. No, sir; if I had known it I would never have had such a paper. 20

Q. What did you and your brother intend to do with this lease in case your brother lived more than fifteen years? A. I would have said the ninety months was up: "Now, Louis, you will commence to pay me rent."

Q. Was the rent fixed? A. No, sir, it was to be according to the expenses on the property. 30

Q. You were to treat your brother as a stranger after the ninety months were up? A. I should have treated him the same as anyone else.

George C. Stein—direct

GEORGE C. STEIN, being duly sworn, testified as follows:

Direct Examination by Mr. Barnitt:

Q. Where do you live? A. Rochelle Park, New Jersey.

10 Q. Do you know Mr. Ulrich? A. Yes, sir.

Q. Do you know Louis C. Ulrich? A. Yes, sir.

Q. Do you recall at any time being present when Mr. Charles W. Ulrich and his brother, Louis C. Ulrich, were together in Paterson? A. Yes, sir.

Q. Do you recall when it was? A. The early part of January, 1920; that was in Mr. Ulrich's store.

20 Q. Did you hear any conversation at that time? A. Yes, sir, I did.

Q. Between him and his brother? A. Yes, sir.

Q. With reference to this lease? A. Yes, sir.

30 Q. What did you hear? A. I heard Mr. Louis C. Ulrich state: "Well, Charlie, it is getting late; let us find a lawyer;" and Mr. Ulrich said, "We Louis, this is a lease; where is that agreement you were supposed to have?" He said, "My attorney could not find the time, and it is too long, the agreement, so I brought this up;" so, he said, "All right, let us go to Mr. Barnitt's office;" then he said, "I will promise if you sign this, I will never use this or assign it; I only want it for my own protection, for our relatives."

Q. Nothing further? A. No, sir. They left the store then.

Q. What were you doing in the store? A. I was there on business.

George C. Stein—cross

Q. What business are you in? A. Real estate business.

Q. Were you in the real estate business at that time? A. Yes, sir.

Q. Did you ever hear, at any other time, any conversation between them relative to this? A. No, sir.

10

Cross Examination by Mr. Greene:

Q. Had you ever met Mr. Louis C. Ulrich? A. Yes, sir.

Q. Had you known him before this particular incident? A. Yes, sir.

Q. Are you friendly with Charles Ulrich? A. I am friendly with both parties.

Q. You are more friendly with the complainant? A. I would not say that.

20

Q. You deal in real estate in Paterson? A. Yes, sir.

Q. Did you ever sell any real estate for the complainant? A. Yes, sir.

Q. You are friendly with him? A. Naturally, as a client.

Q. How did the complainant find out you were present there in 1920, if you know; did you come to him or did he come to you in connection with this testimony you have just given? A. They wanted to give me a subpoena, but I said it was not necessary.

30

Q. Did you go to him, or did he come to you to remind you of your presence there? A. No one reminded me.

Q. Did you talk this case over with the complainant before you testified here? A. No, sir.

Q. You did not refresh your memory as to just what you heard? A. No, sir.

Q. What time of day or night was this conversation? A. I presume it was around four o'clock in the afternoon, to the best of my knowledge, because Louis Ulrich mentioned that it was getting late.

10 Q. Do you remember having a conversation with Mr. Pfaff in reference to this lease? A. Yes, sir.

Q. When was that conversation held? A. November, 1923.

Q. What fixes that in your mind? A. On account of that note; I went down to see Mr. Ulrich's nephew, Mr. Charles Ulrich's nephew—John Ulrich.

20 Q. What did you go down there for? A. I went down to see John, and I was speaking to John, and I said, "What are you going to do with the business?" and he said, "I have nothing to say; you see Lawyer Pfaff."

Q. Why did you ask the question? A. John Ulrich had asked me to go down there.

Q. Were you paid anything to go down there? A. No, sir.

By the Court:

30 Q. Why did you take such an interest in the transaction? A. Because John Ulrich asked me.

Q. What information were you trying to get? A. Nothing.

Q. Do you remember Mr. Pfaff asking you whether Charles Ulrich signed this lease, and you said to him that he had not signed the lease; do you remember telling Mr. Pfaff when he asked if

Charles Ulrich had signed this lease, that he had not signed it? A. I did not say that.

Q. You never said that to Mr. Pfaff? A. No, sir.

Q. Did Mr. Pfaff ever ask you that question? A. I never knew there was a lease.

Q. Did Mr. Pfaff ever ask you that question, whether Mr. Ulrich had signed the lease? A. No, 10 sir, not to my knowledge.

Q. Will you say he did not? A. I will say he did not.

Re-direct Examination by Mr. Barnitt:

Q. Do you recall Mr. Pfaff saying anything to you with reference to the lease? A. Mr. Pfaff informed me that the lease was on record on November 15th. 20

Q. Can you state when it was that you were in his office? A. Well, within a few days after that.

Mr. Greene—Now, if your Honor please, I would like to take the testimony of this witness, Mr. Pfaff, on just two points.
The Court—All right.

FRANK J. PFAFF, recalled. 30

Cross Examination (continued) by Mr. Greene:

Q. Do you remember the call of the last witness at your office? A. Yes, sir.

Q. What did he say he came there for? A. He asked me whether there was a lease, and I said, "Certainly; it was signed by Mr. Ulrich and

Frank J. Plaff—cross

acknowledged before an attorney” and that it was recorded, and that, therefore, I could not show it to him, but he could go to the Court House and ask for it, and he said he had.

Q. Did he tell you what interest he had in the matter? A. He said he was a real estate dealer in Paterson.

10 Q. Did he tell you Charles Ulrich never signed the lease? A. He said that; he said he had never signed the lease.

Q. You said on direct examination, that you told Mrs. Ulrich and Mr. John J. Ulrich, after the death of his father, to sign the lease; you advised them to sign the lease and have it recorded. Will you tell us why you so advised them? A. They said that the day they called at Mr. Ulrich’s shortly after the death, there was an argument with Mr. Ulrich; and I said, “If there is going to be an argument, you had better protect yourselves.”

By Mr. Barnitt:

Q. And then advised them to sign the lease, and you recorded it? A. Yes, sir.

Mr. Barnitt—We rest.

30 Mr. Greene—Now, as I said to your Honor, Mr. John Ulrich, without my knowledge, has gone to California; I don’t know whether his testimony is material; I think he is out there for good, and we shall have to get a commission.

The Court—You will have to rest, under the rules, if you want the matter disposed of now, but you do it at your own peril.

James Vincent Barnett—direct

DEFENSE

JAMES VINCENT BARNITT, being duly sworn, testified as follows:

Direct Examination by Mr. Greene:

Q. Mr. Barnitt, you are a solicitor of this court? 10
A. Yes, sir.

Q. You are also a Master in Chancery of this Court? A. Yes, sir.

Q. How long have you been practicing? A. Going on ten years.

Q. I show you “Exhibit C-1½” purporting to be the lease involved in this suit; I show you an acknowledgment, and ask you whether you took this acknowledgment? A. I did.

Q. And do you now state that the contents of 20
that acknowledgment are true? A. I do.

Q. You state in this acknowledgment that you made known the contents of the lease to which the acknowledgment is taken, to the lessor, Charles W. Ulrich, the complainant, and that he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed, and I ask you whether you did so? A. Yes, sir.

Q. Did he acknowledge the deed as you say 30
here? A. Yes, sir.

Q. Was he looking out of the window when you were taking his acknowledgment, as he has testified? A. He may have been.

Mr. Greene—Now, I think I had better continue this matter. I want to read the testimony before I take out a commission.

The Court—All right; I don’t want to delay it too long. I think there is enough in

James Vincent Barnett—direct

the case, Mr. Barnitt, to make you take the position that you can afford to wait a little while.

Now, in regard to the motion to admit this woman as a party, I am inclined to let her in.

10 Mr. Barnitt—In regard to “Exhibit C 2½,” I want this recited in detail with the testimony, and the same in regard to “Exhibit C 1½.”

Adjourned.

20

30

Exhibit—C-1½

EXHIBITS

EXHIBIT C-1½

Charles W. Ulrich

to

Kate E. Ulrich et als.

This Agreement, made the Nineteenth day of January in the year of our Lord One Thousand 10
Nine Hundred and Twenty, between Charles Ulrich, single, of the City of Paterson in the County of Passaic and State of New Jersey party of the first part, And Louis C. Ulrich and Katherine Ulrich, his wife and John J. Ulrich as joint tenants and not as tenants in common of the City of Elizabeth, in the County of Union and State of New Jersey of the second part;

Witnesseth, That the said party of the first part, 20
has hereby let, and rented to the said party of the second part, and the said party of the second part has hereby hired and taken from the said party of the first part,

All that certain tract now owned by the Party of the first part on Westfield Avenue, Elizabeth, New Jersey, known as 43 and 45 Westfield Avenue, Elizabeth, New Jersey, being forty-two feet front and ebing twenty-two feet in depth on the other side line. The rear width being — feet for the term of Fifteen years, to com- 30
mence on the Nineteenth day of January A. D. 1920, at the yearly rent of Ten (\$10) dollars payable yearly in advance on the 19th day of January each and every year during the life of this lease.

It is hereby understood and agreed between the parties hereto that the parties of the second part will erect on said land a building and that the parties of the second part will pay all charges in con-

nection therewith and also pay the yearly taxes to be assessed against said property to commence with the year of 1920.

10 And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-
enter the said premises and to remove all persons therefrom.

And the said party of the second part covenants to pay to the said party of the first part, the said rent as herein specified, to wit:

20 And at the expiration of the said term or the termination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good a state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part covenant, that the said party of the second part, on paying the said rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

30 It is also understood that the parties of the second part being husband and wife and son, should any of them die, the Lease is to be in force and effect in the survivors or survivor.

In Witness Whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

Charles ... Ulrich (L.S.)
Kate E. Ulrich (L.S.)
John J. Ulrich (L.S.)

Signed, sealed and delivered
in the presence of
Frank J. Pfaff,
as to K. E. U. & J. J. U.

County of Passaic }
State of New Jersey }ss:

10 Be it Remembered that on this 21st day of January in the year of our Lord One Thousand Nine hundred and Twenty, before me an Attorney at Law of New Jersey, personally appeared Charles Ulrich, single, who, I am satisfied is the Lessor 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.

J. Vincent Barnitt, 20
An Attorney at Law of N. J.

Reed Nov. 15th, 1923.
At 2.01 P.M. No. 76.

Recorded at request of Frank J. Pfaff.

Union County Register's Office

State of New Jersey, }
County of Union, }ss.

30 I, Edward Bauer, Register of the County of Union, do hereby certify that the foregoing is a true and correct copy of the record of a certain Lease Deed made by Charles Ulrich to Kate E. Ulrich et al., and also of the certificate of acknowledgment hereto annexed, as the same may be found recorded in my office in book 290 of Deeds for said County on pages — No. 76.

Exhibit C-2½

In Testimony Whereof, I have hereunto set my hand and official seal this 24th day of November A. D., 1923.

Edward Bauer,
Register.

(Seal)

EXHIBIT C-2½

10

This Agreement, Made the Nineteenth day of January in the year of our Lord, One Thousand Nine Hundred and Twenty

Between Charles Ulrich, single, of the City of Paterson, in the County of Passaic and State of New Jersey, party of the first part, and Louis C. Ulrich and Katherine Ulrich, his wife and John J. Ulrich as joint tenants and not as tenants in common of the City of Elizabeth, in the County of Union and State of New Jersey of the second part.

20

Witnesseth, that the said party of the first part, has hereby let, and rented to the said party of the second part, and the said party of the second part, has hereby hired and taken from the said party of the first part,

30

All that certain tract now owned by the party of the First Part on Westfield Avenue, Elizabeth, New Jersey being forty-two feet front and being twenty-two feet in depth on the one side line and eighteen feet in depth on the other side line. The rear width being feet, for the term of Fifteen years, to commence on the Nineteenth day of January, A. D. 1920, at the yearly rent of Ten (10) Dollars payable yearly in advance on the 19th day of January each and every year during the life of this lease.

It is hereby understood and agreed between the parties hereto that the parties of the second part

Exhibit C-2½

will erect on said land a building and that the parties of the second part will pay all charges in connection therewith and also pay the yearly taxes to be assessed against said property to commence with the year 1920.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom.

10

And the said party of the second part covenants to pay to the said party of the first part, the said rent as herein specified, to wit:

And at the expiration of the said term, or the termination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good a state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

20

And the said party of the first part covenant, that the said party of the second part, on paying the said rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

It is also understood that the Parties of the Second part being husband and wife and son, should any of them die, the Lease is to be in force and effect in the survivors or survivor.

30

In Witness Whereof, the said parties hereto have hereunto set their hands and seals the day and year first above written.

Charles W. Ulrich (Seal)

Exhibit C-3½—C-4½

Signed, Sealed and Delivered
in the presence of

Endorsed: Charles Ulrich, single, and Louis C. Ulrich and Katherine Ulrich, his wife and John Ulrich.

Dated, January 19th, 19

10 Rent, \$10.00 per year Payable, yearly.

EXHIBIT C-3½

Newark, N. J., Jan. 18, 1924

Chas. Ulrich, Esq.,
Paterson, N. J.

Dear Sir: In re Ulrich Bankruptcy.

20 On behalf of Francis A. Gordon, Receiver of John J. Ulrich, bankrupt, I herewith hand you \$10, in cash in payment of annual rent due to you for premises 43 and 45 Westfield Avenue, Elizabeth, N. J., under and by virtue of an Indenture of lease heretofore made, executed and delivered by you to the Bankrupt.

Very truly yours,
William Harris.

EXHIBIT C-4½

January 21st, 1924

30 Mr. William Harris,
Kinney Building,
Newark, N. J.

Dear Sir:

On Saturday, January 19th, Aaron Sobo, who stated he was from your office, gave me a letter addressed to Charles Ulrich, dated January 18th, 1924, in connection with the Ulrich bankruptcy matter, and reading as follows:

Exhibit—C-3½—C-4½

“On behalf of Francis A. Gordon, Receiver of John J. Ulrich, bankrupt, I herewith hand you \$10. in cash payment of annual rent due to you for premises 43-45 Westfield Ave., Elizabeth, N. J., under and by virtue of an Indenture of lease heretofore made, executed and delivered by you to the bankrupt.”

10 At the same time this young man tendered me for Mr. Ulrich, the sum of \$10.00 cash, which on Mr. Ulrich's behalf I refused acceptance of, for the reason that Mr. Ulrich has never considered that the lease in question which you refer to was effective and binding upon him. In fact, your office, through Mr. Israel Green, has opposed my application to make the trustee a co-defendant in legal proceedings about to be instituted by me on behalf of Charles W. Ulrich to set aside the lease that 20 you refer to in your letter, and an order was duly entered by Referee Atwood L. De Coster allowing the procedure contemplated to be taken.

I hope within the next few days to have the bill of complaint filed and subpoena issued in the regular way.

Very truly yours,
J. Vincent Barnitt.

JVB:ml

EXHIBIT D-1½

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

10	In the matter of John J. Ulrich, Individually, and as surviving partner of the firm of John J. Ulrich, and Louis Ulrich, trading as John J. Ulrich & Co.,	In Bankruptcy
	Bankrupt.	

ORDER TO SHOW CAUSE

20 Upon reading the duly verified petition of Charles W. Ulrich, wherein the said petitioner applies for a rule to show cause upon the receiver, Francis Gordon, why an order should not be issued to obtain leave from this Court to make said receiver, or a trustee who may be subsequently elected co-defendant in certain Chancery proceedings about to be instituted by said petitioner against one Catherine C. Ulrich, and the said receiver or trustee, and it appearing that said application is reasonable and proper,

30 It is, on this 22nd day of December, 1923, on motion of J. Vincent Barnitt, solicitor of petitioner, Ordered that the said receiver, Francis Gordon, show cause before this Honorable Court at 776 Broad Street, Newark, N. J., at ten o'clock in the forenoon, on the 9th day of January, 1924, why said application should not be granted, and

It is further Ordered that a certified copy of the petition upon which this order to show cause is granted, be served or delivered by registered mail,

to the said Francis Gordon, receiver as aforesaid,
within days from date.

Atwood L. De Coster,
Referee.

A true copy
Atwood L. De Coster,
Referee in Bankruptcy.

10

20

30

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

10 In the matter of John J. Ulrich, Individually, and as surviving partner of the firm of John J. Ulrich, and Louis Ulrich, trading as John J. Ulrich & Co.,
Bankrupt.

In Bankruptcy

PETITION

To the Honorable Atwood L. De Coster,
Referee in Bankruptcy, Newark, N. J.

20 The petition of Charles W. Ulrich, of the City of Paterson, County of Passaic, and State of New Jersey, respectfully shows as follows:

(1) That on or about the 13th day of December, 1923, the aforesaid John J. Ulrich was adjudged bankrupt in the United States District Court, for the District of New Jersey, and that Francis Gordon, of Elizabeth, N. J., was appointed Receiver, and that the matter has since been referred to this Honorable Court for the purpose of administering the affairs of the said bankrupt.

30 (2) Your petitioner further shows and alleges that the said bankrupt, together with his father, Louis C. Ulrich, who died on or about the 29th of October, 1923, conducted an auto accessory and supply business at premises known as 43 and 45 Westfield Avenue, in the City of Elizabeth, County of Union and State of New Jersey, which said business was, according to information of said petitioner, conducted by said individuals at such place

for a long time prior to the date of the death of the said Louis C. Ulrich, and subsequent to his said death, by John J. Ulrich; that the premises in question, that is, the property where the store used for such business, is located, is owned by your petitioner, and that the right to said premises, consisting of the store and the premises above the store, where the bankrupt, and his deceased father, and the bankrupt's mother have maintained their home, is claimed by your petitioner.

(3) Your petitioner further shows and alleges that on or about the 19th day of January, 1920, and at about the time the building was under construction, which said building is that located on the premises aforesaid, your petitioner was requested by Louis C. Ulrich, since deceased, who was the brother of your petitioner, to allow the said Louis C. Ulrich to have a document, which would purport to be a lease of the premises, and which document the said Louis C. Ulrich informed your petitioner would be a lease for a short term, to the premises known as 43 and 45 Westfield Avenue, Elizabeth, N. J.

(4) Your petitioner further shows and alleges that the said Louis C. Ulrich, at the time the request was made, presented to your petitioner, a document which your petitioner did not read, and which petitioner states he signed, and subsequently his brother requested that your petitioner go to some person authorized to take oaths, for the purpose of having him sign the same, to the effect that your petitioner had signed and executed the document for the purposes expressed therein. Your petitioner did so, but your petitioner did not read the document, and did not know the contents

of same. At the time in question, the said Louis C. Ulrich had been assisted financially by your petitioner in securing moneys for the benefit of the said Louis C. Ulrich, and in other respects the said Louis C. Ulrich was indebted to your petitioner for other matters and things.

10 Your petitioner further shows and alleges that your petitioner only consented to sign the document in question, which as previously stated, the said Louis C. Ulrich had informed petitioner would be a short term lease, and which your petitioner understood would be for a year or two at no rental whatsoever, upon the understanding that Louis C. Ulrich would not sign said lease, and would never record the same in any recording office where such documents may be recorded, and the said Louis C. Ulrich did agree that he would not sign the
20 same, or use it in any way against petitioner, by recording it, contrary to the wishes of said petitioner. The document was then delivered up to Louis C. Ulrich and said Louis C. Ulrich and his son, John J. Ulrich, and the wife of Louis C. Ulrich continued to occupy and use the premises consisting of a store, and dwelling premises above the store, as soon as the building was completed, and until, as far as the store is concerned, the said John J. Ulrich was adjudged bankrupt, and as far as
30 the dwelling quarters are concerned, they are still occupied by the family of the bankrupt, consisting of himself and Kate E. Ulrich, his mother.

(5) After the death of the said Louis C. Ulrich and on or about the 15th day of November, 1923, the said John J. Ulrich, bankrupt, informed your petitioner that a certain promissory note, which had been executed by Louis C. Ulrich, prior to his

death, and which had been endorsed by your petitioner for the benefit of the said Louis C. Ulrich, and which said note had been discounted in the National State Bank of Elizabeth, N. J., for \$1200.00, and which said note was dated August 15th, 1923, and due three months from date, was due on said November 15th, 1923, and that petitioner should take care of the same. 10

At the same time, the said John J. Ulrich informed petitioner that he was going to sell out the business at the premises as aforesaid on Westfield Avenue, and rent out the store, and at the same time the said bankrupt informed your petitioner that there was a fifteen years lease of the building which was in the possession of the bankrupt, and which gave him and his mother, Catherine C. Ulrich, the right to remain in possession of the building, which consisted of the dwelling quarters, and the store for a period of fifteen years from the 19th of January, 1920, at the yearly rental of \$10.00. 20

Subsequently your petitioner learned, upon ascertaining from the Register's office of the County of Union, that on the 15th day of November, 1923, a certain document, which purports to be the lease as referred to in this petition, was recorded in said official's office, and upon inquiry, learned that the said lease had never been signed by Louis C. Ulrich, with reference to which latter fact, said Louis C. Ulrich had kept his agreement with petitioner, but that the said lease had been signed by Kate E. Ulrich and John J. Ulrich, in the presence of Frank J. Pfaff, with offices in Elizabeth, N. J. 30

Your petitioner then proceeded to ascertain from Frank J. Pfaff as to when the said lease had been executed by said Kate E. Ulrich and John J. Ul-

rich, and learned from said individual, that the lease had been executed in his office by the said two latter individuals on the 15th of November, 1923, in the afternoon on that day. Petitioner attaches hereto a copy of the document referred to as the lease as aforesaid, and makes same a part of this petition. Petitioner states that the afore-

10 said document executed by said individuals, consisting of the bankrupt, and the said Kate E. Ulrich was executed by said individuals in fraud of your petitioner, and that the said document has never been, and never was understood to be a lease which was binding upon your petitioner, and your petitioner is about to institute a suit in the Court of Chancery of the State of New Jersey to have said lease considered as cancelled and void, and of no effect, and in fraud of your petitioner, and by

20 reason of such contemplated action, the said Receiver, of said John J. Ulrich, bankrupt, or the trustee who may afterwards be elected, will necessarily have to be made a party to the proceedings to be instituted by your petitioner in said Court.

Your petitioner therefore desire to obtain an order from this Court requiring the said Francis Gordon, receiver of said John J. Ulrich, to show cause in this Honorable Court, on a certain day to be fixed by your Honor, why the said application of your petitioner to obtain leave from this Honorable Court to make the said Francis Gordon, Receiver, or the Trustee of the bankrupt, who may be subsequently elected as co-defendant in the Chancery proceeding, should not be granted.

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Your petitioner therefore prays that the said Francis Gordon, or in the discretion of this Honorable Court, the trustee of said estate of John J.

Ulrich, bankrupt, who may be subsequently elected by creditors, should show cause in this Court on said certain day to be fixed by your Honor, why the prayer of your petitioner to obtain leave from this Honorable Court to make said Receiver or Trustee as aforesaid, co-defendant in the Chancery proceedings about to be instituted by your petitioner against said Catherine C. Ulrich and the receiver or trustee of John J. Ulrich, bankrupt, to have the said lease determined as void and inoperative.

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And your petitioner will ever pray, etc.

Charles W. Ulrich.

State of New Jersey ss.
County of Passaic

Charles W. Ulrich, being duly sworn on his oath according to law, deposes and says: 20

That he has read the foregoing petition, and that he is the petitioner named therein, and who signed same, and that the matters and things alleged therein are true, and that as to those matters and things alleged on information and belief, he believes them to be true.

Charles W. Ulrich.

Sworn and subscribed to before me this 20th day of December, 1923. 30

Susan W. Moore,
Notary Public of New Jersey.

COPY OF LEASE

Charles W. Ulrich
to
Kate E. Ulrich, et als.

This agreement made the 19th day of January,
in the year of our Lord, one thousand nine hun-
10 dred and twenty, between Charles Ulrich, single,
of the City of Paterson, in the County of Passaic,
and State of New Jersey, party of the first part,
and Louis C. Ulrich and Katherine Ulrich, his
wife, and John J. Ulrich as joint tenants and not
as tenants in common the City of Elizabeth, in the
County of Union and State of New Jersey, of the
second part,

Witnesseth: That the said party of the first part
has hereby let, and rented to said party of the
20 second part, and the said party of the second part
has hereby hired and taken from the said party
of the first part,

All that certain tract now owned by the party
of the first part on Westfield Avenue, Elizabeth,
New Jersey, known as 43 and 45 Westfield Ave-
nue, Elizabeth, N. J., known as 43 and 45 Westfield
Avenue, Elizabeth, New Jersey, being forty-two
feet front and being twenty-two feet in depth on
the one side line, and eighteen feet in depth on the
30 other side line. Th rear width being — feet for
the term of fifteen years, to commence on the nine-
teenth day of January, A. D., 1920, at the yearly
rent of Ten (\$10) dollars, payable yearly in ad-
vance on the 19th day of January, each and every
year during the life of this lease.

It is hereby understood and agreed between the
parties hereto that the parties of the second part
will erect on said land a building and that the par-
ties of the second part will pay all charges in con-

nection therewith and also pay the yearly taxes to
be assessed against said property to commence
with the year of 1920.

And it is agreed that if any rent shall be due
and unpaid, or if default shall be made in any of
the covenants herein contained, then it shall be
lawful for the said party of the first part to re-
enter the said premises and to remove all persons
therefrom.

And the said party of the second part covenants 10
to pay to the said party of the first part, the said
rent as herein specified to wit,

And at the expiration of the said term or the
termination of this lease, the said party of the sec-
ond part will quit and surrender the premises here-
by demised, in as good a state and condition as
reasonable use and wear thereof will permit, dam-
ages by the elements excepted.

And the said party of the first part covenant,
that the said party of the first part, on paying the
said rent, and performing the covenants aforesaid, 20
shall and may peaceably and quietly have, hold
and enjoy the said demised premises for the term
aforesaid.

It is also understood that the parties of the sec-
ond part being husband and wife and son should
any of them die, the lease is to be in force and ef-
fect in the survivors or survivor.

In Witness Whereof, the said parties hereto
have hereunto set their hands and seals the day
and year first above written.

Charles W. Ulrich (L.S.) 30
Kate E. Ulrich (L.S.)
John J. Ulrich (L.S.)

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Exhibit—D-1½

Signed, sealed and delivered
in the presence of
Frank J. Pfaff,
as to K. E. U. and J. J. U.
State of New Jersey }
County of Passaic }ss.

10 Be it Remembered that on this 21st day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty, before me an Attorney at Law of the State of New Jersey, personally appeared Charles Ulrich, single, who I am satisfied, is the lessor 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.

J. Vincent Barnitt,
An Attorney at Law of N. J.

20 Recd. Nov. 15, 1923,
At 2.01 p.m. No. 76.
Recorded at request of Frank J. Pfaff.

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Opinion

IN CHANCERY OF NEW JERSEY

Between
Charles W. Ulrich,
Complainant,
and
Francis Gordon, Trustee of
John J. Ulrich, Bankrupt, and
Kate E. Ulrich, otherwise
known as Catherine E. Ulrich
Defendants.

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Mr. J. Vincent Barnitt, for Complainant, Messrs.
William Harris and Israel Green, for Defendants.

OPINION

LEWIS, V. C.

This bill is filed to cancel a lease made by the complainant to his brother, Louis Ulrich. The lease is for the premises forty-three (43) and forty-five (45) Westfield Avenue, Elizabeth, New Jersey. It bears date January 19, 1920. The lessees named in it are Louis Ulrich, decedent, complainant's brother; Kate E. Ulrich, decedent's wife, and John J. Ulrich, decedent's son. It is true that the defendants, Kate E. Ulrich and John J. Ulrich signed the lease and recorded it after the father's death, but it was not necessary for them to sign as it bore the complainant's signature and is binding on him. John J. Ulrich was adjudicated a bankrupt some time after the death of his father and prior to this suit and his trustee, Francis Gordon, and his mother are defendants herein. The lease was ex-

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120
Opinion

ecuted by the complainant and acknowledged before Mr. Vincent Barnitt, solicitor of the complainant in this cause, who was then acting as his attorney. The complainant alleges that his deceased brother had perpetrated a fraud upon him. He claimed at the hearing before me that the lease which was for fifteen years he understood was to be for ninety months; that he had not read the lease but had signed it without knowing the contents, and this despite the fact that it was duly acknowledged before his attorney. It was also asserted by him at the time of the execution of the lease his brother undertook and agreed not to record it, or to ever use it against the complainant.

The only evidence offered to support these charges was advanced by the complainant himself. A consideration of his testimony does not satisfy me that much reliance can be placed upon it. He is a man who has had experience in real estate transactions, has made leases, and has been fairly successful in life. The defendant and his brother were entirely friendly during the latter's lifetime. He started the present proceedings when he was obliged to pay some of his brother's debts upon which he had been surety. In examining complainant's evidence, the court has in mind an exhibit produced in the bankruptcy case of John J. Ulrich, a son of decedent. A copy of the Petition of the complainant in that cause asking leave to join the trustee in bankruptcy as a party defendant to this suit is before me now. In that petition the complainant sets forth that the lease would run for a year or two at no rental whatsoever. For convenience I set forth the pertinent part of the petition:

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Opinion

Your petitioner further shows and alleges that your petitioner only consented to sign the document in question which, as previously stated, the said Louis C. Ulrich had informed petitioner would be a short term lease and which your petitioner understood would be for a year or two at no rental whatsoever, upon the understanding that Louis C. Ulrich would not sign said lease and would never record the same in any recording office where such documents may be recorded.

When confronted with this exhibit the complainant was unable to make a satisfactory explanation. His testimony in this court is that the lease was for ninety months. As appears by this exhibit, he sets forth that the lease is to be for one or two years, while the written lease which he now seeks to cancel is for fifteen years. Aside from this there is considerable force in the suggestion that the complainant is in laches and therefore the bill should be dismissed. His brother, the only material witness of the defendant, is dead. Records are lost and four years have expired since the transaction between the parties. Complainant has waited all this time before instituting this suit. I think that he clearly understood what he was doing when he executed the lease.

Complainant's bill should be dismissed.

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Final Decree

(Filed January 19, 1926)

IN CHANCERY OF NEW JERSEY

Between
Charles W. Ulrich,
Complainant,
and
Francis Gordon, Trustee of
John J. Ulrich, Bankrupt, and
Kate E. Ulrich, otherwise
known as Catherine E. Ulrich,
Defendants.

On Bill, &c.

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FINAL DECREE

This cause coming on to be heard in the presence
of J. Vincent Barnitt, of counsel with complainant
in the presence of Israel B. Greene, of counsel with
the defendants, and the pleadings having been read
and proofs taken and arguments of respective coun-
sel having been heard and considered, and the Court
having duly considered the said pleadings, proofs
and arguments; and it appearing to the Court that
the lease made by the complainant, Charles W. Ul-
rich to Louis Ulrich (now deceased) Kate Ulrich
and John J. Ulrich, dated the 19th day of January
1920 for premises 43-45 Westfield Avenue, Eliza-
beth, New Jersey, referred to in the bill of complaint
filed herein, is a good and valid lease and that the
complainant is not entitled to the relief sought and
prayed for by him in the said Bill of Complaint, it is
on this 2nd day of December, 1925 by Edwin Robert
Walker, Chancellor of the State of New Jersey,

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123
Final Decree

Ordered, Adjudged and Decreed that the com-
plainant's bill of complaint be and the same is here-
by dismissed with costs of this suit to be taxed, to
be paid by the complainant to the defendants herein
and that execution issue therefor, according to the
practice of this Court, and it is further

Ordered that the complainant pay to counsel for
defendants the sum of \$200.00 as a counsel fee to be
included in the taxed costs, together with the sum
of \$56.25 for defendants' copy of the testimony here-
in, together with one-half of the costs of the
Court's copy thereof.

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Respectfully advised,
VIVIAN M. LEWIS
V. C.

E. R. WALKER

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Notice of Appeal

(Filed December 18, 1925)

IN CHANCERY OF NEW JERSEY

	Between	}	On Bill, &c.
	Charles W. Ulrich,		
	Complainant,		
	and		
10	Francis Gordon, Trustee of		
	John J. Ulrich, Bankrupt, and		
	Kate E. Ulrich, otherwise		
	known as Catherine E. Ulrich,		
	Defendants.		

NOTICE OF APPEAL

Complainant hereby appeals from the final decree made in the above entitled cause on the second day of December, 1925, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

J. VINCENT BARNITT,
Solicitor for and of Counsel with Complainant.

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

J. VINCENT BARNITT,
Of Counsel with Complainant.

I acknowledge receipt of a copy of the within notice of appeal served upon me this 16th day of December, 1925.

(Signed) WILLIAM HARRIS,
Solicitor for and of Counsel with Defendant.

Petition of Appeal

(Filed January 6, 1926)

NEW JERSEY COURT OF ERRORS & APPEALS

	Between	}	10
	Charles W. Ulrich,		
	Appellant-Complainant,		
	and		
	Francis Gordon, Trustee of		
	John J. Ulrich, Bankrupt, and		
	Kate E. Ulrich, otherwise		
	known as Catherine E. Ulrich,		
	Appellees-Defendants.		

PETITION OF APPEAL

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

The petition of Charles W. Ulrich, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 2nd day of December, in the year 1925, in a case therein, wherein the said Charles W. Ulrich was complainant, and the said Francis Gordon, Trustee of John J. Ulrich, bankrupt, and Kate E. Ulrich, otherwise known as Catherine E. Ulrich, were defendants, in this respect, to wit: That the said decree adjudges that the said complainant is not entitled to the relief sought and prayed for in his bill of complaint filed in said cause, and that complainant's bill be dismissed. And your

Petition of Appeal

petitioner humbly appeals from the said decree of the Chancellor and the whole and every part thereof, upon the ground that the same is erroneous, for that the said complainant was and is entitled to the relief prayed for in his bill of complaint, namely, that by the decree of the Chancellor, it should have been decreed and declared that the alleged lease made by the complainant, Charles W. Ulrich, referred to in said bill of complaint, was null and void and that the said alleged lease be cancelled, surrendered up and discharged of record, and that the defendants be compelled to make an accounting, showing in detail the amount of rentals received from the premises referred to in the aforesaid mentioned alleged lease.

And for that the Chancellor should have by his decree in said suit, ordered, adjudged and decreed that said alleged lease be decreed and declared null and void, and be cancelled, surrendered up and discharged of record, and that the said defendants should be compelled to make an accounting, showing in detail the amount of rentals received from the premises referred to in the aforesaid mentioned alleged lease, according to said prayer of said bill of complaint, and that costs of suit should by said decree have been ordered and decreed to be paid by the said defendants to said complainant.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the parts aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

J. VINCENT BARNITT,
Solicitor for and of Counsel with
Appellant-Complainant.

Answer to Petition of Appeal

(Filed January 8, 1926)

NEW JERSEY COURT OF ERRORS & APPEALS

Between
Charles W. Ulrich,
Appellant-Complainant,
and
Francis Gordon, Trustee of
John J. Ulrich, Bankrupt, and
Kate E. Ulrich, otherwise
known as Catherine E. Ulrich,
Appellees-Defendants.

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ANSWER TO PETITION OF APPEAL

The answer of the above named defendants-respondents (referred to as the appellees-defendants in the petition of appeal filed herein) to the petition of appeal, of the above named complainant-appellant, Charles W. Ulrich.

These defendants-respondents not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit that a decree was on the 2nd day of December, 1925 last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, these defendants-respondents pray to refer thereto when the same shall be produced; and these defendants-respondents are advised and believe that the said decree is agreeable to equity, and pray that

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Answer to Petition of Appeal

the same may be affirmed with costs to be adjudged to these defendants-respondents.

WILLIAM HARRIS,
Sol'r. for defendants-respondents.

ISRAEL B. GREENE,
Of Counsel with defendants-respondents.

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114 FEB. T. 1927
Bm

New Jersey Court Of Errors and Appeals

Charles W. Ulrich,
Complainant-Appellant,
vs.

Francis Gordon, Trustee of
John J. Ulrich, Bankrupt,
and Kate E. Ulrich, other-
wise known as Catherine
E. Ulrich,
Defendants-Appellees.

On Appeal
from Chancery

BRIEF OF COMPLAINANT-APPELLANT

STATEMENT OF FACTS

Complainant seeks to have an instrument purporting to be a lease between complainant and Kate E. Ulrich and John J. Ulrich, cancelled, surrendered up, and discharged of record, as well as an accounting from Kate E. Ulrich, and Francis Gordon, trustee, of John J. Ulrich, bankrupt, of rentals received under and by virtue of the alleged lease as well as such other relief as the nature of the case required, and which may be agreeable to equity.

In January, 1920, complainant affixed his signature to the instrument in question, which purports to be a lease dated January 19th, 1920, between complainant as lessor, and Louis C. Ulrich, and Catherine E. Ulrich, and John J. Ulrich, *as joint tenants, and not as tenants in common*, lessees. This document, after being executed by complainant, was acknowledged by him as being

his act and deed, before J. Vincent Barnitt, the solicitor of complainant, on the 21st day of January, 1920, (S. of C., p. 88, l. 3). The lease was executed on an original as well as a duplicate copy. Both copies were delivered by complainant to his brother, Louis C. Ulrich, who never affixed his signature to either the original or copy. Louis C. Ulrich retained possession of the documents until he died in October, 1923, after which, and on the 15th day of November, 1923, several days after the death of Louis C. Ulrich, his widow, Catherine E. Ulrich, and his son, John J. Ulrich, went to the office of Frank J. Pfaff, an attorney of Elizabeth (S. of C., p. 72, l. 9), who testifies that he had recommended that they record the lease, after which Kate E. Ulrich, and John J. Ulrich signed one copy of the lease, and the other copy was retained by Mr. Pfaff, the one having been executed by Kate E. Ulrich, and John J. Ulrich, was recorded on the 15th of November, 1923, the same day that the widow and son executed the lease. (S. of C., p. 73, l. 8-15.)

Complainant owned the land referred to in the alleged lease, and Louis C. Ulrich, in 1920, and shortly after the alleged lease was signed by the complainant, Louis C. Ulrich, with the permission of complainant, caused to be constructed on the land owned by complainant, a building, which cost approximately \$9000.00, \$5000.00 of which sum Louis C. Ulrich advanced, and \$4000.00 was raised by Louis C. Ulrich, the deceased, (S. of C., p. 77, l. 13-18), executing a note which was endorsed by complainant, which was discounted at the bank, and the proceeds of which were added

to the \$5000.00 advanced, and used for the cost of constructing the building. (S. of C., p. 78, l. 15-26.)

Complainant states that his brother, Louis C. Ulrich was desirous of using the ground floor of the building for his automobile accessory business, and the floor above as a dwelling for his family, consisting of Louis C. Ulrich, his wife, Catherine E. Ulrich, and their son, John J. Ulrich. (S. of C., p. 52, l. 11-13.) The latter three entered into possession of the building, and remained in possession, Louis C. Ulrich until the time of his death, October, 1923, Catherine E. Ulrich, until after the filing of this bill, and as far as complainant knows, is still in possession of the dwelling quarters, and John J. Ulrich having been adjudged a bankrupt prior to the filing of the bill, his trustee subsequently elected, Francis Gordon, one of the defendants of this suit, has been in possession. (S. of C., p. 54, l. 1-19.) What arrangement, if any, has been made by Catherine E. Ulrich, with reference to renting the quarters above the store is unknown to complainant at the present time. Complainant however, states with reference to the same, that part of the premises have been sub-leased, (S. of C., p. 52, l. 8-10,) and the trustee, according to information of the complainant, has been in receipt ever since he has been elected as such, of a rental, the amount of which complainant is unable to state.

Complainant further states that at the time he endorsed the note of his brother, Louis C. Ulrich, the agreement with his brother was such that his brother was to pay off the note by reducing the same every three months, and notes from time to

time would be endorsed by complainant in reduced sums until the \$4000.00 was fully paid to the bank that discounted such notes for Louis C. Ulrich. (S. of C., p. 78, l. 18-22.)

Complainant further states that the understanding with his brother, Louis C. Ulrich was that if Louis C. Ulrich paid the note of \$4000.00, he would have disbursed the sum of \$9000.00, the cost of the building, and in return for such, in view of the fact that the land upon which the building was located was that of complainant, he desired to be protected in connection with the use and occupancy of the building, by reason of the outlay of said \$9000.00 (S. of C., p. 83, l. 25-34), so complainant agreed with Louis C. Ulrich, his brother, shortly before the building was completely erected, that Louis C. Ulrich and his family, consisting of his wife and son, could occupy the building for business and dwelling purposes as aforesaid, for a term of ninety months, it having been agreed between them that if the building had been constructed by complainant at a cost of \$9000.00, the value of the premises as a rental return for the valuation of the land and building would be about \$100.00 a month, which complainant would be in receipt of, and inasmuch as Louis C. Ulrich would have advanced, if he had paid the full \$9000.00, that sum he would be entitled to the use and occupancy of said premises for a term of ninety months, or ninety times \$100.00 a month rental, equalling \$9000.00. (S. of C., p. 83, l. 4-11.)

Complainant further says that the agreement was further that Louis C. Ulrich pay the taxes on the property, including the land and building,

during the time that the said ninety months would run, as well as the repairs, and fire insurance on the building, (S. of C., p. 84, l. 32-36, and p. 85, l. 1-24), and complainant was to receive nothing in return during all that period of time, for the use and occupancy by Louis C. Ulrich and his family of the premises, although complainant owned this valuable piece of land upon which the building was located, until after ninety months had elapsed, after which time complainant was to have possession of the entire property. (S. of C., p. 83, l. 4-11.) In other words, complainant would, under the agreement, receive nothing from his brother or his brother's family during the full period of ninety months for the use and occupancy of Louis C. Ulrich and his family of the land in the valuable location in Elizabeth where the premises were situated for the term of ninety months.

In connection with the note executed by the complainant as an endorser for Louis C. Ulrich, at the time of the death of Louis C. Ulrich in October, 1923, there was still due on this note the sum of \$1200.00, which was held by one of the banks in Elizabeth. Louis C. Ulrich, or his estate not having paid the note when it became due, complainant was required to pay this bank, notwithstanding the agreement of Louis C. Ulrich to have paid off this note at an earlier date, as testified to by complainant. (S. of C., p. 79, l. 13-23.)

Complainant further states that prior to the death of his brother, and after the alleged lease was entered into, Louis C. Ulrich had requested complainant to execute a mortgage for \$3000.00

on the property, and the proceeds of which Louis C. Ulrich was to receive, and pay off the note at the bank. Complainant did execute the mortgage for \$3000.00, which covered the property, (S. of C., p. 91, l. 27-29), and the proceeds of same was turned over to Louis C. Ulrich, and he used the same for other purposes, and did not pay off the note in the bank. After the death of Louis C. Ulrich, complainant was required to pay off this \$3000.00, so that complainant had to pay in connection with the premises the subject matter of the litigation, \$1200.00 on the note, as well as the \$3000.00 for the mortgage, or a total of \$4200.00. (S. of C., p. 92, l. 28-30, and p. 79, l. 11-23.)

With reference to the alleged lease, complainant testified that his brother, Louis C. Ulrich, asked complainant to let him have a lease to cover the agreement which complainant states had been entered into between him, and Louis C. Ulrich, with reference to the occupancy of the premises, for a period of ninety months, and Louis C. Ulrich brought to complainant the document which complainant had signed, and which is the alleged lease, the subject of the controversy, and which complainant states he did not read, but executed the same, believing it covered the terms of the agreement, which complainant hereinbefore refers to as having been entered into between him and Louis C. Ulrich. (S. of C., p. 87, l. 21-33.) He states further that the paper as signed by him was then brought to his attorney, J. Vincent Barnitt, before whom he acknowledged the same, and complainant states that while J. Vincent Barnitt requested complainant to state whether or not he knew the contents of the document, com-

plainant states that he paid no attention to the matter, and it is his opinion that he was looking out of the window of the office of Mr. Barnitt at the time this transaction took place. (S. of C., p. 89, l. 2-20.)

Complainant states that he then gave this document to this brother, Louis C. Ulrich, who was not to use the same at any time, (S. of C., p. 17-28), and complainant did not know that Catherine E. Ulrich and John J. Ulrich's names were on the lease as joint tenants and not as tenants in common, or in any capacity, until after the death of his brother, Louis C. Ulrich, when he learned of such over the telephone, when he had a conversation with John J. Ulrich, at which time, John J. Ulrich told complainant that he should take care of the note at the bank for \$1200.00, which complainant had endorsed for Louis C. Ulrich, the brother of complainant. (S. of C., p. 81, l. 15-22.)

Having learned at that time from John J. Ulrich that such lease had been signed by complainant, John J. Ulrich having told complainant at the same time that the lease had been recorded in Union County on the 15th of November, 1923 (S. of C., p. 82, l. 11-21), complainant took immediate steps to investigate to see whether that was so, and found out that it was a fact that said lease was recorded, the lease having been signed by Catherine E. Ulrich, and John J. Ulrich on the 15th day of November, 1923, several days after the death of Louis C. Ulrich, but the lease never having been signed by Louis C. Ulrich (S. of C., p. 72, l. 9-17) this being in keeping with the agreement with complainant not to use the same.

Complainant further testified that no payment of \$10.00 yearly rent referred to in this lease had ever been made or tendered to complainant by Louis C. Ulrich, Catherine E. Ulrich, or John J. Ulrich, at any time, but after the death of Louis C. Ulrich, and after the bill was filed in this cause, Francis Gordon, as trustee of John J. Ulrich, bankrupt, tendered \$10.00 for the year 1924, which complainant refused to accept. (S. of C., p. 92, l. 31-34.)

It is interesting to note in this particular case, that at the time John J. Ulrich and his mother executed this lease, John J. Ulrich was continuing to conduct the automobile accessory business at the premises referred to in the lease, this business having been conducted by both John J. Ulrich and his father, Louis C. Ulrich, before Louis C. Ulrich's death. After his father's death, John J. Ulrich was unable to meet the obligations and charges against this business, and as such became involved in financial difficulties, which resulted in an application being made to the United States District Court, for the District of New Jersey, in involuntary bankruptcy proceedings (S. of C., p. 54, l. 9-25), and which resulted in the appointment of Francis Gordon, receiver, one of the defendants. The receiver was subsequently elected trustee, and he has been made a party to the cause as the successor in interest, if any, of John J. Ulrich, as one of the tenants in the alleged lease.

At about that time, and just before the appointment of the receiver in bankruptcy, the creditors of John J. Ulrich were pressing him, and he then brought the document, the alleged lease, to

Mr. Pfaff's office, where it was executed in manner stated. (S. of C., p. 55, l. 22-25.)

POINT 1.

COMPLAINANT STATES THAT NO AGREEMENT HAD EVER BEEN ENTERED INTO.

Complainant states that no agreement had ever been entered into between him and Louis C. Ulrich with reference to the alleged lease being a binding contract between them, because of the fact that Louis C. Ulrich, one of the alleged lessees, never executed said lease. In 24 Cyc. on page 902, it is stated as follows:

A. Execution.

The formalities prescribed by statute in the execution of leases should be substantially followed and unless the contract or agreement, in whatever shape it may be, is signed by both parties thereto, it may not operate as a valid lease for want of mutuality. In several jurisdictions however, by usage or custom, a lease may be executed by the exchange of duplicates, each of which is signed only by the other party. However, a lessee by accepting a lease under seal and entering into the use and occupation of the premises may become liable for the performance of the conditions of the lease, although the same is not signed by him; this is likewise true where the lease is executed by the lessee but not by the lessor.

In the case of Spear & Co. vs. Empire Lace & Embroidery Co., 95 Atl. Rep., p.

356, by Justice Black, speaking for the Supreme Court, "A lease, like all written contracts or agreements should be signed by both parties thereto; otherwise such a paper may not operate as a valid lease, for want of mutuality." In this opinion, the following authorities are cited and referred to:

24 Cyc. 902; 1 Taylor on Landlord and Tenant (Ninth Edition), p. 52, Woodfall on Landlord & Tenant, p. 218, Sigmund v. Newspaper Co., 82 Ill. App. 178; Clemens v. Broomfield, 19 Mo. 118-121. The rule succinctly states this: A lease must be signed by the lessor, for he stands in the position of a grantor who is conveying an estate.

In the case of Whitford v. Laidler, 94 N. Y., 145, reported also in 46 Am. Rep. 131, where a lease signed by the lessor was also signed by certain officers of the lessee, a corporation, and left with a third person to procure the signatures of the other officers, and then deliver it to the town clerk, and it was held that it did not take effect until so signed by the other officers.

It is respectfully urged by the complainant in connection with the lease in question, that inasmuch as this lease was only signed by the lessor, the complainant, and never signed by Louis C. Ulrich, and never signed by Catherine E. Ulrich, and John J. Ulrich, until after the death of Louis C. Ulrich, almost four years after the document was signed by complainant, and

inasmuch as the complainant took steps immediately to have the document cancelled as a lease when he learned that such action had been taken by Catherine E. Ulrich and John J. Ulrich, there was no contract or agreement between complainant and Louis C. Ulrich, and Catherine E. Ulrich and John J. Ulrich, or any of them, and that the law governing written contracts is such that such written contracts must be signed by both parties thereto, is applicable to the case in question, in the same manner as other written contracts or agreements.

The case in question is not one such as sometimes occurs, as when a lessor executes one copy of the lease, and a lessee executes another copy of the lease, and each copy is exchanged. It will be noted in the case in question that two copies of the lease, that is, the original and the duplicate, were signed by the complainant, and both delivered to Louis C. Ulrich, his brother. Both of these were retained by Louis C. Ulrich, and found among his effects after his death, by his wife and son, and when found, they were not executed by Louis C. Ulrich, or John J. Ulrich. Catherine E. Ulrich testified that she did not know that such a lease was in existence, but thought it advisable to take it up with a lawyer after her husband's death, to ascertain what she could do. John J. Ulrich has not testified, (the complainant has assumed because he did not know anything about the document), and his interest in taking it up to the lawyer's office was for the purpose of gaining some possible benefit, financially, because at that time he was being pressed by his creditors.

POINT II.
**COMPLAINANT IS ENTITLED TO AN AC-
 COUNTING.**

If the Court upholds the validity of the lease, the creditors of John J. Ulrich will be in receipt of a very valuable interest in the leasehold premises, and it would seem only fair and equitable that if the document is construed by the Court as being a lease, that complainant should be entitled to receive the return of his \$4200.00 outlaid in manner hereinbefore stated, and some provision made for the return to complainant of that sum of money.

Complainant states that if the agreement between Louis C. Ulrich and complainant had been carried out as originally agreed between complainant and Louis C. Ulrich, the latter and his family being entitled to remain in possession for ninety months from January, 1920, they would have had a right to remain in possession until July, 1927, but inasmuch as complainant was required to pay off the \$4200.00 in manner heretofore stated, he was entitled to consider a reduction in the period of time that Louis C. Ulrich's family or their successors in title could remain in possession for a period of forty-two months in reduction of the ninety months period, figuring on the basis of \$100.00 a month for forty-two months. That would have permitted Louis C. Ulrich's successors to the lease to have remained in possession the difference between ninety months and forty-two months, or forty-eight months, or approximately four years, and inasmuch as Louis C. Ulrich, and his successors were in possession of the premises from January, 1920, to the time

of the filing of the bill, and since that time, more than four years having elapsed, complainant stated that he was entitled to the possession of the premises, or if the Court felt that the agreement as to the period of time for the occupancy of the premises should not be reduced to the extent of forty-two months, that under the general relief prayed for by complainant in his bill, he would be entitled to an equitable lien or a charge against the defendants to the extent of the \$4200.00, advanced by him in manner hereinbefore stated.

POINT III.
**COMPLAINANT MAINTAINS THAT HE
 COULD NOT ENFORCE THE LEASE AGAINST
 THE LESSEES, AS NO COPY OF THE SAME
 EXECUTED BY ANY OF THE LESSEES WAS
 DELIVERED TO HIM.**

Complainant maintains that he could not have enforced the alleged agreement against the defendants. The testimony discloses that both copies of the alleged agreement were in the possession of the wife and son of the decedent, Louis C. Ulrich, at the time of his death. That at that time the two copies of the alleged lease did not bear the signature of any of the alleged lessees; after Louis C. Ulrich died, the individual who received the two copies of the lease from Charles W. Ulrich, the complainant, the wife and son of Louis C. Ulrich, secured possession of the two copies of the lease, and executed the same. Up to that time, the complainant could not have enforced the lease against the defendants or any of

them, because he had no written agreement signed by any of the alleged lessees.

The said Louis C. Ulrich never elected to sign the lease, and no testimony was produced to show that he requested his wife or son to execute the lease, in fact, the testimony is just the opposite, that they having observed the lease after the death of Louis C. Ulrich, they took it from the effects of Louis C. Ulrich, seeing it was an alleged lease of the premises in question, and affixed their signatures to it in the office of their attorney, Frank J. Pfaff. Up to that time, the complainant had never elected that such a lease be considered effective against Louis C. Ulrich, or any of the persons referred to, and promptly took steps after the first knowledge of the execution of the lease by Catherine Ulrich and John J. Ulrich, to have the lease annulled, by filing a bill in the Court of Chancery for that purpose. It will be observed that the first knowledge that the complainant, Charles W. Ulrich had of the execution of the lease by the mother and son was shortly after the death of the father, when in a conversation had between complainant with the son, John J. Ulrich, the latter informed complainant that he had found such a lease, and had executed the same after the death of his father. Then complainant ascertained and learned that the lease had been recorded with the Register of Deeds of Union County. It will be observed that the complainant could not be guilty of laches in prosecuting his appeal to the Court of Chancery to have the lease annulled, because it is plainly evident that the complainant had no knowledge of the execution of the lease, except when it came to his atten-

tion in manner hereinbefore stated.

It is respectfully urged that the Court should have decreed that the lease be cancelled, and surrendered up, and ordered cancelled of record, or in the alternative, if it be upheld, the execution of the lease as valid, then the Court should have decreed that an accounting be had and that complainant should receive the sum of \$4200.00 outlaid by him, together with such other moneys as he expended for insurance premises and taxes on the premises, all of which moneys so advanced and expended by complainant, the said Louis C. Ulrich agreed both at the time the alleged lease agreement was entered into, and also by the terms and provisions of the lease itself, should be paid by the alleged lessees to the lease.

J. VINCENT BARNITT,
Solicitor for and of Counsel with
Complainant-Appellant.

14 FEB. T. 1927

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

New Jersey Court of Errors and Appeals

CHARLES W. ULRICH,
Complainant-Appellant,
 vs.
 FRANCIS GORDON, Trustee of
 John J. Ulrich, Bankrupt, and
 KATE E. ULRICH, otherwise
 known as CATHERINE E. UL-
 RICH, *et al.,*
Defendants-Respondents.

*On Appeal
 from Chan-
 cery.*
Sat Below
 WALKER, C.
 LEWIS, V.-C.

BRIEF OF RESPONDENTS.

Statement.

The complainant appeals from a decree (advised by Vice-Chancellor Lewis), dismissing his Bill by which he sought to annul a lease made by him to his brother, Louis Ulrich, Kate E. Ulrich, his wife, and John J. Ulrich, his son (*as joint tenants* and not as tenants in common), for premises 45 Westfield avenue, Elizabeth, New Jersey. The lease is dated January 19, 1920, and was *duly acknowledged* by the complainant as his *voluntary act and deed* before J. Vincent Barnitt, his solicitor in this suit (p. 88; App. Brief, pp. 1, 2). Louis Ulrich did not sign the lease, but he, and his family entered in possession of the demised premises thereunder. (App. Brief, p. 3.)

Louis Ulrich died in October, 1923. Shortly thereafter, Kate, his wife, and John, his son, signed the lease, recorded it, and continued in possession of the demised premises (App. Brief, p. 3). John was adjudged a bankrupt several months after his father's death, and Francis

Gordon, his trustee in bankruptcy defends in the right of John's creditors.

The Bill of Complaint alleges that Louis Ulrich obtained the lease by fraud, in that he falsely represented its term to be ninety months, whereas in fact, it is for fifteen years; and that he agreed never to record the lease, nor use it against the complainant.

The bill also alleges that contemporaneously with the execution and delivery of the lease and as part of the consideration therefor, Louis Ulrich agreed to erect, at his own expense, a building on the demised lands costing \$9,000; that the complainant agreed to assist Louis in borrowing \$4,000 of said sum by endorsing Louis' notes in that amount; that Louis was to repay the \$4,000 at the rate of \$100 per month; that the complainant endorsed said notes; that Louis failed to pay off the notes in his lifetime, with the result that he, the complainant, was compelled to pay the same, in addition to other debts of Louis, upon which he became surety.

Because of the nature of the charges exhibited by the bill against Louis Ulrich, and the relief therein prayed for, Mrs. Ulrich, as *Administratrix* of her husband's estate, petitioned to be admitted as a party defendant. The Vice-Chancellor, after hearing argument of counsel for both parties, advised an order admitting her to defend in her representative capacity. This order, and her answer in her representative capacity, were omitted from the State of the Case, and are therefore printed at length at the end of this brief. Said order is not appealed from.

The only evidence offered to support the charges in the bill, was advanced by the complainant himself. His testimony is so ably sum-

marized in the opinion of the learned Vice-Chancellor (p. 120) as not to require a repetition. The opinion of the Vice-Chancellor is a sad commentary upon the incredibility of the complainant's testimony, and the unworthy motives which actuated him in bringing the suit. In substance, the learned Vice-Chancellor found, that the complainant's testimony was so self-contradictory, and so inconsistent as to be unworthy of belief; that the lease transaction was free from fraud; that the complainant "*clearly understood what he was doing when he executed the lease*"; and that the complainant was motivated in bringing this suit because he was obliged to pay his brother's debts. He also found that the complainant was guilty of laches in bringing this suit.

ARGUMENT.

Since the *gravamen* of the bill is the alleged fraud of the decedent, it is obvious that the meritorious question on this appeal is whether, from the evidence adduced by the complainant, the learned Vice-Chancellor was justified in finding an absence of fraud.

Notwithstanding this pivotal question in the case, counsel for the appellant has studiously avoided discussing this subject. Apparently he is either satisfied with the finding of the Court below, or he realizes the futurity of assailing it. His silence on this important point cannot be charged to mere oversight but must be construed as an acquiescence on his part in the correctness of the finding of the learned Vice-Chancellor. Since the question of fraud is out of the case, it remains only to examine the three points argued in the appellant's brief.

Answer to Point One.

Under this point, counsel for the appellant argues that the lease in question never became effective because it was not signed by the decedent, and in support of this contention, he cites an excerpt from 24 Cyc. 902, *Spear & Co. v. Empire Lace Embroidery Co.*, 88 N. J. L. 153, 95 Atl. 356, and *Whitford v. Laidler*, 94 N. Y. 145.

While it is true that Louis Ulrich did not sign the lease, it is equally true that Kate E. Ulrich, and John J. Ulrich did sign the lease prior to the institution of this suit (p. 72). Since the lease was made to the lessees as *joint tenants*, and not as tenants in common, and since the surviving tenants did sign the lease, hence, as against them, there is no merit in the present contention of the complainant.

The cases of *Spear & Co. v. Empire Lace & Embroidery Co.* and *Whitford v. Laidler*, *supra*, do not sustain the complainant's contention, and are wholly beside the point. In the *Spear* case the lessor did not sign the lease, nor had the lessee entered in possession. In an action by the lessor to recover rent, on covenant, our Supreme Court held there could be no recovery because there was no lease. In the opening sentence of the opinion, Justice Black, speaking for the Supreme Court, says,

"There is but a single question in this case to be decided viz: whether an action can be maintained on the covenants in a written lease to pay rent, the lease not having been signed by the lessor, and the lessee not having entered into possession."

In the *Whitford* case there was no delivery of the lease, nor a legal acceptance thereof, either actual or constructive, by the lessee. The lease was left with a third person to procure signatures

of several officers of the lessee; and hence there could be no effective delivery of the instrument until the signatures were procured.

Whatever the rule may be in other jurisdictions, it is firmly established in this State, under the facts of this case, that it was not necessary for the lessee to sign the lease after the same was made, executed and delivered to them by the lessor. *Charlton v. Columbia Real Estate Co.*, 64 N. J. E. 631; 54 Atl. 444 (reversed on other grounds 67 N. J. Eq. 629; 60 Atl. 192).

Section 1 of our Statute of Frauds (C. S. 2610), which is applicable to the lease in this case, requires the lease to be signed by the "*party or parties making or creating the same or their agents thereunto lawfully authorized * * **" but does not require the lessee to sign the same. The very excerpt from 24 Cyc., page 902, cited by counsel for the appellant (p. 9 of his brief) says, "*The formalities prescribed by statute in the execution of leases should be substantially followed * * **" Even if our Statute of Frauds require the lessee to sign the lease, the part performance of the lessees in the case in entering into possession of the demised premises, and erecting the building thereon, would take the case out of the Statute. See *Rutan v. Crawford*, 45 N. J. E. 99; 16 Atl. 180. *Brown v. Pinniger*, 81 N. J. E. 229; 86 A. 541. In the excerpt from 24 Cyc. 902 *supra*, it is said "** * * However a lessee by accepting a lease under seal and entering into use and occupation of the premises may become liable for the performance of the conditions of the lease although the same is not signed by him * * **"

Answer to Point Two.

Under this point, counsel for the appellant insists that the complainant is entitled to an accounting of \$4,200 for debts of his deceased brother in that amount, which he was obliged to pay by reason of his becoming an endorser on said notes. Counsel for the appellant suggests that this accounting may take one of two forms: either a decree compelling the defendants, Kate E. Ulrich and the trustee in bankruptcy of John J. Ulrich to pay this sum, or that this indebtedness be impressed as a lien on the leasehold, and that the term thereof be amortized (so to speak), or be reduced by 42 months, at the rate of \$100 per month.

It must be admitted that the lien theory, though without merit or precedent, is at least ingenious and extremely novel. But unfortunately for the appellant, there are many insuperable obstacles to his prayer for an accounting.

In the first place there is no admissible or legal evidence in the record upon which to decree any accounting, since the personal representative of the decedent was a party to the suit. The complainant's testimony respecting his conversations and transactions with the decedent, were inadmissible under Section 4 of our Evidence Act. (C. S., p. 2218.) Counsel for the respondents made timely objections on that ground.

In the second place this testimony, was inadmissible, since it was an attempt to vary the terms of the lease. *Naumberg v. Young*, 44 N. J. L. 331, *Hallenbeck v. Chapman*, 72 N. J. L. 201. *Ramsey v. Perth Amboy Ship Building & Engineering Co.*, 72 N. J. E. 165.

In the third place, the bill does not pray for an account as is now urged. The only prayer for an accounting is the third prayer (p. 14), and that merely prays for an accounting against Kate E. Ulrich and the trustee in bankruptcy of John J. Ulrich, "*showing in detail the amount of rentals received from the premises referred to in the aforementioned lease, if any.*" The present suggestion of the appellant seems to be an afterthought. If the complainant has a claim, it is against Louis Ulrich, and not against the other lessee. Neither Kate E. Ulrich nor John J. Ulrich incurred any part of said indebtedness, nor did they, or either of them, covenant, or agree to erect a building. As against Louis Ulrich, the complainant has an adequate remedy at law, for he may have reimbursement from the administratrix, or maintain a suit at law against her.

There is no merit in the contention that an accounting may be granted under the broad prayer of the Bill for General relief; the finding of the Court below that the lease was valid and free from any taint of fraud destroys any right of accounting to which the complainant might otherwise have been entitled to.

The remedy of accounting may be classified under two general heads, *e. g.* strict bills of accounting, and bills wherein an accounting is merely incidental to some primary relief. A strict bill of account—will lie where the accounts are extremely complicated. *Seymour v. Long Dock Co.*, 20 N. J. E. 396; *Inhabitants of Crawford Township v. Watters*, 61 N. J. E. 284; *Daab v. New York Central H. R. R. Co.*, 70 N. J. E. 489; or where a fiduciary relationship exists between parties, and a duty rests upon the defendant to render an account to the complainant. Pom. Eq. Juris. (2nd Ed.) Vol. 5, Sect.

2358; as between principal and agent (*id*). Sect. 2359; and between partners, tenants in common, or joint tenants, or joint adventurers (*id*) Sect. 2360. In all other cases, the remedy of accounting is merely auxiliary to some principal relief (*id*) Sect. 2362. It is, therefore, clear that the accounting urged in the case at bar, if maintainable at all, falls in the second class, hereinbefore mentioned. And since the principal relief sought by the Bill was denied, the accounting, too, must fall. *Jewett v. Bowman, et al.*, 29 N. J. E. 174. A bill alleging fraud cannot, upon failure to prove fraud, be turned into an action of account. *Jewett v. Bowman, et al., supra*.

We have never heard or known of a case (unless the instant case is to become a precedent), in which moneys due from one of several joint tenants to a landlord, was declared a lien on the leasehold of the tenant, so as to reduce the term of the demise *pro tanto*, at the rate of the monthly rental reserved in the lease. If the lease has been breached, the landlord has an adequate remedy at law. *Bochman v. Post*, 25 N. J. L. 285; *Ocean Grove Camp Meeting Ass'n v. Sanders*, 68 N. J. L. 631.

Answer to Point Three.

Under this point, counsel for the appellant argues that the lease never became effective because he could not enforce it against the lessees, by reason of the fact that no copy of the same, signed by the lessee, was delivered to him. We think that our answer to his first point disposes of this contention.

It is, therefore, respectfully submitted that the decree appealed from be affirmed, with costs.

ISRAEL B. GREENE,
Of Counsel with Defendants-Respondents.

IN CHANCERY OF NEW JERSEY.

Between

CHARLES W. ULRICH,
Complainant,

and

FRANCIS GORDON, Trustee of
John J. Ulrich, Bankrupt,
and KATE E. ULRICH, other-
wise known as CATHERINE
E. ULRICH,

Defendants.

On Petition,
etc.

Order.
Admitting
Kate E.

Ulrich Ad-
ministratrix
of the Estate
of Louis
Ulrich, De-
ceased.

Application having been duly made before the Chancellor on the petition of Kate E. Ulrich, the administratrix of the Estate of Louis Ulrich, deceased, praying that she may be made a party defendant in the above-stated cause and the Court having heard argument of counsel for said petitioner and counsel for complainant, and the Court having considered the matter and being of the opinion that said petitioner is a proper party defendant in this cause, it is on this 2nd day of December, 1925,

ORDERED that Kate E. Ulrich as administratrix of the Estate of Louis Ulrich, deceased, be admitted as a party defendant in this cause and she may forthwith file her answer to the Bill of Complaint herein, and that the parties may file any further supplemental pleadings as may be necessary to join issue herein.

E. R. WALKER,

C.

Respectfully advised,

VIVIAN M. LEWIS,
V.-C.

IN CHANCERY OF NEW JERSEY.

*Between*CHARLES W. ULRICH,
*Complainant,**and*FRANCIS GORDON, Trustee of
John J. Ulrich, Bankrupt,
and KATE E. ULRICH, other-
wise known as CATHERINE
E. ULRICH,
*Defendants.**On Bill, &c.**Answer of
Kate E.**Ulrich as**Administra-
trix of the**Estate of**Louis Ulrich,**Deceased.*

Defendant Kate E. Ulrich, the administratrix of the Estate of Louis Ulrich, deceased, of the City of Elizabeth, Union County, New Jersey, having been made a party defendant in this suit, answering the bill of complaint filed herein, says:

1. She admits paragraphs 1 and 2.
2. She admits so much of paragraph 3 to the effect that complainant consented to the construction of the building referred to in said paragraph, same to be at the expense of Louis C. Ulrich; she has no knowledge or information sufficient to form a belief as to the other allegations in said paragraph.
3. She has no knowledge or information sufficient to form a belief as to paragraph 4.
4. She admits so much of paragraph 5 to the effect that complainant consented to the construction of said building by Louis C. Ulrich upon the terms, covenants and conditions set forth in the lease, a copy whereof is annexed to the Bill of Complaint, and marked Exhibit "A"; but she has no knowledge or information sufficient to

form a belief as to the other allegations in said paragraph.

5. She denies paragraph 6, except that in consideration of the construction and maintenance of said building the complainant made, executed and delivered to the said Louis C. Ulrich, now deceased, for the benefit of said Louis C. Ulrich, and John J. Ulrich, and herself, the lease, a copy whereof is annexed to the Bill of Complaint and marked Exhibit "B."

6. She admits paragraphs 7 and 8.

7. She has no knowledge or information sufficient to form a belief as to paragraphs 9 and 10.

8. She admits that the said Louis C. Ulrich died on the 29th day of October, 1923, while the said Louis C. Ulrich and John J. Ulrich were in possession of the premises in question; that she has no knowledge or information sufficient to form a belief as to the other allegations of the 11th paragraph.

9. She has no knowledge or information sufficient to form a belief as to paragraph 12.

10. She has no knowledge as to paragraph 13, except that she admits that said lease was duly executed by herself, and John J. Ulrich after the death of said Louis C. Ulrich, and was duly recorded in the Register's Office of the County of Union, New Jersey, in Book 920 of Deeds, page 76, on November 15, 1923; as to the provisions of said lease she begs leave to refer to said instrument as if same were herein set forth for greater certainty.

11. She denies paragraph 14.

12. She admits paragraphs 15, 16, 17 and 18.

13. This defendant, further answering, says:

That said lease, a copy whereof is annexed to the Bill of Complaint filed herein and marked

Exhibit "B," was made, executed and delivered to Louis C. Ulrich, deceased, this defendant's late husband, for the benefit of said Louis C. Ulrich and this defendant, and John J. Ulrich in consideration of the construction of the building now located on the lands mentioned in the Bill of Complaint for the other consideration mentioned in said lease, which consideration has been fully paid and satisfied according to the true intent and tenor thereof.

14. This defendant further answering says:

That no fraud was practiced upon the complainant by the said Louis C. Ulrich, and that said lease was made, executed and delivered by complainant to the said Louis C. Ulrich for the benefit of himself, this defendant, and John J. Ulrich in consummation of an oral agreement theretofore agreed upon.

15. This defendant further answering says:

That complainant at the time of the execution of said lease, and at all times since said time, has known of the contents of said lease, and has accepted the rents and profited by the benefits and consideration therein provided, and has therefore fully ratified and confirmed same, and is and should therefore be estopped from maintaining this suit.

16. That if any fraud was practiced upon complainant by the said Louis C. Ulrich as charged in the Bill of Complaint, which this defendant denies, said complainant, after discovering said alleged fraud accepted the rent provided in said lease and profited by the benefits and other considerations therein provided, and in all respects fully ratified and confirmed said lease, and therefore is and should be estopped from maintaining this suit.

17. This defendant further answering says:

That if any fraud was practiced upon complainant by the said Louis C. Ulrich as alleged in the Bill of Complaint, which this defendant denies, complainant is not entitled to maintain this suit because of the lack of diligence in bringing the suit during the lifetime of the said Louis C. Ulrich; that complainant has been guilty of laches.

18. This defendant further answering says:

That complainant is not entitled to maintain this suit because said suit is an attempt to vary by parol the terms of the written lease entered into by the complainant and the said Louis C. Ulrich.

By way of counter-claim this defendant says:

1. That on or about the 19th day of January, 1920, complainant being seized in fee of certain lands in the City of Elizabeth, Union County, New Jersey, commonly known as Numbers 43-45 Westfield avenue, in the said City, made, executed and delivered a lease to the said Louis C. Ulrich, the late husband of this defendant, for a period of fifteen years from the 19th day of January, 1920, for the benefit of said Louis C. Ulrich, this defendant, and John J. Ulrich, her son, a copy of which lease is annexed to the Bill of Complaint filed herein and marked Exhibit "A" in consideration among other things, of the Agreement on the part of the said Louis C. Ulrich to build and construct on said lands a two-story brick building at a cost of not less than \$9,000, and to pay all the charges in connection therewith, and also to pay the yearly taxes to be assessed against the said property beginning with the year 1920, and in further consideration of an annual rental of \$10.00 to be paid

in advance on the 19th day of January of each and every year during the life of said lease.

2. That pursuant to said lease, said Louis C. Ulrich did enter upon said lands and did in the year 1920, build and construct a two-story brick building in accordance with plans and specifications approved by complainant at a cost exceeding the sum of \$9,000, and since said time down to the present day has paid all the charges and assessments thereon, including all taxes, water charges, insurance and interest on mortgages amounting to a further sum of \$2,500 and has paid the annual rental of \$10.00 for each and every year during said lease and down to the present time; that complainant refused to accept the annual rental of \$10.00 for the year 1924, which was duly tendered to him by this defendant on the 19th day of January, 1924; and the said Louis C. Ulrich and this defendant, and the said John J. Ulrich have at all times fully performed the terms, covenants and conditions of said lease.

3. That on the 29th day of October, 1923, the said Louis C. Ulrich departed this life intestate; that thereafter such proceedings were had that this defendant was duly appointed the administratrix of the estate of said deceased, ever since which times he has qualified as such administratrix and has acted and is now acting as such administratrix; that by reason thereof and pursuant to the statutes of this State in such case made and provided she became entitled to all the personal property whereof the said decedent died seized and to the interest of the said decedent in and to said lease.

4. That if this Court decree that the said lease is null and void, as prayed for in the bill of complaint, then the said expenditures made by

the said Louis C. Ulrich in the erection and construction of said building, and the payment of taxes, interest on mortgages, assessments, water charges, etc., should be declared an equitable lien or mortgage against the said lands and premises, and complainant should be accountable therefor.

This defendant therefore prays:

First: That complainant may answer this counter-claim and each statement therein made without oath.

Second: That if said lease is declared to be null and void, as prayed for in the bill of complaint, then that an accounting may be had of the moneys expended by the said Louis C. Ulrich in the erection and construction of said building on the land of complainant and the taxes, water charges, insurance premiums, repairs, assessments and all other charges in connection therewith, and that the amount found due on such accounting may be decreed to be an equitable lien or mortgage against said lands and premises, and that complainant may be decreed to pay to this defendant her share or interest in said amount, pursuant to the statutes of this State in such case made and provided, or that said lands and premises be sold, and that this defendant's interest in said lien or mortgage may be paid and satisfied out of the proceeds realized from the sale thereof.

Third: That a writ of subpoena issue out of this Honorable Court directing complainant to answer this counter-claim and abide by such decree as may be made in the premises.

Fourth: That defendant may have such other and further relief as may be just in the premises, and

TAKE NOTICE, that this defendant objects to the bill of complaint on the ground that same does not set forth a cause of action, for which reason she reserves the right to move to strike out said bill of complaint at or before the final hearing herein.

WILLIAM HARRIS,
Solicitor for and of Counsel
with Defendant, Kate E. Ulrich,
as Administratrix of the
Estate of Louis Ulrich.

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