57

New Jersey Court of Errors and Appeals.

THE PETER BREIDT CITY BREWERY COMPANY, a corporation, Plaintiff-Respondent, vs. FRED WEBER, Defendant-Appellant.	On Appeal.

Brief of defendant

The Statement of the Case.

This is an action brought for the rent of premises No. 214 Broad Street, also known as 214 Morris Avenue, Elizabeth, New Jersey, formerly occupied by the defendant. There is also a claim for repairs made, and a beer bill of $38.40.

The first count of the complaint, recites that defendant entered into possession of said premises under a lease alleged to have been made October 1, 1914, for a term of three years, at a monthly rental of one hundred dollars, payable monthly in advance on the first day of each and every month, and that the defendant has not paid the rent for said premises from November 1, 1915, to May 1, 1916—7 months.

The second count alleges an abandonment and that by reason thereof the plaintiff was obliged to remodel and repair same so as to be suitable for another tenant.

The third count is for a beer bill.

The fourth count recites that plaintiff and defendant entered into an agreement in writing which is

attached, and marked Exhibit A and attached to complaint, and paid a monthly rental of $100, and that on November 1, 1915, defendant abandoned same and refused to continue conducting his saloon and liquor business, although he was duly licensed by the proper municipal authority, and that by reason of same, the plaintiff was damaged to the amount of $5,000.

The fifth count refers to the transfer of said license and that plaintiff endeavored to get another tenant to conduct the same kind of business, and that plaintiff had to make certain repairs on said premises to get a new tenant.

The sixth count charges that the defendant never terminated the tenancy of the said premises under the agreement of Jan. 9, 1910, and therefore owes seven months rent of same, from November 9, 1915, to June 9, 1916; and also sets out the various amounts due for damages and rent under the various counts.

See printed case pp. 6-9.

The defendant answering denies making the lease for three years, but says that his tenancy was under the agreement of June 9, 1910, marked Exhibit A, in complaint, and that the same was a monthly one, and was terminated by giving defendant the proper notice; as specified in his answer to the first count.

And to the second count, defendant denies that he abandoned the premises in question.

As to the fourth count, the defendant admits the 10th, 11th, 12th and 13th paragraphs, and as to the 14th paragraph he denies that plaintiff has been injured.

As to the fifth count, the defendant admits the

10th, 11th and 12th paragraphs, and admits that he refused to transfer his license to the plaintiff, but denies that the plaintiff was thereby prevented from procuring a tenant to conduct a saloon at said premises by reason of such refusal.

As to the sixth count defendant admits the 10th and 11th paragraphs, but as to paragraph 20, he denies the truth of the same.

The defendant also sets out his counter.

See printed case, pp. 14, 15, 16 and 17.

I.

As to the Agreement in the Cause.

The testimony produced on the part of the plaintiff attempted to show that there was an oral agreement made between the plaintiff and defendant some time in October, 1914, for a lease for three years, but this is denied by the defendant, and the jury took the view that the tenancy was the one created by the agreement of June 9, 1910, and marked as Exhibit A, at the end of plaintiff's complaint. The defendant remained in possession of the premises by virtue of this agreement, which was terminated November 1, 1915, by the notice given by him to the plaintiff on September 24, 1915, and marked Exhibit P 6. (See printed case, p. 170.) The Judge before whom the case was tried at the Circuit took the view that the agreement of June 9, 1910, did not fix a term, and where there is no term fixed and the parties themselves construe the lease, which indicates what they themselves decided the term was, then that is what fixed it. (See case p. 9, 157, line 25, and fol —.) He charged that it

was not a monthly tenancy, although the monthly receipts would indicate that it was. (See Exhibits D 4, p. 198. Therefore a three months notice was necessary. The matter is before this court on errors in the judge's charge and his refusal to charge as requested. The grounds of appeal are found on pages 2, 3 and 4 of printed case.

The Law of the Case.

In considering the agreement of June 9, 1910, marked Exhibit A, which the defendant claims governs in this case, the charge of the court objected to and as found in the 3d, 4th, 5th, 6th, 7th, 8th and 9th and 10th paragraphs of the grounds of appeal, and also the refusals to charge as found in paragraphs 12, 13, 14 and 15 of the grounds of appeal, will be taken as a whole in the argument.

The court below charged the jury as a matter of law that the agreement (Exhibit A) created a tenancy from year to year and that Mr. Weber's giving one month's notice was not sufficient to terminate his tenancy under that agreement and he would be liable for the whole year's rent.

The agreement between Weber and the Brewery Company stated that the Brewery would rent the premises to Weber at a monthly rental of $100, payable in advance and Weber agreed to apply for a license to the excise authorities of the City of Elizabeth, and if granted to conduct the business of retail liquor dealer at the premises and pay a monthly rental of $100 per month in advance. Weber applied for and received his license and entered the premises under the conditions of the agreement (Exhibit A) and continued to occupy the premises until October 31, 1915, at which time

he left the same after giving notice to the Brewery on September 24, 1915, of his intention to terminate his tenancy, and that he would quit and surrender the same on November 1, 1915. (See notice p. 170, Ex. p. 6.)

The license in this case has nothing whatever to do with the nature of the tenancy. The license is a personal privilege granted to Weber to sell intoxicating liquors which he may discontinue at his pleasure. There is no connection whatever between the license and the term. The license in no way affects the term, or the term the license. Each is separate and distinct. The payments of the rent fix the term where no annual rent is reserved and no term stated in the letting, and the notice to be given is to be governed by the term. The rule is laid down in *Steffens* v. *Earle,* 40 New Jersey Law, p. 128, and is as follows: "Where it appears that there is a rent reserved, and the payment is to be made by the quarter or month or week, then the renting is a yearly letting without regard to the periods of payment. But where there is no such letting, and there is no evidence but the fact of payment at intervals of a week or a month, the implication is that the renting is a monthly or weekly one, just as the payment is monthly or weekly."

In the case before the court there is nothing but the fact of payment of $100 monthly and receipts for payment of $100 monthly and therefore the same is a monthly tenancy.

Assuming the lease had been for years in the beginning with no annual rent reserved in the lease or agreement, with rent payable $100 a month and ~~other~~ the tenant after the expiration of his agreement for years continues in possession of the premises with the consent of the landlord, and continues to pay the $100 per month without a new agreement

having been made between the parties. Does the tenant by holding over after the expiration of his agreement for years become liable for the payment of one year's rent? Or is there any implication in the law to warrant the court in finding that the tenant and landlord agreed to rent and let for another year? The rule as enunciated in *Steffens* v. *Earle* above is contrary to any such implication.

Following the rule laid down in *Steffens* v. *Earle* above, if A. rents or leases to B. certain premises say, for five years at a monthly rental of $100. per month, without any annual rent reserved, and if B. holds over after the expiration of his lease or agreement he does not become a tenant from year to year, he becomes a tenant from month to month because there is no annual rent reserved, only a monthly reservation and because the lease or agreement dies at the end of the five years as to time, and the only evidence then is the reservation of rent by the month. The rent reserved governs as to the nature of the tenancy, and as to the kind of notice to be given to terminate such tenancy. The term is governed by the reservation of the rent where no time is mentioned in the agreement.

So also a tenancy from month to month will generally arise where no definite term of letting is specified by the parties and the rent is payable monthly.

Steffens v. *Earle*, 40 N. J. L. 128;
State v. *Schertinger*, 51 N. J. L. 452;
Hurd v. *Whitsett*, 4 Colo. 77;
Wall v. *Ellman*, 2 Chester Co. Rep. Pa. 178.

Also cited in Underhill on Landlord and Tenant, Vol. I, Section 105, as follows: For if a term is not

fixed in a parol letting, but a monthly rent is reserved, a tenancy from month to month and not from year to year usually arises.

A lease at bill with the rent payable in monthly installments becomes a tenancy from month to month.

Sebastian v. *Hill*, 51 Ill. App. 272;
Lehman v. *Notting*, 56 Mo. App. 549;
Barnaby Co. v. *Johnston*, 28 R. I. 105;
Same case, 65 Atl. Rep. 613;
Rogers v. *Brown*, 51 Minn. 223.

Where a lessee went into possession on the sixth of the month and paid his rent up to the first of the following month the period of renting is from the first day of the month to the first day of the month.

Ver Steeg v. *Becker-Moore Paint Co.*, 80 S. W. Reporter 346.

Where a tenant from month to month holds over for more than a year and the landlord elects to treat him as a tenant, he does not thereby become a tenant from year to year, but continues under the terms of the former lease so far as applicable, and will presumptively remain a tenant from month to month in the absence of a new hiring for a different period.

Hollis v. *Burns*, 100 Pa. St. 206.

The receipts in this case specify that the term was for a month.

In *Schlosser* v. *Huber*, 46 N. Y. Suppl., p. 921, it was held that where the receipts for rent specified

that the term was for one month only and later receipts specified no term, the fact that the tenant continued to pay rent monthly was sufficient to support a finding that the original arrangement for a monthly tenancy continued.

The defendant also contends that the proceedings taken by Butler and Scanlon and marked as exhibits for the defendant indicate a termination of the defendant's tenancy, and a new tenancy with Scanlon.

The defendant also contends that he is not liable for any repairs as charged for in the complaint in this cause.

II.

As to the Counterclaim of Defendant.

The defendant claims and insists that the court erred in striking out the counterclaim filed in this cause. That the court should have charged the jury as requested by defendant as expressed in paragraphs 16, 17, 18 and 19 of his grounds of appeal. That the counterclaim as set out in the answer of the defendant and the defense to the sixth count of the complaint should have been permitted to have been proved, and that the counter claim set out in the answer was sufficient to charge the plaintiff with damages for injuries alleged to have been done the defendant.

The judge at the circuit took a decided view with regard to the counter claim, because in his charge at page 159 he says: "Under the law of this case it is very clear that the defendant has no right to a counter claim for damages against the plaintiff for the failure to transfer, or the failure to

get a license at a new place," and at page 160 he says: "I have already eliminated that (counter claim), and if I am in error, you have an exception which covers that."

The defendant insists that there is law sufficient to assist in prosecuting his suit for damages under the counter claim. The proceedings while not in a court were before the Board of Excise on Weber's application for a transfer of his license from the Broad Street place to this building on Elizabeth Avenue.

In Addison on Took, Vol. II, Section 868, Wood's Ed., it is stated: "Whoever makes use of the process of the court for some private purpose of his own, not warranted by the exigency of the writ or the order of the Court is amenable to action for damages for an abuse of the process of the Court.

The foundation of every action of tort is a wrongful act, but it need not be malicious, for malice is not a necessary ingredient in a wrong.

Ibid, Vol. 1, Sec. 4.

Also every servant acting in the execution of his master's business represents the master himself, and his acts are in contemplation of law, the acts of his master.

Ibid, Vol. I, Sec. 36.

Whatever a servant does in order to give effect to his master's will may be treated, as we have seen, as the act of the master.

Ibid, Sec. 550.

The counter claim is valid, even if there is a

wrongful use of a court process, rather than a malicious one.

The case of *Bartlet* v. *Christhilf,* 69 Maryland 219, also reported in 14 Atlantic Reporter 518, held, That courts will never permit the wrongful use of their process and in case such use is attempted the party will not be permitted to gain an advantage by reason of such wrongful act. But the law goes farther and gives the person aggrieved by the wrongful act a cause of action against the offending party .

It has been held that a malicious abuse of process consists in the malicious misuse or misapplication of that process to accomplish some purpose not warranted or commanded by the writ.

Whoever makes use of the process of the court for some private purpose of his own, not warranted by the exigency of the writ or the order of the court is answerable to an action for damages for an abuse of process of the court.

Nix v. *Goodhill,* 95 Iowa 282; 63 N. W. Rep. 701;

2 Addison on Torts, Sec. 868, Woods Edition.

See also the following cases:

Barr et als. v. *Essex Trade Council,* 53 Eq. 101;

Barr et als. v. *Essex Trade Council,* 30 Atl. 881;

Rogers v. *O'Barr et al.,* 76 S. W. Rep. 593;

Kline v. *Hibbard,* 29 N. Y. Suppl. 807;

Humphreys v. *Sutcliffe,* 43 Atl. Rep. 954;

Assets Collection Co. v. *Myers,* 152 N. Y. Suppl. 930;

Carpenter Boggatt & Co. v. *Hanes,* 83 S. E. Rep. 577;

McLaughry v. *Porter,* 33 N. Y. Suppl. 464.

The defendant respectfully insists that for the reasons above a new trial should be granted him.

Respectfully,

WILLIAM R. WILSON,
Atty., etc., for Appellant.

[9668]

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57

New Jersey Court of Errors and Appeals.

THE PETER BREIDT CITY BREWERY COMPANY, a Corporation, Plaintiff-Respondent, vs. FRED WEBER, Defendant-Appellant.	Action at Law On Appeal.

BRIEF FOR RESPONDENT.

This appeal brings up for review, a trial held at the Union Circuit before the Court and Jury.

The complaint (p. 6-12) contains six counts.

The first count alleges that on or about the first day of October, 1914, the plaintiff entered into an agreement with the defendant, whereby he, the defendant, did hire and rent the first floor of said premises for a term of three years, to commence on the first day of October, 1914, at the monthly rental of $100.00, payable in advance, etc. That the defendant failed to pay seven months' rent to the plaintiff for the use and occupation of said premises under the terms of said lease.

The second count alleges (p. 8, par. 7) that the defendant abandoned the premises on the first day of May, 1916, and refused to pay the rent. *An error was made in the drafting of that paragraph and at the trial, the said paragraph was amended as to its date, to read "November 1st, 1915," instead of "May 1st, 1916"* (p. 22, l. 1-10). By reason of the abandonment of the said premises, the plaintiff sustained damage in addition to the loss of seven

month's rent, the sum of $398.92, as contained in paragraph 8 of the second count.

The fourth and sixth counts allege that on the 9th day of June, 1910, the plaintiff and defendant entered into a written agreement for the occupancy of the premises. (Said written agreement is set forth on p. 12, and marked "Exhibit A").

The main question on this appeal is whether or not the Court correctly construed "Exhibit A" the written agreement, dated the 9th day of June, 1910, and which reads as follows:

> AGREEMENT entered into this ninth day of June, One Thousand Nine Hundred and Ten, between FREDERICK WEBER, party of the first part, and the PETER BREIDT CITY BREWERY COMPANY, a corporation, party of the second part; both of the City of Elizabeth, in the County of Union and State of New Jersey.
>
> WHEREAS the party of the second part is the lessee of the building known and number as 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and wherein is conducted a saloon or liquor business by one William Moore; and
>
> WHEREAS it has been mutually agreed by and between the parties hereto that the party of the first part shall conduct the said business and have the occupancy of the said building, therefore it is agreed as follows:
>
> For and in consideration of the sum of One dollar ($1.00) each party unto the other paid, the receipt of which is hereby acknowledged, the party of the second part

obligates itself to put in a new front, suitable for the business to be conducted therein at the premises number 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and to make such repairs and renovations on the interior of the said store as will be necessary to put it in proper shape for the conduct of the business, and to rent the store floor with basement underneath same to the party of the first part at a monthly rent of One Hundred Dollars ($100), payable in advance.

SECOND: The party of the first part obligates himself to make proper and legal application for the license or transfer of license from the excise authorities of the said City of Elizabeth, and if granted, to conduct the business of retail liquor dealer at the premises No. 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and to pay a monthly rental for the store, or first floor and the basement underneath same, of One Hundred Dollars ($100) per month, payable in advance.

THIRD: It is, however, agreed by and between the parties hereto that in the event of a sale of the business to be conducted at the premises No. 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, by the party of the first part, that the amount paid for the sale of the said business shall be equally divided between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have affixed their hand, the seal, the day and year first above mentioned.

FREDERICK WEBER, (L. S.)

THE PETER BREIDT CITY BREWERY CO.,

By D. F. Collins, Prest., (L.S.)

(Seal)

Signed, sealed and delivered
in the presence of

Patrick J. McGurn.

The undisputed facts in this case are as follows: That on the 26th day of July, 1910, under the written agreement "Exhibit A" the defendant first procured for the premises in question, a liquor license from the Board of Excise Commissioners of the City of Elizabeth, and that said license was for one year and thereafter annually renewed, and the last license being granted commencing the 26th day of July, 1915, to the 26th day of July, 1916. That on the 23rd day of August, 1910, the defendant paid the first rent to the plaintil amounting to $150.; that the defendant vacated the premises on the 1st day of November, 1915 (p. 27, l. 30; p. 28 & 29). That the defendant gave a thirty days' notice to the plaintiff that he would vacate the premises on the 1st day of November, 1915, and under that notice attempted to and did vacate said premises. "Exhibit P-6" (p. 170, l. 1-20).

At the trial the plaintiff offered proof to substantiate the first count contained in the complaint, and the defendant offered proof in denial thereof; that question was submitted to the Jury and no error is

assigned challenging the correctness of the Court's ruling in that regard.

The grounds for appeal may be defined for the purpose of argument into two classes.

> 1. Did the Court below correctly construe the Agreement, "Exhibit A"?
>
> 2. Did the Court below err in striking out the testimony offered by the defendant on his counterclaim?

I.

The Court below did not err in construing the agreement "Exhibit A."

The construction and effect of "Exhibit A" being a written instrument is a matter of law to be determined by the Court and not by the Jury.

> *Grueber Engineering Co.* v. *Waldron,* 71 N. J. L. 597.

"The question whether or not an agreement between the parties is a valid lease for more than three years, or merely a lease at will, is one of law for the Court, as the lease for more than three years could not exist without a writing; and the force and effect, as well as the interpretation and construction thereof, is for the Court and not for the jury."

> *Dumn* v. *Rothermel,* 112 Pa. St. 272, 3 Atl. 800.

By virtue of 'Exhibit A" the plaintiff claims that the defendant was a tenant from year to year, re-

quiring *three months' notice* to terminate the tenancy.

Sec. 29, Landlord and Tent Art. 3, Comp. St. 3077.

The agreement "Exhibit A" is not a lease, but an executory contract by which the plaintiff agreed to do certain things and then to rent the premises to the defendant at a monthly rental of $100., and the defendant obligated himself to apply for a liquor license *and if granted,* to conduct the business and pay a monthly rental of $100. No time was fixed as to when the agreement should become executed or how long it was to continue. It became executed only when the parties had performed their respective obligations and when the defendant entered into and commenced to conduct the business and pay the agreed monthly rent. No new agreement or lease was made and the defendant entered into possession without any agreement as to the term of occupancy. *This we claim made him a tenant from year to year.*

In *Den* v. *Drake,* 14 N. J. L. 523, which is the leading case upon the subject, the Court, on page 531, remarks, "From these and other English, as well as American decisions, the principle may be deduced, *that all general and undefined tenancies,* or when the tenant has entered under a void lease * * * * or wherever there has been no express agreement between the parties as to the terms of the occupancy * * * are now held to be tenancies at will; and all tenancies at will, as well such as are created by grant or contract, as those which arise by implication, so far at least, as to entitle the tenant to half a year's notice (now three months) to quit, are constructively held to be tenancies from year to year." "In perfect conformity with this view of the subject Chancellor Kent says,

"estates at will, in the strict sense, have become almost extinguished under the operation of judicial decisions," "such estates are said to exist only notionally where no certain term is agreed on, they are construed to be tenancies from year to year" and again "all general tenancies, are constructively, tenancies from year to year."

4 Kent's Co. 111, 112, 1st Ed.

In *Snowhill* v. *Snowhill,* 23 N. J. L., 447-457, it was held: "No lease or tenancy for a definite period being shown to exist, she (the tenant) is to be regarded as a tenant from year to year."

Waters v. *Williamson,* 59 N. J. L., 339, the decision by Justice Van Syckel is peculiarly in point with the facts in our case. He says: "The tenant went into possession in 1892 without an agreement as to the duration of the term and without any agreement as to the time when the rent was to be paid and has occupied the premises since that date. This constituted a tenancy from year to year and entitled the tenant to three months' notice to quit."

In this case Justice Van Syckel distinguished the case from *Steffins* v. *Earl,* 40 N. J. L., 128, and other like cases, pointing out that in those cases the Court found as a fact that the agreement for the first letting was for one month, and holding over from month to month.

"In uncertain tenancies, reasonable notice was necessary, which reasonable notice had, from the time of Henry VIII, been six months" (now three months).

Steffins v. *Earl,* 40 N. J. L., 128.

B. The Inn and Tavern Act of 1848, Section 12, 3 Comp. Statutes, p. 2893, provides as follows:

> 12. DURATION AND RENEWAL OF LICENSE.—That every license to keep an inn and tavern, shall be made to continue for one year, and no longer; but may be renewed yearly by the said courts, upon the like recommendation, penalties, assessments, and fees, and in the same manner in every respect, as when such license was originally granted; and further, if any person, who, at the expiration of his or her license shall neglect or refuse to renew the same in manner aforesaid, shall, notwithstanding, sell and retail vinous, spirituous or strong liquors, then such person shall be subject to the like penalties as for selling without license. (Rev. 1877, p. 488.)

Keeping the above statute in mind and taking the agreement as indicating the intention of the parties, it is apparent that neither contemplated a monthly tenancy. It is not to be supposed that the plaintiff expected to make extensive repairs and alterations for the use of the defendant for one month, nor that the defendant expected to secure a license grant or conduct the business for one month only. The fact that defendant obligated himself to procure a license or transfer of license for the place, *and if granted,* to conduct the business, sufficiently indicates that the parties had in mind at least a term of tenancy for a year or portion of a year, depending upon whether the license grant was a new license for a period of one year, or a transfer of an old license for an unexpired term thereof:

The obligation of the defendant in the second paragraph of the agreement to procure a license or transfer is coupled with the agreement, *"if granted,"* to conduct the business and to pay the rent, and as no time is therein limited or fixed, when his obligation to conduct the business and pay the rent was to commence and terminate, the conclusion must be that he, the defendant, obligated himself to conduct the business and pay rent for at least the period covered by the license, which under the admitted facts in this case was for the period of one year.

We therefore respectfully insist that the license contemplated by this agreement, was for one year, that his tenancy thereby became a yearly tenancy, and the defendant in order to terminate that tenancy was obliged to give the plaintiff three months' notice as provided by statute.

We therefore insist that it was the duty of the trial Court to construe the agreement and in so construing it, be guided by the conduct and actions of the parties, and that the trial Court did correctly construe the agreement to be a tenancy from year to year.

In the case of *Pfeiffer* v. *Peters,* 80 N. J. L. 662, the Court held as follows: "It has now become settled that though the statute creates an estate at will only, yet that estate, having come into existence, may and will be changed into a tenancy from year to year by the payment of rent."

> "The general rule is that a written lease is to be construed according to the intention of the parties thereto, and that such intention is to be gathered from the whole instrument rather than from a single cause thereof; and where the language of the lease is not absolutely clear, the circumstances attending its execution, *and the acts of the*

parties subsequent thereto, may be scrutinized in ascertaining such intention."

24 Cyc. 914-915.

"Where an agreement for a lease has been reduced to writing, and even though it contains a stipulation that a formal lease in writing shall be subsequently executed, the question has frequently arisen whether the written agreement operates as a lease in proesenti, or only as an agreement for a lease in futuro. The general rule is that effect will be given to the instrument according to the intention of the parties, to be ascertained from all the terms of the instrument itself, considered in the light of the surrounding circumstances."

24 Cyc., p. 897.

C. Notice to terminate a tenancy is mutual.

"At common law a tenant, from year to year, was charged with the reciprocal duty of giving his landlord a six months' notice of his intention to vacate, in order to rid himself of the obligation of a tenant." "The reciprocal nature of this duty has not been altered by statute and still prevails in this State as at common law."

Zabriskie v. *Sullivan*, 80 N. J. L. 673

Hanks v. *Workmaster*, 75 N. J. L. 73.

Pfeiffer v. *Peters*, 80 N. J. L. 662.

II.

As to the counter-claim of the defendant.

The counter claim of the defendant, p. 17, l. 20-40, &c., charges the plaintiff with a malicious and

wilful act. No proof, however, was offered at the trial by the defendant to show that the plaintiff did maliciously, wilfully or otherwise attempt to interfere with a proposed transfer of a license held by the defendant as to No. 214 Broad Street, Elizabeth, N. J., to No. 1000 Elizabeth Avenue, and we therefore respectfully submit the Court did not err in striking out the testimony relating to the counter-claim.

The colloquy between the trial Court and the counsel for the defendant relating to the counter-claim as set forth in the printed case fully justifies the making of the statement above set forth.

We cannot conceive any theory upon which the plaintiff would be liable to the defendant, and we therefore insist that the Court properly struck out the testimony relating to the counterclaim.

The plaintiff respectfully insists that the judgment below be affirmed with costs.

JOHN J. STAMLER,

Of Counsel with Plaintiff-Respondent.

INDEX

PAGE

Notice of Appeal 1
Grounds of Appeal 2
Summons 5
Complaint 6
Exhibit "A" 12
Answer 14
Reply 18
Judgment 18
Testimony 20
Motion for Direction of Verdict 152
Court's Charge 154
Defendant's Request to Charge 162

PLAINTIFF'S WITNESSES.

John J. Stamler:
Direct 31
Cross 63
Redirect 71
Recross 71
Dennis F. Collins:
Direct 72
Cross 76
Henry F. Loehrs:
Direct 82
Cross 88
Redirect 93

DEFENDANT'S WITNESSES.

John F. Kenah:
Direct 101
Patrick J. McGurn:
Direct 109
Cross 112
Redirect 112
William J. Scanlon:
Direct 113
Edward J. Butler:
Direct 119

PAGE

Fred Weber:
Direct 121
Cross 138

PLAINTIFF'S REBUTTAL.

Dennis F. Collins:
Recalled—Direct 146
John J. Stamler:
Recalled—Direct 147
Henry F. Loehrs:
Recalled—Direct 148
Clarence D. Meyer:
In Sur-rebuttal—Direct.... 150
In Sur-rebuttal—Cross 151

DEFENDANT'S SUR-REBUTTAL

Fred Weber:
Recalled—Direct 149

PLAINTIFF'S EXHIBITS

Exhibit P-1 165
Exhibit P-2 167
Exhibit P-3 169
Exhibit P-4 169
Exhibit P-5 169
Exhibit P-6 170
Exhibit P-7 170
Exhibit P-8 171
Exhibit P-9 175
Exhibit P-10 176

DEFENDANT'S EXHIBITS

Exhibit D-1 180
Exhibit D-2 182
Exhibit D-3 187
Exhibit D-4 198

Notice of Appeal.

New Jersey Supreme Court

UNION COUNTY.

THE PETER BREIDT CITY BREWERY COMPANY, a Corporation, Plaintiff, vs. FRED WEBER, Defendant.	Action at Law. Notice of Appeal.

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To John J. Stamler, Esq.,
Attorney of Plaintiff.

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Take notice that the defendant appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals of New Jersey.

Dated, October 31, 1916.

Yours respectfully,

W. R. WILSON,
Attorney of Defendant.

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Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE PETER BREIDT CITY BREWERY COMPANY, a Corporation, Plaintiff-Respondent, vs. FRED WEBER, Defendant-Appellant.	Action at Law. Grounds of Appeal.

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The appellant states the following grounds of appeal:

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1. That the Court erroneously directed a verdict for the plaintiff against the defendant.

2. That the Court refused to allow the case to go to the jury to determine an issue of fact involved therein.

3. That the Court charged the jury that the agreement made between the parties was not a monthly tenancy and Mr. Weber could not relieve himself by one month's notice.

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4. That the Court erred in charging the jury as follows: "But where there is no term fixed and the parties themselves construe the lease, where the parties themselves act, which indicates what they themselves decided the term was, then that is what fixes it. And in this case you see Mr. Weber advanced $500 year after year, running from the 26th of July, 1910, to 1911; 1911 to 1912; 1912 to

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1913; 1913 to 1914; 1914 to 1915, and the Court charges you that it was not a monthly tenancy."

5. That the Court erred in charging the jury as follows: "I might say I have eliminated from the case the counterclaim. Under the law of this case it is very clear that the defendant has no right to a counterclaim for damages against the plaintiff for the failure to transfer, or the failure to get a license at a new place. The law does not permit that, under the testimony in this case." 10

6. That the Court erred in charging the jury as follows: "I charge you as a matter of law, that the notice Mr. Weber gave was not sufficient to terminate his tenancy, either under the three-year lease, or under the old one." 20

7. That the Court charged the jury over the exception of the defendant the following: "Where there is no term and the parties fix what they believe to be the term, then that fixes the term."

8. The Court erred also in charging the jury as follows: "That the parties might fix the term."

9. That the Court charged the jury over the exception of defendant the following: "This is not a monthly tenancy under the agreement of June, 1910." 30

10. That the Court erred in charging: "That it was a yearly tenancy under the lease, and that therefore a three month's notice was necessary, and Weber's giving a monthly notice was not sufficient, and that it was a tenancy from year to year."

40

11. That the Court erred in refusing to consider the counterclaim as filed by the defendant.

12. That the Court erred in charging that notice given by Mr. Weber under the lease of June, 1910, was of no validity whatever."

10

13. That the Court refused to charge the jury as follows, as requested: "That under the agreement in writing of June 9, 1910, between the parties to this action, as there was no definite term, then the tenancy is to be considered a monthly one, and a month's notice to quit is sufficient."

14. That the Court refused to charge the jury as follows: "If the jury believe that the necessary requisites of mutuality are lacking in the agreement of June 9, 1910, for the premises in question then the tenancy is from month to month."

20

15. That the Court refused to charge the jury: "That the writing of June 9, 1910, should be construed to be a lease for an indefinite period, making it a monthly tenancy."

16. That the Court refused to charge the jury: "That under the counterclaim filed by the defendant he can recover in this cause."

30

17. That the Court failed to charge the jury as requested: "That the business of the defendant was such property as entitled it to protection from unlawful interference and if the plaintiff or its agents interfere with it maliciously so that injury resulted an action arises for this interference."

40

18. That the Court refused to charge the jury

as follows: "That the jury are the judges of the amount of damages to be awarded to the defendant if they believe from the evidence in the cause he is entitled to the same."

19. That the Court refused to charge the jury as follows: "That if the jury believe that the plaintiff or its agents in any way interfered with the transfer of the license of 214 Broad Street, to 1000 Elizabeth Avenue, on Weber's application, by reason of which the Board of Excise was led to refuse the application, then a right of action will lie by Weber against the plaintiff." 10

WILLIAM R. WILSON,
Attorney for Appellant.

Filed Jan. 13, 1917. 20

Summons.

THE STATE OF NEW JERSEY to Fred Weber:

L. S.

You are summoned to answer the annexed complaint of the Peter Breidt City Brewery Company, a corporation of the State of New Jersey, in an action at law in the New Jersey Supreme Court. 30

And take notice that unless you file your answer to said complaint with the Clerk of said New Jersey Supreme Court at Trenton, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. (And see notice endorsed hereon.)

WITNESS, WILLIAM S. CUMMERE, Esquire, Chief Justice of our said Court at Trenton aforesaid, this 40

tenth day of August, Nineteen Hundred and Sixteen.

WILLIAM C. GEBHARDT,
Clerk.

JOHN J. STAMLER,
10 Attorney.

Complaint.

NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

20 THE PETER BREIDT CITY BREWERY COMPANY, a Corporation, Plaintiff, vs. FRED WEBER, Defendant.	Action at Law.

30 The plaintiff, a corporation of the State of New Jersey, having its principal place of business at No. 604 Pearl Street, Elizabeth, New Jersey, says:

FIRST COUNT.

1. That on the first day of October, Nineteen Hundred and Fourteen, the plaintiff was rightfully and lawfully entitled to the possession and right of possession of certain premises situate at and known as No. 214 Broad Street and also known as
40 No. 214 Morris Avenue, in the City of Elizabeth,

County of Union and State of New Jersey, upon which said premises there was erected a certain building.

2. That being in possession of said premises and building, aforesaid, the said plaintiff by its duly authorized agent and attorney did make and enter into an agreement with the defendant, in and by which the said plaintiff did let and rent to the defendant and the said defendant did hire and rent from the plaintiff, the first floor of said premises for a term of three years, to commence on said first day of October, Nineteen Hundred and Fourteen, at a monthly rental of One Hundred Dollars ($100), payable monthly in advance on the first day of each and every month.

3. That the said defendant did agree to pay said rental of One hundred dollars per month in advance on the first day of each and every month.

4. That on or about the first day of October, Nineteen Hundred and Fourteen, the said defendant, pursuant to the agreement aforesaid, did enter into the possession and occupancy of the first floor of said premises known as No. 214 Broad Street aforesaid as the tenant of the plaintiff.

5. That the defendant has not paid the rent for said premises to plaintiff for the months of November, December, Nineteen Hundred and Fifteen, and January, February, March, April and May, Nineteen Hundred and Sixteen, and although plaintiff has frequently demanded the payment of said rent from said defendant, he, the said defendant, has neglected and refused to pay the same and is justly

indebted to the plaintiff in the sum of Seven Hundred Dollars.

SECOND COUNT.

10 6. The plaintiff repeats the allegations of paragraphs 1, 2, 3, 4 and 5 hereof.

7. That on and after the first day of May, Nineteen Hundred and Sixteen, defendant abandoned said premises and refused to pay any rentals therefore to the plaintiff.

8. That thereupon, plaintiff diligently sought to obtain another tenant for said premises, but was unable to obtain a tenant for said premises to engage
20 in the same line of business as that which had been carried on by the defendant. Plaintiff obtained a tenant for another line of business and was obliged to remodel and repair said premises so as to be suitable for another line of business at a great cost and expense, to wit, Three hundred and ninety-eight dollars and ninety-two cents ($398.92), all of which sums were necessarily expended by reason of the breach of said contract of letting committed by the said defendant as aforesaid.

30

THIRD COUNT.

9. The plaintiff bargained, sold and delivered to defendant at defendant's special instance and request upon a book account, lager beer of the value of Thirty-eight dollars and forty cents ($38.40); the following is a copy of the book account:

40

Peter Breidt City Brewery Co.
Sold to
Fred Weber

1915						
Oct. 25th	1/2	bbl.	lager	beer		
26	"	"	"	"		
27	6/2	"	"	"		
29	1/2	"	"	"		
30	3/2	"	"	"		
	12/2	"	"	"	@ $4.00	$48.00
					Less discount	9.60
						$38.40

FOURTH COUNT.

10. That on the ninth day of June, Nineteen Hundred and Ten, plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed and made a part hereof as Exhibit "A".

11. Pursuant to said agreement, defendant entered into the possession of said premises at No. 214 Broad Street on June 9th, 1910, and paid a monthly rental of One hundred dollars in advance for the use and occupancy of said premises and did therein, pursuant to said agreement, conduct a saloon and liquor business.

12. That contrary to the wishes and directions of plaintiff, defendant did on the first day of November, Nineteen Hundred and Fifteen abandon and vacate said premises and refused to continue conducting said saloon and liquor business although he had been and was thereto duly licensed by the proper municipal authority.

13. That plaintiff requested defendant to consent to a transfer of the license to conduct said business at 214 Broad Street to plaintiff or its nominee so that said business could be sold pursuant to the provisions of the third paragraph of the agreement mentioned in paragraph 10 hereof, but said defendant refused to comply with said request or to make a sale of said business.

14. That the said saloon business was of great value, to wit, the sum of Ten thousand dollars and by reason of the breach of said agreement by said defendant as mentioned in the preceding paragraph, the plaintiff has suffered damage in the sum of Five thousand dollars ($5,000).

FIFTH COUNT.

15. Plaintiff repeats the allegations of paragraphs 10, 11 and 12 hereof.

16. That on and after the first day of November, Nineteen Hundred and Fifteen, plaintiff requested defendant to consent to a transfer of the license to conduct said saloon business at No. 214 Broad Street, aforesaid, to this plaintiff or to its nominee so that said premises could be used for a like and similar line of business as that conducted therein by the defendant, but the defendant refused to consent to the transfer of said license or to further conduct said business and by reason thereof it was impossible to procure a tenant to conduct a saloon business at said premises, as without the consent of said defendant the license procured to conduct a saloon business at said premises.

17. Plaintiff endeavored to obtain another tenant

for said premises at No. 214 Broad Street, aforesaid, and was able to obtain another tenant at the same rental upon condition that plaintiff would make certain repairs and remodel the said premises so as to make it suitable for said new business.

18. That thereupon, plaintiff in making said premises suitable to said new line of business and in order to get a new tenant at the rental of One hundred dollars per month, was obliged to lay out and expend and did lay out and expend for the repairing and remodeling of said premises, the sum of Three hundred and ninety-eight dollars and ninety-two cents ($398.92) as detailed in the statement hereto annexed and made a part hereof.

SIXTH COUNT.

19. Plaintiff repeats the allegations of paragraphs 10 and 11 hereof.

20. That defendant has never terminated his tenancy aforesaid in said premises and has failed, neglected and refused to pay plaintiff the rent therefore for the period of seven months from the ninth day of November, Nineteen Hundred and Fifteen, to the ninth day of June, Nineteen Hundred and Sixteen, at the aforesaid monthly rental of One Hundred Dollars ($100) per month, payable in advance.

Plaintiff claims damages on the first count in the sum of Seven hundred dollars ($700), besides interest, on the second count in the sum of Ten hundred and ninety-eight dollars and ninety-two cents ($1,098.92), besides interest, on the third count in the sum of Thirty-eight dollars and forty cents ($38.40), besides interest, on the fourth count in

the sum of Five thousand dollars ($5,000), besides interest, on the fifth count in the sum of Three hundred and ninety-eight dollars and ninety-two cents ($398.92), besides interest, and on the sixth count in the sum of Seven hundred dollars ($700), besides interest.

JOHN J. STAMLER,
Attorney for Plaintiff.

Exhibit "A."

AGREEMENT entered into this ninth day of June, One Thousand Nine Hundred and Ten, between FREDERICK WEBER, party of the first part, and the PETER BREIDT CITY BREWERY COMPANY, a corporation, party of the second part; both of the City of Elizabeth in the County of Union and State of New Jersey,

WHEREAS the party of the second part is the lessee of the building known and number as 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and wherein is conducted a saloon or liquor business by one William Moore; and

WHEREAS it has been mutually agreed by and between the parties hereto that the party of the first part shall conduct the said business and have the occupancy of the said building, therefore it is agreed as follows:

For and in consideration of the sum of One dollar ($1.00), each party unto the other paid, the re-

ceipt of which is hereby acknowledged, the party of the second part obligates itself to put in a new front, suitable for the business to be conducted therein at the premises number 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and to make such repairs and renovations on the interior of the said store as will be necessary to put it in proper shape for the conduct of the business, and to rent the store floor with basement underneath same to the party of the first part at a monthly rent of One Hundred Dollars ($100), payable in advance.

SECOND: The party of the first part obligates himself to make proper and legal application for the license or transfer of license from the excise authorities of the said City of Elizabeth, and if granted, to conduct the business of retail liquor dealer at the premises No. 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and to pay a monthly rental for the store, or first floor and the basement underneath same, of One Hundred Dollars ($100) per month, payable in advance.

THIRD: It is, however, agreed by and between the parties hereto that in the event of a sale of the business to be conducted at the premises No. 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, by the party of the first part, that the amount paid for the sale of the said business shall be equally divided between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have af-

fixed their hand, the seal, the day and year first above mentioned.

FREDERICK WEBER, L. S.
THE PETER BREIDT CITY BREWERY CO.,
By D. F. Collins, Prest., L. S.
(Seal)

10

Signed, sealed and delivered }
in the presence of }
PATRICK J. MCGURN.

Statement of expenditures made by plaintiff necessary to repairing and remodeling premises at 214 Broad Street by reason of the breach of covenant by defendant:

Boehm & Company	$183.00	
Elizabeth Cornice Works	48.00	
William Melewski, plumber	19.10	
John Callahan, carpenter	18.00	
" " material	82.82	
Frank Korn, painter	48.00	
		$398.92

20

Filed August 15, 1916.

30

Answer.

Defendant, Fred Weber, of Elizabeth, New Jersey, says that:

1. As to the statements in the first paragraph in the first count, defendant says he has no knowledge or information thereof sufficient to form a belief.

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2. As to the statements in the second paragraph

of said first count the defendant denies that he made a lease of any kind whatsoever with the plaintiff or its agent, but says that he was a monthly tenant.

3. As to the statements in the third paragraph of the said first count defendant admits that he paid one hundred dollars a month under a monthly tenancy. 10

4. As to the statements in the fourth paragraph of the said first count, defendant denies that he entered into any such agreement, or in pursuance of any three year agreement, but says that such tenancy was a monthly one.

5. As to the statements contained in the fifth paragraph of said first count, defendant denies that he owes for the months set out in the complaint or for any others, and says that the tenancy existing at the time was terminated by a notice given to the plaintiff, which notice was sufficient under the then existing tenancy. 20

Defense to Second Count.

1. The defendant repeats the answers of 1, 2, 3, 4, and 5, hereof. 30

2. As to the statements contained in paragraph seven, defendant denies that he abandoned the premises therein described, but says he vacated the same after the termination of his tenancy.

3. As to the statements contained in paragraph eight in the said second count, defendant says he 40

has no knowledge or information thereof sufficient to form a belief.

DEFENSE TO THIRD COUNT.

10 1. As to the statements contained in paragraph nine, defendant says that he denies that he owes the amount set out in said paragraph or any amount.

DEFENSE TO FOURTH COUNT.

1. Defendant admits the tenth paragraph.

2. Defendant admits the eleventh paragraph.

20 3. Defendant admits the twelfth paragraph.

4. Defendant admits the thirteenth paragraph.

5. As to the statements contained in the fourteenth paragraph, defendant denies that the plaintiff has been injured.

DEFENSE TO FIFTH COUNT.

30 1. Defendant repeats the answers to paragraph 10, 11, and 12 hereof.

2. As to the statements contained in paragraph sixteen, the defendant admits that he refused to transfer his license to the plaintiff, or its nominee, but denies that the plaintiff was thereby prevented from procuring a tenant to conduct a saloon at said premises by reason of such refusal.

40 3. As to the statements contained in paragraph

seventeen, defendant has no knowledge or information sufficient to form a belief.

4. As to the statements contained in paragraph eighteen, the defendant has no knowledge or information sufficient to form a belief. 10

DEFENSE TO SIXTH COUNT.

1. Defendant repeats the answers of paragraph 10 and 11 hereof.

2. As to the statements contained in paragraph 20, the defendant denies the truth of the matters contained therein.

By way of counterclaim against the plaintiff the 20 defendant demands of the plaintiff the sum of ten thousand dollars ($10,000.00) damages, for that whereas the defendant, Fred Weber, was engaged in the business of selling ale, lager-beer, etc., at a building known as 214 Broad Street, in the City of Elizabeth, N. J.; and whereas, the said defendant was desirous of removing his said business to a building owned by him, and after giving the proper notice, the said defendant accordingly vacated the premises on or about the date set out 30 in the notice, and delivered the keys of the premises to the plaintiffs, and, whereas, the defendant made application to the Board of Excise of the City of Elizabeth, New Jersey, for a transfer of the license so held by him, to his building located at 1000 Elizabeth Avenue, in said city, the said plaintiff maliciously intending to injure him and drive him out of business, and to injure him in his credit and business, and to prevent him from acquiring any further profits and gain therefrom, 40

or from continuing the same, did maliciously cause the Board of Excise of the City of Elizabeth to refuse the said transfer of the said license, thereby driving the said defendant out of his business, because he had refused to transfer his said license to the plaintiff or its nominee, to the damage of the defendant of $10,000, and therefore the said defendant seeks to be reimbursed for such loss from the said plaintiff.

WILLIAM R. WILSON,
Attorney for Defendant.

Filed Sept. 14, 1916.

Reply.

1. The plaintiff answering the counterclaim of the defendant denies the allegations therein contained.

2. Objections in law to counterclaim.

The plaintiff reserves the right to move to strike out the counterclaim at the trial of said cause on the ground that it does not constitute a cause of action in favor of the defendant and against the plaintiff.

JOHN J. STAMLER,
Attorney for Plaintiff.

Filed Sept. 15, 1916.

Judgment.

This cause was tried before the Hon. George S. Silzer, Judge, and Jury at the Union County Circuit Court on the thirteenth and sixteenth day of October, nineteen hundred and sixteen. The jury rendered a general verdict against the defendant and in favor of the plaintiff for the sum of seven hundred eighty-eight dollars and forty cents ($788.40/100).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of seven hundred and eighty-eight dollars and forty cents, and its costs, which are taxed at the sum of fifty-three dollars and seventy-one cents, making in the whole the sum of eight hundred and forty-two dollars and eleven cents.

Judgment entered October 17, 1916.

WM. S. GUMMERE,
C. J.

Damages	$788.40
Costs	53.71
	$842.11

Case

NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

October Term, 1916.

10

PETER BREIDT CITY BREWERY COMPANY, a Corporation, against FRED WEBER.	No. 28 in the List.

Transcript of stenographer's notes of evidence, taken in the above-entitled matter, before HON. GEORGE S. SILZER, Circuit Court Judge, and a Jury, in the Union County Court House, in the City of Elizabeth, New Jersey, on the thirteenth day of October, A. D. 1916, at 9.30 A. M.

20

Appearances:

JOHN J. STAMLER, Esq., and C. ADDISON SWIFT, Esq., for the Plaintiff.

WILLIAM R. WILSON, Esq., and ALFRED A. STEIN, Esq., for the Defendant.

30

Mr. Swift: Before the Jury is called, we desire to make a motion to strike out the counterclaim, the right being reserved by the reply to strike out counterclaims filed by the defendant upon the ground that it does not allege any legal cause of action. It alleges that the plaintiff did maliciously cause the Board of Excise of the City of

40

Eizabeth to refuse an application for a transfor of a license of the application of the defendant to transfer the license from the premises that are the subject of this suit to other premises of the defendant. The only cause of action alleged is that the plaintiffs did maliciously cause the Board of Excise of the City of Elizabeth to refuse the transfer. It goes without saying that at most it is simply a reflection upon the Board of Excise that they were influenced maliciously to refuse this transfer. It does not seem to me that that raises any legal cause of action. I do not imagine that intend to charge the president and members of the Board of Excise with a bribery, and it does not so allege. It does not allege in what way they maliciously——

The Court: Doesn't it depend upon what the facts might be?

Mr. Swift: Yes, but they haven't alleged here in what way they maliciously caused the Board to refuse the transfer of the license.

The Court: It seems to me it would depend on the facts and on the circumstances that existed. It may be the facts that exist would be such that there would be no cause of action.

Mr. Swift: Mr. Stamler says we will withdraw it if your Honor is of that opinion.

The Court: Let the Sheriff return a panel.

A jury being empanelled and found satisfactory, they were sworn.

Mr. Swift opens the case for the plaintiff.

Mr. Swift: I notice the complaint in the

second count, section seven sets forth that on and after the first day of May, 1916, the defendant abandoned the said premises and refused to pay any rental therefor to the plaintiff. That is an error and it should have been first of November, 1915, and I ask for leave to amend.

10

Mr. Stein: No objection.

Mr. Wilson opens the case for the defendant.

The Court: Mr. Wilson, do you claim that the Brewery used anything but persuasion before the Board of Excise in order to prevent the transfer of the license?

Mr. Wilson: Yes.

The Court: What do you intend to prove?

20

Mr. Wilson: This: we are going to endeavor to prove that the remonstrances were gotten up by the Brewery, and that they were presented by one man who got it from another man who was selected by the Brewery to do it, a remonstrance remonstrating against this act before the Board of Excise. Mr. Stamler appeared there before the Board of Excise himself and with all the vim and the power that he has endeavored——

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The Court: That is all you intend to prove, is it, just what you have stated?

Mr. Wilson: No, this: And that by reason of the action of the Brewery, the influence they had on the Board of Excise——

The Court: Influence in what way do you mean, by persuasion, argument, presentation of objections?

Mr. Wilson: No. This: By stating to the Board of Excise that Fred Weber had aban-

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doned the premises; that Mr. Weber was no longer a tenant, and that therefore the Board of Excise, under some act of 1891, that they had a better right to that license than Fred Weber, and they so induced the Board of Excise to think the same way, and the Board of Excise refused to transfer this license to Mr. Weber on his property in Elizabeth Avenue. Your Honor may not, perhaps, understand, but there was an act passed some years ago by which if a tenant abandoned the premises—whether it is constitutional or not we do not know—that then the owner had a right to take the necessary steps to have that transfer made to them or to some other tenant, or somebody that they would suggest, and that the Board of Excise, acting on that, had a right to transfer. Now, the Brewery took this course: they said, that license belongs to us under this act, and we have a right to that license; it does not belong any more to Weber, and we want the Board of Excise to do this: we want them to transfer it, not to the man, to Fred Weber, but to transfer it to the name of somebody else.

The Court: Suppose, Mr. Wilson, that was done in good faith, does it give you a right of action?

Mr. Wilson: No. The jury is the best judge of that. They have got to judge of the facts whether it was done in good faith or not. Your Honor cannot anticipate in this matter, we charge it as bad faith. I have a line of cases I am going to hand up

to Your Honor in a moment on that particular point.

The Court: I just want to get your line of thought.

Mr. Wilson: Our contention is this: that Weber, if he is the owner of the license, that he had a right himself to say I want a transfer of it, and he could say to the Brewery, you can't take it from me, you can't proceed, not in an orderly or a disorderly way before the Board of Excise and say it belongs to somebody they may designate, and not to Fred Weber, and therefore you must take this course, and that is exactly what they did.

The Court: Wasn't there a discretion in the Excise Board to grant it or not, irrespective of any petitions?

Mr. Wilson: That is the point. No. This——

The Court: I mean, the Excise Board was not obliged to transfer this privilege?

Mr. Wilson: No they were not.

The Court: That being so, how can you assume that the Board would have transferred it even if there had been no objection?

Mr. Wilson: This is the point about the thing:——

The Court: In other words it is something to which you are not entitled as a matter of strict legal right. It is merely a privilege which the Board may grant or not.

Mr. Wilson: I understand that. The Board generally does grant.

The Court: You cannot go by that.

Mr. Wilson: But if a wrong statement of facts is presented to the Board of Excise, by which they are misled or induced to do something which they would not have done if a different statement of facts had been presented to them, why is not the jury a judge of that? Why can't they say, if the Board of Excise had the matter presented to them as it was, and they had refused it, that is one thing. But when the Board of Excise is presented with one statement of facts——

The Court: Yes, but what troubles me is you are asking damages for the deprivation of a right, and the right did not exist. It is purely discretionary to grant. In other words, you say you were deprived of something you did not have any right to. Entirely up to the Board of Excise whether they would give you the right or not.

Mr. Wilson: We did have a right. The license is a privilege to sell beer.

The Court: At a certain place.

Mr. Wilson: For a certain time.

The Court: Yes, but you were asking to have it transferred somewhere else.

Mr. Wilson: Yes.

The Court: You had no right of any kind to sell at the other place, or to insist that you had such a right. The right was entirely with the Board of Excise whether they would give it to you or not. How can you allege you were deprived of something to which you had no right?

Mr. Wilson: I see what is in Your Honor's mind. But this is the point about

that: we claim the license. As the matter was presented to the Board of Excise the Brewery claimed the license and said it is ours, it is not Fred Weber's. And when that statement of fact was presented to the Board of Excise, they said, they are lawful claimants. That statement of facts being presented to the Board of Excise, of course, they said, what can we do? We won't transfer it. And they didn't. They couldn't get the license, but they prevented Mr. Weber from going anywhere else and plying his trade, you see. He had a license which he had paid the City of Elizabeth for, and he had to keep it in his pocket, because the other side said, we won't let you get a transfer because we claim it ourselves. I have a line of cases, I have looked the matter up, I will hand them to you.

The Court: I wanted to get your idea, Mr. Wilson, as you went along.

Mr. Wilson: So that when the matter finally came up before the Board of Excise, and as we say, these distorted facts were presented to the Board of Excise, and they being rightful claimants, and the Board of Excise not having the knowledge or wisdom of Solomon to decide a case of that kind, they very properly said, we cannot transfer this license, Mr. Weber, because the Brewery says they own it under some law, or something, and there it is. So they refused to transfer this license of Mr. Weber for which he had paid five hundred dollars. And there he was, out of his business, out

of his location, he had paid his money to the City of Elizabeth, they refused to let him go sell somewhere else and we say the Brewery was responsible for that condition of affairs. Our contention will be, if that is so, and you believe that there was a monthly tenancy and that Weber had a right to get out, that is one question. If you believe the conduct of the Brewery was such, after the expiration of the tenancy, that they deprived him of his livelihood and deprived him of operating under that license which was given him by the City of Elizabeth, why, then we say it rests with you to say here is a fair amount of damages for the injury done him. I am going to say to Your Honor this: the cases seem to hold it, that if the jury believe that this was done maliciously, with intent to ruin Mr. Weber, that not only compensatory damages may be given them but punitive damages for the malicious conduct of the Brewery in this cause.

The Court: I understand the original agreement, as shown by the complaint, is dated June 9th, 1910.

Mr. Wilson: That is right.

The Court: How soon after that did Mr. Weber enter into the possession?

Mr. Wilson: On the first of August, 191..

Mr. Stamler: On the twenty-third day of August, 1910.

The Court: And he continued in possession I understand from that time until the first of November, 1915?

Mr. Wilson: Yes.

The Court: When was the first license granted?

Mr. Stamler: That is the time, the date I gave you. July twenty-sixth.

The Court: The first license. July what?

10 Mr. Stamler: Twenty-sixth.

The Court: 1910?

Mr. Stamler: Yes.

The Court: You gave me a date of August twenty-third, 1910.

Mr. Stamler: It took some time to put the place in condition.

The Court: When did the first license expire?

Mr. Stamler: One year.

20 The Court: The renewal license.

Mr. Stamler: The same way, for one year from the first grant.

The Court: They granted it from one year?

Mr. Stamler: From the date it was granted.

Mr. Swift: July twenty-sixth, 1915, to July twenty-sixth, 1916.

The Court: The last license was granted on July twenty-sixth, 1915, and that would

30 have expired July twenty-sixth, 1916?

Mr. Stamler: That is correct. Of course there was a license before that in this same place for many years.

The Court: Yes, but that has nothing to do with this. The notice was served by Mr. Weber that he would remove when?

Mr. Wilson: On the first day of November. Served September twenty-fourth that he would remove on the first of November. The

40 rent was to commence from the first of the

month following the getting of the license. That was the agreement. So that it was from the first of the month to the first of the month.

The Court: The first month's rent ran from August first, 1910——

Mr. Swift: We do not admit that. 10

The Court: When was the first month's rent paid?

Mr. Stamler: On August twenty-third.

Mr. Wilson: Yes, for the month of August. They started from the first.

Mr. Swift: We claim—their insistment is under this agreement, and that must be controlled by the date of the agreement.

The Court: I am speaking about what the actual facts were. The first month's rent was for the month of August, was it? 20

Mr. Wilson: Yes, sir.

Mr. Stamler: On September 3rd we received one hundred and fifty dollars at one time for that rent.

Mr. Wilson: Not from Mr. Weber.

The Court: There cannot be any dispute as to your rent.

Mr. Stamler: That is what our books show. 30

Mr. Wilson: You are asking what Mr. Weber paid?

The Court: Certainly. No one else paid his rent, Mr. Wilson, that is sure.

Mr. Stein: There were other tenants in there before him.

The Court: What is the first month's receipt that you have, Mr. Wilson?

Mr. Wilson: I am just going to look, sir. 40

It is paid on September 2nd, and it was for a month—paid from August the 15th, 1910, and ending September 30th, 1910, one and one-half months.

The Court: That is half of the month of August and all of September?

10 Mr. Wilson: That is half of the month of August and all of September.

The Court: One hundred and fifty dollars, you said?

Mr. Wilson: Yes.

The Court: Do you claim, Mr. Stamler, that in addition to the facts that have already been stated, that there was a new agreement made, or do you claim that there was a situation created as appears by the

20 facts now, namely, that this agreement of June 9th, 1910, was entered into, that a license was granted on July 26th, that the premises were ready for occupancy so that the tenant could pay one-half of the month of August. But he paid the rent for the half of August, and all of September and then continued in possession continually from that time, under whatever the agreement was, and received renewals of licenses until

30 a new situation was created on the twenty-sixth of July by the giving of notice that he intended to quit on the first of August?

Mr. Stamler: No. The situation changed in April 30th, 1915, when the lease with the company had expired and therefore we could not keep Mr. Weber in possession. He knew that. This is the real test in the case.

The Court: You claim there was a new arrangement made?

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Mr. Stamler: We took a new lease and a new arrangement was made, and that was oral.

The Court: Then the fact is that this original agreement has not anything to do with the case?

Mr. Stamler: Excepting on the second count, that where there was an agreement, in case of the sale of the business.

The Court: There was no sale of the business.

Mr. Stamler: We will prove one.

The Court: Then the original agreement, so far as this claim, has nothing to do with the case.

Mr. Wilson: Oh, no.

Mr. Stamler: Oh, no.

The Court: You claim there was no further agreement?

Mr. Wilson: Exactly.

Mr. Swift: They claim he still held under the original agreement as a monthly tenant.

The Court: You claim he continued under this first arrangement and that there was no new arrangement?

Mr. Wilson: No new agreement at all.

The Court: That you continued under the situation, whatever it was, that was created by the first agreement?

Mr. Wilson: That is it.

JOHN J. STAMLER, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Swift:

Q. Mr. Stamler, where do you reside? A. In the City of Elizabeth.

Q. You are an attorney and counselor at law in this state? A. I am.

10 Q. You are the attorney for the Peter Breidt City Brewing Company? A. I am.

Q. And have been for what period of time? A. Since 1910.

Q. Of course you know Mr. Weber, the defendant in this case? A. I do.

Q. Are you acquainted with the premises known as 214 Broad Street? A. Yes, sir.

Mr. Wilson: Sometimes called 214 Morris

20 Avenue.

A. That is correct.

Q. Do you know who was in the occupancy of those premises in the year 1914? A. Yes.

Q. Who? A. Mr. Weber.

Q. Mr. Fred Weber, the plaintiff in this case? A. Yes, sir.

Q. Do you know what his relationship to the property was in the year 1914 prior to October? A.

30 I do.

Q. What were they? A. He was in under an agreement which was made in writing.

Q. I show you paper and ask you if that is the agreement to which you refer? A. That is the agreement that I refer to.

The Court: That is dated what?

A. Dated ninth day of June, 1910.

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The Court: That will be admitted.

Mr. Wilson: It is annexed in the declaration.

(Agreement entered in evidence and marked Exhibit P 1.)

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Q. What was the relation of the Peter Breidt City Brewery Company with reference to that property? A. It was the tenant or lessee of one Glazer, who was the owner of the building.

Q. When did their lease expire? A. The thirtieth day of April, 1914.

Q. Thirtieth of April? A. Thirtieth of April, 1914. That is my recollection. It may be the thirtieth of May. I am not definite on that date now.

Q. Was Mr. Weber then in possession of the premises? A. Yes, sir.

20

Q. For what purpose did he use the premises? A. He used it for his saloon or inn and tavern. I don't know which.

Q. Do you know whether this place had been so used for a number of years previous to that time? A. Oh, yes. More than ten years.

Q. What happened upon the expiration of the lease with Glazer? A. It was before the expiration of the lease that I first got acquainted with the subject matter of this suit.

30

Q. Just detail it? A. In the early part of January of 1914 I was requested by General Collins, who was the president of the company, to take up the question of the renewal of the lease with Mr. Glazer, who was then the owner. Mr. Weber—then I went to see Mr. Weber for the purpose of making some arrangements with Mr. Glazer. I got in touch with Mr. Glazer and asked him to come to Elizabeth and he came. We met at the office of General

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Collins. Mr. Glazer insisted upon an increase of rent.

Mr. Wilson: I object to what Mr. Glazer said. Mr. Weber wasn't there.

10 Q. Was Mr. Weber there? A. Mr. Weber was not there. It was afterwards communicated to Mr. Weber.

The Court: Then I think it is competent. Transaction relating, followed up as they allege, by his making the lease of these premises——

You may show what was done and whatever Mr. Weber was told. Not the conversations.

20

Q. Had you seen Mr. Weber previous to this in relation to the matter? A. Yes, sir. He directed me to make some arrangements whereby he could remain in possession of the premises after the expiration of our lease.

Q. Then your meeting with Mr. Glazer and conversation with him was in consequence of your directions from Mr. Weber as well as the Brewery? A. Yes, sir.

30 Q. Well now, go ahead and detail the facts? A. After we got Mr. Glazer to the office and had a talk, I went back to Mr. Weber and reported to him that Mr. Glazer wants one hundred and fifty dollars rent per month for the premises that he paid heretofore one hundred dollars for. That General Collins told Mr. Glazer at the time that no person could pay that high rent at that place. It wouldn't pay. A man couldn't make it pay. And that the General would not renew a lease with Mr. Glazer for one

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hundred and fifty dollars per month unless Mr. Weber was satisfied. Mr. Weber told me that he could not undertake or agree to pay one hundred and fifty dollars a month rent. I should try to arrange with Mr. Glazer to surrender to him the second floor of the property and he could only use the first floor and he would be willing to pay one hundred dollars only for the first floor of that property and not use the second floor.

Q. You say he told you to arrange with whom? A. With Mr. Glazer. I took up this negotiation with Mr. Glazer to arrange for the occupancy only of the first floor of the premises and I could make no satisfactory arrangement with Mr. Glazer. This thing dragged on for a period of two or three months. And I thereupon took the question up with Mr. Glazer to rent the store directly across the street in 225 Broad Street——

Mr. Wilson: I object to that Mr. Stamler.

A. I took that up with Mr. Weber.

The Court: You said Glazer.

A. I meant Mr. Weber. For the purpose of moving the license across the street. And he should continue in there. I saw the owner and reported to Mr. Weber that they wanted one hundred dollars for the store. Finkel wanted one hundred dollars for the store at 225. And upon this arrangement Mr. Weber came in one day to me, that is what he said: "There is a notice out on the building that this store is to let." I said to him, well we will have to go down and see General Collins. And we went down to General Collins office.

By Mr. Wilson:

Q. What day was that, Mr. Stamler? A. Oh, this was the latter part of May. Just about the time when the lease of the Brewery expired. I won't say whether it is April or May. I do not recall it just now. In 1914. And we came down to the office, General Collins and Mr. Weber was there. The question was whether or not a new lease should be taken from Mr. Glazer at an increased rental. Mr. Weber—General Collins said I will not take the lease, Mr. Weber, to that property under any circumstances at an increased rent. If you want to take the risk yourself go ahead and do it. And at that time it was decided that a further conference was to be had to see whether or not some arrangements could be made with Glazer. He left the office of the company and a day or the same day Mr. Weber came in and informed me that Mr. Glazer had rented the property to William C. Finck, the whole building at one hundred dollars per month and that Finck wanted him to close up the side door which led to the upper portion of the building. I said to him, well, I guess we will be able to handle or do something with Mr. Finck. I thereupon at his instructions went to Mr. Finck and tried to arrange with Mr. Finck that Mr. Weber should remain a tenant of the first floor of the property. I could make no satisfactory arrangement.

By Mr. Swift:

Q. Have you stated how Mr. Finck figured in the matter? A. Mr. Finck got a lease. I am coming to that later. I saw Mr. Finck, and Mr. Fink told me he had a lease for, I think, five years for the prop-

erty. I made him an offer for rental on behalf of Mr. Weber and he would not have a saloon in there under any circumstances. That was his position. I thereupon went to see Mr. Myers, who was the attorney of Glazer, and who prepared the lease between Glazer and Finck, for the purpose of finding out what the terms of that lease was. And then I first discovered that there was a lease in existence for five years from Mr. Glazer to Finck for the entire building, but it contained a clause that in the event that Glazer should sell the property to anyone within the period of time mentioned in the lease that upon three months notice Mr. Finck would have to vacate. That was the—and I then came back and told Mr. Weber that there is a clause in the lease, maybe some arrangement could be made that we could continue in possession of the property and that he could remain there. And he said you go ahead and see what can be done.

Q. Weber said that? A. Weber said that. And, meanwhile a suit was started in the District Court of the City of Elizabeth for dispossession by Mr. Glazer to evict us from the premises.

Q. When was that started? A. Why it was started early in June, and I think it was returnable the 14th of June, 1914. That was the first return day. On the return day of that case Mr. Weber and I went down to the District Court primarily to meet Mr. Glazer so that we could talk matters over and arrange any possible way that Mr. Weber could remain in the property. And when we got there I asked for an adjournment of the matter for a week, which Mr. Myers consented to, and after that we went out in the hall and talked. Mr. Weber, myself and Mr. Myers and Mr. Glazer, as to making some

arrangement relative to a continuance in possession. Mr. Glazer said it is all up to Mr. Myers. If Mr. Myers can see some way that it can be done I am willing to do it. I am somewhat sorry that I didn't re-arrange with the company. Thereupon I directed Mr. Myers to take up the question direct with Mr. Finck, first to see whether some arrangement could be made with Mr. Finck, who was the tenant in possession. He was then occupying the second floor of the property. Mr. Myers reported back to me that nothing could be done with Finck, and I reported that back to Mr. Weber. Meanwhile the case was pressing. We got a number of continuances, Mr. Weber going down to the District Court every time that case was returnable. Until a suggestion was made, whether by myself or Mr. Meyer, that the only possible way of getting this lease would be by getting the title from Glazer to someone else. And I took the question up with Mr. Meyer and with Mr. Glazer and Mr. Meyer thought that could be done, that arrangement could be made whereby Mr. Glazer should be divested of the title and the new purchaser could give the three months' notice to Mr. Finck and Mr. Finck would have to vacate from the property. Before doing that I went back to General Collins and reported to him and Mr. Weber was with me on that occasion. And General Collins says I am not going to assume any responsibility in this. If you want that place you have got to pay for all the expenses in connection with it; told that to Mr. Weber. Whatever it costs us to get this renewal of lease you will have to pay for. Mr. Weber says, I will pay for it. He says, then go ahead and make your arrangements. I thereupon went back to Mr. Myers and talked to him as to what it would cost us to get this arrange-

ment perfected and he told me two hundred and fifty dollars. I asked him for how long a term of lease we would have—at first we talked about a five-year lease. Mr. Weber would not have a five-year lease, he was satisfied with three. The papers were drawn first one way and then changed to a three-year lease. 10

By Mr. Wilson:

Q. When was this, Mr. Stamler? A. This was in July; away back in July. Meanwhile that case was still pending. Mr. Weber—we required two hundred and fifty dollars to pay Mr. Myers for his services in the matter.

By Mr. Swift: 20

Q. You say July? A. I think it was probably later. I do not recall the dates unless I would have the papers before me.

Q. Just refresh your recollection from this paper. A. The negotiations might have commenced on the 27th of June, 1914, but the date of the check will show the very date that we were in the office of General Collins; the check to Mr. Myers. Mr. Myers' fee was to be two hundred and fifty dollars and he thought he could arrange it by taking a deed to Mr. Butler and Mr. Butler make a purchase-money mortgage to Mr. Glazer. 30

Mr. Wilson: I object. Was Mr. Weber there at this time?

A. No.

The Court: Was it communicated to Mr. Weber? 40

A. Yes, sir; and I did that all at Mr. Weber's request.

The Court: I will admit it.

A. A purchase money mortgage must be taken back to Mr. Glazer, no bond given, however, for Mr. Butler. I told that to Mr. Weber and told him Mr. Myers wants two hundred and fifty dollars for that. He said, I haven't got the money for it. Won't Joe Nolte advance it for us? I said, if you will give us your note, I am satisfied it will be done. Joe Nolte was the treasurer of the company. Mr. Weber made out a note for two hundred and fifty dollars; we went up to the brewery and got a check for two hundred and fifty dollars, and I delivered the check to Mr. Meyer. And after that all papers were executed relating to this lease, and the property was transferred from Glazer to Butler, Butler and Glazer executed a lease to the company for three years. In this connection I want to state that Glazer would not give Weber a direct lease. He wanted the responsibility of the company. And Mr. Weber agreeing to take it for three years, he said all right.

By Mr. Swift:

Q. Now, right there; you say that Mr. Weber agreed to the terms of three years? A. It was at his request, taking three instead of five years.

Q. The first proposition of Glazer was to lease it for five years? A. Five years. The same term as Mr. Finck had, and I had drawn the lease accordingly for five years first.

Q. Mr. Weber objected to that, but said he would take it for three years? A. For three years.

By the Court:

Q. From what time? A. This was to be—the time was to commence as soon as he could perfect the notice upon Mr. Finck to vacate from the possession of the property which would require three months, and we did have to give him three months' notice. 10

Q. What date would that make it then? A. October 1st. It was intended at that time that the lease should commence, and I think the contract provides from October 1st, 1914.

By Mr. Swift:

Q. I show you a paper and ask you what that is. A. This seems to be an exact copy of a lease between Butler, Glazer and the Peter Breidt Company for the property in question, executed by Mr. Glazer, only. 20

Q. Is there anything about that which carries out your statement that the term of five years was first suggested and then changed at the request and consent of Mr. Weber to three years? A. Yes. It shows the erasure there and you will notice that right in the original paper. There was an erasure where it says three; there was an erasure there. 30

Mr. Swift: I will offer that in evidence.

A. The other paper was fully executed by all parties.

Q. Which other paper? A. There were two papers, one Mr. Glazer had, and one we had.

By the Court:

Q. What is this paper? A. This is one signed by Mr. Glazer. Butler never signed it. 40

Q. Was it in the nature of a deed? A. No, this is a lease. The deeds were recorded, everything went on record.

Mr. Swift: "For these premises at one hundred dollars a month to begin on October 1st, 1914."

10

Mr. Wilson: I object to it.

By the Court:

Q. Did Butler take a deed? A. Butler took a deed to the property.

Q. What is this paper then? A. This is a lease from Glazer and Butler. Glazer was the mortgagee. We wanted him to consent to it.

20

Q. To whom? A. To the Peter Breidt Brewery.

Mr. Wilson: I object to it for this reason: this purports to be a lease from Edward J. Butler, owner, and Jacob Glazer, mortgagee, to the Peter Breidt Brewing Company and it is dated on the 27th of June. As a matter of fact, Breidt did not become owner of the premises until some time in July. Over a month later, and he was not an owner. I object to the lease because it does not conform —it is not signed by the Peter Breidt Brewery Company, it is not signed by Butler.

30

The Court: It is signed by Glazer, isn't it?

Mr. Wilson: It is signed by Glazer.

The Court: Who was the owner of the property?

Mr. Wilson: No. It states in this that he was the mortgagee, not the owner of the property. That Edward J. Butler was the owner of the property. It is not a true state-

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ment of fact. Because Glazer was the owner of the property and continued to be the owner of the property until July, a month following.

By the Court:

10

Q. Was there a subsequent lease made? A. This lease was actually executed. It seems to me that we omitted to have Mr. Butler, who was a member of the firm——

Q. Did you operate under this? A. Absolutely operating under this lease.

Q. Whatever this is, you operated under it? A. Yes, sir.

Mr. Swift: This is the one that is in force on that property. 20

A. This lease is in force today.

The Court: I will admit it.

Mr. Wilson: I object to the lease for this reason: it is not signed by Butler, who is alleged to be the owner of the property.

The Court: Suppose it is not, Mr. Wilson, it is signed by the man who actually was the owner of the property. Of course it is admissible to that extent anyway. The legal effect, of course, is something else. 30

Mr. Wilson: Yes.

The Court: It is one of the elements of the circumstances in the proceeding.

A. That lease was signed after the check to Mr. Myers was given for two hundred and fifty dollars.

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Mr. Wilson: I object for another reason: Jacob Glazer's name appears to be here. It is not witnessed by anybody at all, and there is no proof that is Jacob Glazer's signature. I object to it for that reason. I object to it because there is no proof.

10

A. That was signed in my presence.

The Court: I will admit it.

A. Mr. Myers presence and my presence.

(Lease entered in evidence and marked Exhibit, p. 2.)

20

Q. I show you a paper and ask you what that is? A. This check is the check that Mr. Weber agreed to pay Mr. Myer for his services of two hundred and fifty dollars, for which he first gave a note to the company and the company gave its check for it to Mr. Myer's order.

By the Court:

Q. What is the date of it? A. July 15th, 1914. That is about the time of the execution of all these papers.

30

By Mr. Swift:

Q. Who delivered the check to Mr. Myers? A. I did personally deliver that to Mr. Myers.

Mr. Wilson: The Court understands this is not Mr. Weber's check at all.

40

Mr. Swift: No.

Mr. Wilson: It is a check dated July 15th, 1914, on the Union County Trust Company, drawn to the order of C. D. Myer for two hundred and fifty dollars and was signed by J. H. Nolte, Treasurer. 10

By Mr. Swift:

Q. To make the matter perfectly clear I understand from your testimony that Mr. Weber did not have the money available at the time and asked for a loan?

The Court: He has been all over that.

Q. Did you also say that he gave a note at that time? A. He gave a note for two hundred and fifty dollars. And afterward paid the note. 20

Q. What was the next step?

By Mr. Wilson:

Q. You are testifying as a matter of fact that that is so? A. That he paid that.

Q. That he gave that note and paid the note? A. Oh, yes, two hundred and fifty dollars. I know that to be a fact. Paid it at that time. 30

By Mr. Swift:

Q. Now, what was the next step? A. The next step I told Mr. Weber then—we discontinued the suit then the day following in the District Court. On July 16th, 1914, the suit was marked discontinued in the District Court. The suit for possession. I told Mr. Weber he should remain in pos- 40

sesion and that I will give three months' notice to Mr. Finck to vacate on the first of October, 1914, and he could remain there for a period of three years without any trouble. Mr. Weber remained in possession uninterrupted there until that time.

10 Q. Did you prepare the notice? A. Yes, I prepared the notice and served that on Mr. Finck.

Q. Who served that? A. My recollection—I won't say now without looking at the papers. I won't say who.

(Check entered in evidence and marked Exhibit P. 3.)

A. We had nothing further—during the month of October, then, after Mr. Finck—after giving no-

20 tice I also obtained from Mr. Finck a release to Mr. Glazer. By an arrangement I thought it would be best to get some release from Mr. Finck in satisfaction of this arrangement that we had had. We arranged, with Mr. Weber's knowledge, that Mr. Finck should remain a tenant of the upper portion of the property, and he of the lower portion of the property. And Weber was to pay one hundred dollars a month rent, and Mr. Finck was to pay fifteen dollars a month rent, which Mr. Glazer was

30 to get. And the company was not to profit in any way at all by it. After all things were straightened out and the legal matters attended to I called up Mr. Weber and asked him to come in and execute a lease with the company.

Q. That was when? A. That was in October.

Q. October, 1914? A. October, 1914.

Q. Yes? A. And Mr. Weber said he would come down to the brewery and fix it up. I prepared an

40 agreement whereby Weber was to continue in pos-

session as a sub-tenant of the property of our company for a period of three years from the first of October, 1914, to the first of October, 1917; and also the usual beer agreement that he would sell exclusively the product of the company. Weber, however, did not come. I thereupon told Mr. Nolte—advised, rather Mr. Nolte, not to pay any rent to Mr. Weber for one thousand Elizabeth avenue. That was the property the company had leased from Mr. Weber. 10

Q. Mr. Weber's own property? A. His own property. And I said to him, that will bring Weber to the office. And Mr. Weber finally by an arrangement arranged with me to come down to the company's office to adjust this whole matter as to the rents that were coming to us and as to rents coming to him, and that was on Friday, October 23d, 1914. 20

Q. What was your object in stopping the payment of the rent of one thousand Elizabeth avenue on Mr. Weber's property by the brewery? A. The object was to compel or get some—compel Mr. Weber to enter into a written arrangement for a continuance in possession of three years. To settle the question of this tenancy.

Q. Of leasing the property 214 Broad street? A. Yes. And we finally met at the office of the company on the 23d day of October, 1914, and I says to Mr. Weber—— 30

Q. Who was there? A. Mr. Weber, Mr. Loehrs, and myself, and probably Mr. Nolte was in his cashier's office there. And probably some of the girls, a stenographer or some other young man. I said to Mr. Weber at that time, Weber, here we went to a great deal of trouble in this matter to 40

get this lease for you, now we want you to sign it, we want you to sign this brewery agreement. He said, you don't need my signature. I have been dealing with General Collins a good many years and my word is as good as my bond. Or some
10 words to that effect. I said, that is not what I am to do. I am to get you to execute an agreement and you are to sign it. We want it, and you ought to bind yourself. He said, it is not necessary. I thereupon consulted General Collins, who was upstairs. He said, that is all right, if Weber says so, all right. I came down and told Weber General Collins says it is all right, you don't have to sign it, but you understand you are going to remain a tenant of that property for three years from the
20 first of October, 1914, to the first of October, 1917, and sell our beer there. He said, yes, sir; I said, all right. That ends it. I said, Mr. Nolte—I directed Mr. Nolte then to give a check to Mr. Weber for one hundred and twenty-five dollars for rent on one thousand Elizabeth avenue, and Mr. Weber then drew a check to the order of the company for one hundred dollars for the rent of 214 Broad street. And with the exchange of these checks the whole thing ended and we all went home.

30 Q. Were you present when the check of one hundred and twenty-five dollars was paid by Mr. Weber, on as you say the twenty-third of October, 1914, in payment of his rent? A. I gave the check myself to Mr. Weber.

Q. I show you what purports to be a check and ask you if that is it? A. Yes, sir; that is the check.

Q. Given to him where? A. At the office of the company at the time of the conversation I just talked about.

40

Q. On the day it bears date? A. Yes, sir.

Mr. Swift: I offer it in evidence.

(Check dated October 23d, 1914, amounting to $125, entered in evidence and marked Exhibit P 4.)

Mr. Swift: I call for check dated October 26th, 1914, for one hundred dollars. 10

Q. Were you present when Mr. Weber paid his check for one hundred dollars? A. This is the check that he turned over then to me, in payment of the rent of 214 Broad street.

Q. And you in turn, what did you do with it? A. I placed it on Mr. McGurn's desk.

Q. Who is Mr. McGurn? A. He is the collector of the company who collects the rents in the usual course. 20

Q. You say that was given to you on October 23d? A. October 23d, on Friday.

Q. What date does it bear date? A. It evidently bears date October twenty-sixth.

Q. But it was given to you on the twenty-third? A. Yes, sir. Wr. Weber afterwards told me that it was actually signed by him on the twenty-third of October, and it was dated ahead. 30

Mr. Swift: I offer it in evidence.

(Check dated October 26th, 1914, amounting to one hundred dollars, entered in evidence and marked Exhibit P5.)

Q. Does that end the circumstances with reference to the leasing of the property to Mr. Weber for a term of three years from October first? A. Yes, sir. 40

Q. What was the next thing you heard of in connection with Mr. Weber's occupancy of the property? A. Some time in September a notice was served upon the company that Mr. Weber was to vacate the property, and we have that notice. That was September, 1915.

10 Q. Is the paper which I hand you the notice? A. That is the notice that was served upon the company that Mr. Weber intended to vacate the property on the first day of November, 1915.

Q. Did it come into your possession? A. It came into my possession and I thereupon replied.

Q. From whom did it come into your possession, from the company? A. From the company it was turned over to me.

Q. You were its attorney? A. Yes.

20 Q. And in consequence of that you did what? A. I wrote a letter to Mr. Weber.

Mr. Swift: Will you produce the letter, please.

Q. Is the paper produced by the defendant and which I now show you, is that the letter to which you refer? A. It is. It is dated September 27th, 1915, addressed to Fred Weber.

30

Mr. Swift: I offer this notice, and the letter.

(Notice entered in evidence and marked Exhibit P 6.)

(Letter dated September 27th, 1915, entered in evidence and marked Exhibit P 7.)

Q. Do you know how long Mr. Weber remained

40 in possession of the premises after giving the no-

tice to vacate? A. Until about the latter part of—the first part of November, 1915.

By the Court:

Q. Rent was paid for the month of November, or October? A. The October rent I think was paid. I am not speaking of my own knowledge now. 10

Mr. Swift: I will prove that by another witness.

The Court: There is no use proving it; there is no dispute about it.

Mr. Wilson: No, we paid the rent.

The Court: The last rent paid was October, 1914?

Mr. Wilson: Yes. 20

A. That is right.

By Mr. Swift:

Q. You say he vacated about the first of November, 1915? A. Yes, sir.

Q. Did the brewery take any steps in reference to securing another tenant for the property? A. We did. 30

Q. And for the sale of the business? A. Yes, sir.

Q. What steps did you take? A. We got Mr. William J. Scanlon to purchase the business, providing the Board of Excise Commissioners of the City of Elizabeth would transfer the license to him, for the sum of fifteen hundred dollars. And Mr. Scanlon thereupon would agree to become a tenant of the company for the balance of our term, or the balance of Mr. Weber's term; either way. 40

Q. Was there an agreement actually entered into between the company and Mr. Scanlon to purchase the business? A. Yes, sir.

Q. And renting of the property? A. Yes, sir.

10 *By the Court:*

Q. Was there finally a license granted to Mr. Scanlon? A. No, it was not. No license was granted.

By Mr. Swift:

Q. What is the paper I hand you? A. This is the agreement between the Peter Breidt City Brewery Company and William J. Scanlon, dated No-
20 vember 8th, 1915, whereby Mr. Scanlon agreed to purchase the business formerly conducted by Weber at 214 Broad Street, providing the Board of Excise Commissioners would transfer the license to him.

Mr. Swift: I offer the agreement in evidence.

Q. Executed by you? A. No. That agreement is executed by General Collins on behalf of the
30 Company, and Mr. Scanlon himself.

The Court: Judge, what is your idea of the effect of that transaction?

Mr. Swift: We claim that under the original agreement that still remained in force so far as the agreement in reference to the sale of the business. Your Honor has read the agreement and you will recall it provides, it was made for the mutual benefit
40 of both parties to that agreement, so that

if the property should be sold that the proceeds of the sale of the business should be divided equally between the parties. Now, we are offering this for two reasons: one is to show we made an effort to rent this property to another tenant for the same line of business. And secondly, that we have affected a sale of the property which would be affected by that clause of the original agreement.

The Court: Therefore you are entitled to seven hundred and fifty dollars?

Mr. Swift: Possibly.

The Court: I want to know what you claim.

Mr. Swift: Well, we claim we would be entitled to at least seven hundred and fifty dollars.

The Court: Do you think your original agreement contemplates the sale if it does not take place by the consent of both parties?

Mr. Swift: I think so.

The Court: Does not the sale contemplate that the mind of Mr. Weber——

Mr. Swift: It does not contemplate that one man should act as dog in the manger, and refuse to sell when he has not further use for the business.

The Court: As I understand, your one position is that you were doing what you could to rent the premises. I understand, of course, that point. I am trying to see if you insist on the second. As I understand your position on the second proposition, it is that under the original agreement,

which you say still continued in connection with the second agreement, that if the property was sold the proceeds of the sale were to be divided.

Mr. Swift: Yes.

10 The Court: Now, do you say that the sale under that agreement could take place without the consent of both parties, fixing the terms of the sale, and so forth?

Mr. Swift: I presume that was contemplated by the agreement, but I insist this: that if Mr. Weber arbitrarily refuses to sell the business and abandoned the business himself——

The Court: Then you could sell it for any

20 price that you wanted to?

Mr. Swift: No. That it was his duty to consent to a sale of the property, which is to him, as well as to the brewery, where he had no longer any use for the property, for the conduct of that business, because he gave it up. Of course, we cannot force any man to mutually agree to a thing, but he must not put himself in the position of arbitrarily refusing to do a thing, to the injury of the other party where it is no injury to

30 himself. He vacated this property, abandoned the business, he had no further use for it, and our insistment is that he was not in a position where he could simply say, well, I won't mutually agree with you to sell this business, to your damage. Under those circumstances, I say that it was his duty after he had abandoned the business, to concur in an advantageous sale of it.

The Court: The fact was that the only

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thing that was of any substantial value was the license, wasn't it?

Mr. Swift: The license of the business, yes. He got the license for that place. He agreed, under this agreement, to get a license for that place and to conduct the business. Now, when he stopped conducting the business——

The Court: What does this agreement that the parties made originally mean? That if during the time the business was being conducted there the parties themselves agreed to sell it, under an arrangement that was satisfactory to both, then profits should be divided? It did not mean anything more than that?

Mr. Swift: I think it meant more than that. I think at least there was an implied obligation on his part to conduct that business during the life of the license. Or, if he wanted to give it up before the license expired, that the idea of the parties was to sell it, and then if they sold it, to divide the proceeds from it, because the agreement was that the parties get a license, and if the license is granted, to conduct the business in that place without any limitation as to time. I say that the construction of that arrangement is that he was to conduct that business for the life of the license which he held on it. And if he gave up that license, or rather, if he vacated the premises and held on to this license, so that that business could not be conducted by anybody else, that it was his duty under that agreement to carry out the spirit of the agreement, to transfer that license to somebody else in order that

that business might be conducted to the end of the life of the license.

The Court: How can you read anything of that kind into this agreement?

Mr. Swift: Because it says so. It says his agreement is to get a license and if it is granted, to conduct the business in that place without any limitations as to time.

10

The Court: But then it comes to the sale, and it says, if they should sell, they would divide the profits.

Mr. Swift: Strictly it says, "If he shall sell," because he was the only one to sell the business, because to sell the business, your Honor, has already suggested it would necessarily mean to sell the license, and he was the holder of the license and he was the only one who could sell it.

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The Court: Didn't that mean rather this: that if, provided that Mr. Weber was there, he sold the business at whatever figure he agreed upon, a bona fide sale, that one-half of the profits should go to the brewery, or half of the sale if he sold it?

Mr. Swift: If that is so, if he remained there, and if he sold it. But here is a case where he got out without selling it, and we got a customer for it.

30

The Court: What right had you to sell it?

Mr. Swift: Because the agreement contemplates the sale of the business, in the event of his giving up the business.

The Court: It does not say anything of the kind. There is nothing in it that can be read that way. It says he is to conduct

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the business. If, while he is conducting it, he sells it, he cannot walk off with all the profits, after the brewery has taken the trouble to secure a lease, and put in fixtures, or whatever the elements were mentioned here. It says, if, during the time he conducted the business he sells it, then he must give up half of the proceeds. 10

Mr. Swift: It does not say if during the time he conducts the business he shall sell it. It says he shall conduct the business.

The Court: And in the event of a sale, and he is the only one who could sell, he shall give up half of the profits, or half of the proceeds. That gives you no right to sell, does it? Where do you get any right to sell something which belongs to somebody else? 20

Mr. Swift: The agreement contemplated, as your Honor said, a mutual arrangement between the parties to sell. While he was in possession, while he was conducting the business.

The Court: That is to say, if the man who owned it sold it. It only contemplates that if the man who owned it sold it, he would have to give up half of the proceeds, that is what it says. What right does that give you to sell? 30

Mr. Swift: That if Weber sold ?

The Court: Yes.

Mr. Swift: That is very true.

The Court: Where do you get any right under the contract to sell?

Mr. Swift: I think we get the right under the contract to sell, or rather to charge him with the loss of the sale. 40

The Court: If you have not any right to sell how can you have any loss on it?

Mr. Swift: Because the contract contemplates a sale of the business in case he fails to conduct it.

The Court: Where is there anything of that kind? It does not say anything of that kind. Take this situation: suppose he left on the first of October, and you secured a new license for the place on the second, and you then sold it for fifteen hundred dollars, would you feel that you had to give him half of it?

Mr. Swift: Would we have to give him half of it? I do not know about that. I suppose it would work both ways.

The Court: It works both ways. Isn't it a fact that all this agreement—of course the parties—that may have been the contemplation, but we have to read the agreement as it is and as they have drawn it. Does this do anything more than to say that the man who owns it has a right to sell it and that if he sells it he must give up half of what he receives?

Mr. Swift: That is the strict language of the agreement.

The Court: How can I read into it, as a matter of judicial construction, that you have a right to sell somebody else's property?

Mr. Swift: I think the sale of the business is the measure of damages. My theory of the case is that the strict construction of the agreement is that unless they mutually agreed to sell this business out to somebody

else, that his contract or obligation was to conduct that business without limitation of time, and that therefore it meant the life of the lease; because otherwise, if he could drop that at most any time, he could have dropped it two months after this whole arrangement was made, and carried his license away with him. It is not to be supposed that the Breidt people are making a contract which they would practically put their place out of business for two years and eight months. I read in that contract that his obligation was that unless they mutually agreed to sell the property and divide the sale of it, that his contract was to continue the conducting of that business for the life of the license. Now then, if he gets out and abandons the business and refuses to make it possible for the business to be conducted there by someone else, by the brewery or its nominee, that at least the loss of the sale of the business at least is a measure of damages, which the company has suffered by reason of his failure, or breach of contract.

The Court: You see, Mr. Swift, there is another element that enters in there: this agreement is to pay fifteen hundred dollars, provided—the most essential thing is necessary—provided the Excise Board give him a license and then give Mr. Scanlon a license. Therefore the agreement was contingent upon something happening which did not happen.

Mr. Swift: I did not catch your Honor's idea. I don't remember that that is the condition of the sale.

The Court: Mr. Stamler just testified to it.

Mr. Swift: Oh, Mr. Scanlon, that is true. The business would be of no value to Scanlon without the license.

10 The Court: Therefore how could fifteen hundred dollars be the measure of damages if it was contingent upon something which did not happen?

Mr. Swift: Because Weber refused to transfer a license which he held for that place.

The Court: And the Board of Excise may have refused to transfer it too.

Mr. Swift: That cannot be assumed. It

20 is not the policy of the Board of Excise to refuse a transfer from one person to another.

The Court: Every case stands on its own bottom.

Mr. Swift: We cannot assume that the board will refuse to transfer, so long as it did not increase the number of licenses in the city.

The Court: We have to assume they did not do it.

30 Mr. Swift: They did not have a chance to do it. There was no application to do it.

The Court: Therefore the contingency upon which it—therefore there was no agreement upon Mr. Scanlon which was binding?

Mr. Swift: No.

The Court: So that Mr. Scanlon was not obligated at all. If he was not obligated, how can that be the measure of damages?

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Mr. Swift: Well, it seems to me if we are entitled to recover, if my construction of the lease or of that agreement is correct, that he failed himself to conduct that business during the life of the license, and he abandoned it, there must be some measure of damages. If that is not the correct measure of damages, then something else is, perhaps. But in my view it is the loss of the business to the company which is the measure of damages, whether it is fifteen hundred dollars or seven hundred and fifty dollars or something else.

The Court: I will admit the agreement. I think it is admissible on the first point anyway.

(Agreement entered in evidence, and marked Exhibit P 8.)

The Court: Why do you say this remaining clause of the first agreement still exists? In view of the fact that there was a new agreement substituted?

Mr. Swift: Only a new agreement as to the terms. There was no term fixed under the old agreement.

The Court: The old agreement is wiped out and substituted by the new agreement.

Mr. Swift: That is as to the term of the lease.

The Court: They made an entirely new agreement, Mr. Stamler testified.

Mr. Swift: I do not think that abrogated the original agreement between the parties relative to the sale of the business and his obligation with reference to the license. But it did fix, of course, definitely, what be-

fore was very indefinite, that is, the life of his lessee rights there. Our contention is, under that agreement, that he was not a monthly tenant. He was more of a tenant for three years. Because it was entirely indefinite as to terms. The second agreement fixes the term definitely as to three years. But in other respects than that does not abrogate the original agreement.

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By Mr. Swift:

Q. Was this agreement consumated? A. It was not because Mr. Weber refused to consent to a transfer of the license.

Q. Do you know anything about the renting of the property to a subsequent tenant? A. After it became apparent that Mr. Weber would not consent to a transfer, the property was put up in the open market for letting, and finally a tenant was procured, Mr. Cashmere, who is the present tenant of the property.

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Q. At what rental? A. One hundred dollars per month.

Q. And that has been rented since when? A. I haven't got the dates in mind. Somebody else will probably give you the better date of it.

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The Court: Can we get that now?

A. Mr. Loehrs will probably give us when Mr. Cashmere started to pay rent.

Mr. Loehrs: Half the month of June of this year.

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Q. We claim up to including May? A. Yes, sir.

Q. Do you know as a matter of fact that in order to rent to the present tenant, who is a jeweler, I think? A. Yes.

Q. Required alterations and changes to be made? A. Yes. This was all part of the agreement.

Q. You don't know anything about the—— A. I don't know what it cost. 10

Mr. Swift I think that is all. Cross-examine.

Cross examination by Mr. Wilson:

Q. Mr. Stamler, you are the counsel for the Peter Breidt Brewery Company? A. I so testified.

Q. That is, you have entire control of all their legal matters, and all their license matters, isn't that so? A. No. I have charge over such matter that I am directed to do. 20

Q. License matters and legal matters come within your duty, don't they? A. No. I do whatever I am asked to do.

Q. This Weber matter came within your particular province, didn't it? A. Yes, sir.

Q. Whatever was done with regard to the Weber, either in the application for the license, or the proceedings before the Board of Excise, you were conversant with, weren't you? A. Yes, sir. 30

Q. And you were present at those various meetings weren't you? A. I might have been at some, and might not.

Q. You were there every time I was there, weren't you? A. I don't know that.

Q. Well, I do. A. I don't know that. Take the stand and testify to it.

Q. But whenever Weber's application came up for transfer, at the Board of Excise, you were pres- 40

ent, weren't you, or Judge Swift? A. Yes. Judge Swift or I were present.

Mr. Swift: Transfer of what license?

Mr. Wilson: The Weber license.

Mr. Swift: To whom? I will ask to have the question made more specific.

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Q. Transfer from 214 Morris Avenue to his Elizabeth Avenue property, one thousand Elizabeth Avenue? A. I say that Judge Swift might have been there, or I might have been there.

Q. And when the application was made for the transfer, finally of the license, by Mr. Weber to 1000 Elizabeth Avenue, you were present, weren't you? A. I don't know that I was present.

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Mr. Swift: I object to this upon the ground I do not see that it is cross examination.

The Court: I do not think this was touched upon by the direct examination.

Mr. Wilson: Very well.

Q. Who started the suit in the District Court for possession of 214 Morris Avenue in 1914? A. Mr. Glazer did, through Mr. Myer.

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Q. Against whom? A. Against Peter Braidt Brewery, who was its tenant.

Q. And that was in what month of the year? A. June, 1914.

Q. At that time the brewery had a lease with Mr. Glazer? A. It had expired.

Q. In what month? A. If you will let me see the envelope there I will be able to tell you more definitely. That is the record in the matter.

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Q. Just the date? A. I will give it to you. It expired on the first day of April, 1914.

Q. And was continued over until when?

Mr. Swift: You understood the question. You asked when it first come up in the District Court. 10

A. The first lease?

Mr. Swift: No. When was the cause returnable.

Q. When were the proceedings commenced—— A. That wasn't the question you asked me.

The Court: Repeat the last question. 20
(Testimony read by stenographer.)

Q. When was the District Court matter finally disposed of? A. On the sixteenth day of July, 1914; sixteenth day of July, 1914.

Q. When was the purchase of the property made by Butler from Glazer? A. The day or two prior—that is, the papers all passed probably a day before the case was marked settled in the District Court.

Q. That was some time in July? A. Yes. The 30 exact date is the date of the check given to Mr. Myer.

Q. That seems to be dated July 15th, 1914? A. That is correct.

Q. And on that day the matter between Glazer and the Breidt Brewery Company had been disposed of by a deed given by Glazer to Butler; is that so? A. That is correct.

Q. Butler must have gotten his deed a day or two

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before the 15th of July? A. This was all done simultaneous. It was all done at one time.

Q. That is, the giving of the check? A. The check, the deeds and the mortgage and the lease was all done at one time. That is my recollection. It was all done at one time. I don't know when they were dated, but it was all done at one time.

Q. But when Myer got his check on July 15th, 1914, had the deed been given then or not? A. The record is the best evidence of the date. I would not recall it, sir. I would not want to tie myself down to an exact minute. It was just about that time. If my memory serves me right, nothing was done until the two-hundred-and-fifty-dollar check was delivered to Mr. Myer. That is, the papers were drawn, the papers were executed, but there was no delivery of them, as my recollection serves me, until that check was actually in the hands of Mr. Myer.

Q. Of course, the deed was first made of Glazer and wife to Mr. Edward J. Butler? A. Yes.

Q. And the mortgage was given back without a bond, you say? A. That is right. You probably find all papers are dated the same date. The date of the lease. If you will look at the original papers in the case. That is on record.

Q. Then in July, as you say, Butler became the owner of record, and the Peter Breidt Brewing Company became the lessee from Butler; is that so? A. Of Butler and Glazer.

Q. In July. Why then didn't you make a lease with Mr. Weber after you got title? A. Because we did not then even know that these negotiations will stand the test until we got a release from Mr. Finck, which was very essential in this case, as you can see.

Q. Yes, but you noticed that in the lease you say

made by Glazer to Finck, there was a three months' clause, wasn't there? A. In the Finck lease there was a three months' clause and therefore it required three months time to wait to see what Mr. Finck would do. Now, if you will figure at the end of three months, it brings you down to October, and therefore the lease was made from the first of October. I understand this was put in that way.

Q. I do not see it the same way that you do. You say the whole matter was concluded on the 15th of July? A. Yes.

Q. Then did you give Mr. Finck a three months' notice ending, on the 15th of October, or the 1st of October? A. It must have been on the 1st of October.

Q. Yes, but you say the whole proceedings were not completed until the fifteenth of July? A. In so far as whatever could be done for the purpose of getting possession of that property for Mr. Weber was done, excepting that we did not know what Mr. Finck would do, what his attitude would be. He had a right in there.

Q. That is not the point I want to get at. The whole matter was consummated at the time of the giving of this check, and that was July 15th, 1914? A. That is right.

Q. Then at that time you gave Mr. Finck the requisite three months' notice, you say? A. Yes.

Q. The one hundred dollar check was for the payment of the rent for the month of October, 1914, wasn't it? A. That is correct.

Q. That is, of the 214 Morris Avenue? A. Yes, sir.

Q. If you had transacted all this business with the idea of making a new lease with Mr. Weber, why didn't you have a lease made in July when you

completed the transaction with Glazer and Butler? A. We had to——

Q. No. Why didn't you do that? A. You want me to answer why?

Q. I don't want any explanation? A. I can't give you any explanation unless you let me answer it.

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Q. I want an answer to it.

The Court: Go on. Because what?

A. Because I was not certain that although this matter went through on July fifteenth that we will be able to stay in there, on account of Finck's tenancy in there. He could have held us up, and until we got a release from Finck, an actual release whereby we agreed that Finck was to stay in the second floor of that property until the following May of 1916 for nothing, was I certain that Mr. Weber could remain in possession of that property. And this was all done for Weber's convenience, for Weber's——

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Q. That is what you say. A. Well, it was a fact, and therefore I didn't even think about having any trouble with Weber about it. Didn't contemplate any.

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Q. There was a written lease between Weber and the brewing company, made in 1910, wasn't there? A. Yes, I became acquainted with that paper.

Q. And in October when you say you had completed all your arrangements with Finck, then you saw Weber about making a new lease, is that so? A. No, not making—signing the lease for three years.

Q. And he demurred and said he would not do it, didn't he? A. No, he did not at first.

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Q. Well, he said he wouldn't sign any lease? A. He didn't say that.

Q. Well, he didn't sign any lease? A. He didn't sign any lease.

Q. Why didn't you insist on his signing? A. I did try to get him to sign.

Q. Well, he refused, didn't he? A. He refused. 10

Q. Why didn't you turn him out then? A. Didn't have to, because I as a lawyer know that he can make an agreement for three years without writing, and it makes no difference if the man is satisfied and we are satisfied. I was dealing with a friend. I wasn't dealing with a man I didn't know.

Q. The lease you say was made for three years? A. Exactly.

Q. And you were willing to let it go at that, an oral lease for the term of three years? A. Yes. 20

Q. Why didn't you insist on its being in writing?

Mr. Swift: I object.

A. I gave you the best answer I know. That is what occurred. Weber said I don't have to sign anything. I have been selling your beer conscientiously and I am going to continue and I will stay there for three years.

Q. You remember when Weber gave the notice to get out? A. Yes. 30

Q. Did you know the termination of the tenancy in November, 1915? A. When he attempted to terminate it, yes.

Q. He did actually terminate then, didn't he? A. No, not that I know of.

Q. Why then did you, as an officer for the brewery, make an agreement with William J. Scanlon? A. I was not an officer of the brewery. I was the attorney of the brewery. 40

Q. Well, you made an agreement with Scanlon for Scanlon to go in there and be a tenant? A. It was only done providing Mr. Weber would consent to it in writing and a request was made of him to consent in writing and he refused to consent to it in writing. This was all done and it is provided for in that contract. It is providing Mr. Weber consents and providing the Board of Excise transferred the license. We didn't want to have any trouble with Mr. Weber.

Q. That was the agreement made that you made with Scanlon? A. Yes. Mr. Weber knew about it. He has got a notice served on him. Carey served him with a notice and he came to see me about it.

Q. Scanlon made an application to the Board of Excise for a transfer of this license, didn't he? A. He attempted to make one.

Q. He did make an actual application to the Board of Excise, didn't he? A. I have no recollection of that.

Q. And Scanlon made his application to the Board of Excise for a transfer by saying that he was the incoming tenant, isn't that so? A. Oh, yes, that was done under the special statute in 191 —1891 or 19—just a minute.

Mr. Swift: I object.

Q. And Mr. Butler gave his notice to the Board of Excise for a transfer of that license, didn't he, because he was the owner of record of the premises?

Mr. Swift: I object. Not the subject of cross-examination. The question has relation to some facts entirely outside of anything that has been opened up in the direct case.

The Court: Why isn't that so, Mr. Wilson?

Mr. Wilson: It is done for this purpose: I want to show that by the subsequent conduct of the counsel, who is now the witness, and of Mr. Butler, who is the owner of record, and Mr. Scanlon, the tenant, that Mr. Butler, who was the owner, recognized Scanlon as the tenant, and made application——

The Court: The point is, how is that cross-examination?

Mr. Wilson: I suppose no. That is all.

Redirect examination by Mr. Swift:

Q. I think you testified that you gave notice to Finck to move on the first of October? I show you paper and ask you to look at it and see if that will refresh your recollection? A. This is the original notice that was given to Mr. Finck, and I did make an error in that. I gave the notice to Finck on the first of November, 1914.

By the Court:

Q. In the meantime you secured his release? A. In the meantime I secured his release. That is the situation of that. I did make an error in that dates, but here is the original notice.

Mr. Swift: I offer it in evidence.

Recross-examination by Mr. Wilson:

Q. Mr. Stamler, I see that this notice is signed by Edward J. Butler, and dated July 15th, 1914. A. 1914.

Q. 1914, yes. In the notice Mr. Butler wants premises delivered to him as the landlord? A. That was the very day when all this thing was closed. Finally closed.

10 (Notice entered in evidence and marked Exhibit P 9.)

DENNIS F. COLLINS, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Swift:

20 Q. General Collins, you, of course, reside in the City of Elizabeth? A. Yes, sir.

Q. You are the President of the Peter Breidt City Brewery Company? A. Yes, sir.

Q. Do you know Mr. Weber, the defendant here? A. Yes, sir.

Q. Was he in possession of property over which you had control, 214 Broad Street, in the year 1914? A. Yes, sir.

Q. Your company had a lease of the property from Glazer, Jacob Glazer? A. Yes, sir.

30 Q. Your company at that time I say held a lease of the property from Jacob Glazer? A. Yes, sir.

Q. Which expired when?

The Court: Judge, we have all that.

Q. Well, April, 1914? A. April, 1914, I believe.

Q. Mr. Weber was in possession of the property at that time? A. Yes, sir.

Q. What was done if anything with reference to

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securing the continuance of his occupancy of the property after the expiration of the lease from Glazer? A. After the expiration of the lease with Glazer, we refused to renew the lease on account of the exhorbitant price we thought Mr. Glazer demanded. I told him that I did not think Mr. Weber could afford to pay such rent. And I refused to enter into any lease with him. He called to see me a number of times before the lease expired and subsequent to its expiration.

Q. As I understand, General, perhaps my question was a little confusing, I understand this arrangement with Mr. Glazer, your seeing Mr. Glazer and your conversation with him was before the expiration of the lease? A. Mr. Glazer was to see me before and after. Mr. Weber continued in there after the lease had terminated, but he was to see me before the lease terminated, and I told him I would not—the company could not assume that responsibility. If Mr. Weber could not pay he could—it would be up to the company to pay the rent.

Q. Well, did you take the matter up with Mr. Weber? A. That drifted along until these notices came in through the District Court. In the meantime I understood Mr. Finck had gotten possession in some way and we were served with a notice to vacate. Then Mr. Weber came to see me when this District Court action was up and he was very anxious to continue there and wanted to know if some arrangement could not be made. I told him I didn't know of any, and I referred him to Mr. Stamler, who was the attorney for the company. But I said, under no circumstances will this company assume that liability of one hundred and fifty dollars a month rent, unless you give them security.

He then went to see Mr. Stamler, with my consent that any arrangement which might be made that would continue him there, I was perfectly willing to do, and assisted him in every way, provided we did not have to assume that responsibility.

10 Q. Was anything said about the expense, if any, attendant upon securing that arrangement? A. Not at that time. Mr. Stamler suggested to me subsequently and told me Mr. Weber had been to see him, and that negotiations were on, he told me about this provision in the lease between Glazer and Finck, and that that same arrangement might be made, but that it would require considerable expense. I told him whatever expense was incidental to that, we were doing this all for Mr. Weber's bene-

20 fit——

By Mr. Wilson:

Q. Is this something you are telling Weber, or Stamler? A. This is a conversation I told Mr. Stamler when he told me——

Mr. Wilson: I object to that.

Mr. Swift: Mr. Stamler testified he received those directions and communicated

30 them to Mr. Weber.

The Court: Yes, but it does not appear that he repeated the very words that the General uses. That is the difficulty.

Mr. Swift: The substance, at least, that the company would not assume the responsibility of the payment of any expenses.

A. That Mr. Weber would have to assume that expense.

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By Mr. Swift:

Q. That Mr. Weber would have to assume it himself? A. Yes, that was it. And also said, if permissible, your Honor, that Mr. Myer was to see me about—as representing Mr. Glazer in the matter. 10

Q. Do you know how the matter was finally adjusted? A. I have been informed by counsel for the company.

Q. Yes. The counsel you refer to is Mr. Stamler? A. Yes, sir.

Q. Did he communicate to you anything with reference to the leasing of the property to Mr. Weber? A. Yes, sir.

Q. Do you recall when? A. Why, that was the latter part of the year. I don't know if it was 20 September or October. My office was upstairs, and Mr. Stamler came up one day and informed me that he had trouble with Weber as far as signing some papers were concerned in reference to his continuance of the premises the lease which we had arranged for his benefit. And said that his word, it was all right, that he would agree to abide by the understanding between us, and that a lease was not really necessary.

Q. What was the understanding between you? 30 A. The understanding was——

Mr. Wilson: I object. This is a conversation between you and Mr. Stamler, wasn't it?

Q. Between you and Mr. Weber, as I understand it. A. Mr. Weber was downstairs. Mr. Stamler came up to my office.

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Q. You said agreeable to the understanding between us. Between whom do you mean? A. As reported to me by Mr. Stamler. That he had entered into this three year——

10 Mr. Wilson: I object to conversation between the General and Mr. Stamler, in the absence of Mr. Weber.

Mr. Swift: That is all right. Mr. Stamler has testified he communicated the fact to him, and Mr. Weber would not sign the lease, but he would agree to it for three years.

By the Court:

20 Q. As the result of that did you direct Mr. Stamler to accept the lease without signature? A. I did all right; yes, sir. I said, all right, Weber will stay there, he seems to be very anxious to continue the business, and it was all done at his request, and he paid the expense account. I haven't any question but what it will be all right.

By Mr. Swift:

30 Q. You concurred then in taking his word for it? A. Yes, sir.

Mr. Swift: Cross-examine.

Cross-examination by Mr. Wilson:

Q. This was in your office, you say, in the brewery building? A. Yes, sir.

Q. General, you are the president of the Peter
40 Breidt Brewing Company? A. Yes, sir.

Q. And on the occasion that you say Mr. Stamler was there, you had the conversation which you say you did have with him, was Mr. Weber—did you see Mr. Weber at all that day? A. I don't think I saw him, but I was informed he was downstairs.

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Q. You don't know whether Mr. Weber was there or not, except what Mr. Stamler told you? A. I did not.

Q. You didn't think it worth your while to go downstairs from where you were down to see Weber? A. I didn't consider that necessary.

Q. And Mr. Weber didn't come upstairs with Mr. Stamler? A. No.

Q. And on the agreement that you say Mr. Weber made with Mr. Stamler, and Mr. Stamler made with Mr. Weber, is entirely out of the mouth of Mr. Stamler? A. On that occasion, yes.

20

Q. You don't know what day that was, do you, of the month? A. Some time in October.

Q. What year was that, last year, or 1914? A. That was 1914.

Q. You say Weber was there under a lease with the brewery. You have no lease for that building yourself, have you? You didn't have in 1914?

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Mr. Swift: Himself?

Q. I mean the brewery? A. What is the question?

Q. Did you have any lease in 1914 for the premises 214, I mean did the brewery have any lease? A. I believe so, yes.

Q. And it expired when? Some time in April, 1914, didn't it?

The Court: April 1st, it has been testified.

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A. That was the original——

Q. Glazer? A. Yes, expired in April, 1914.

Q. Did you ever have any subsequent lease for those premises? A. I believe we entered into a lease subsequently.

10 Q. With whom? A. At Mr. Weber's request.

Q. With whom? A. Well, I can't—the papers will show that.

Q. I understand, but did you ever sign any lease? A. If it was signed, why, I signed it.

Q. If it wasn't signed, you didn't, of course? A. Absolutely. It will speak for itself. I sign a good many of those.

Q. Do you ever remember signing any lease after the first of April, 1914, with reference to 214 Broad Street?

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Mr. Swift: I will object to the question, because it does not seem to me it is material. The paper is offered in evidence, and it is in evidence.

The Court: The only thing the General has been asked about was this conversation with Mr. Stamler, wasn't it?

Mr. Swift: That is all.

Mr. Wilson: Yes.

30

Q. Mr. Stamler is your general counsel, isn't he, General? A. Yes, sir.

Q. And he has entire control of all your legal and all your excise matters, isn't that so? A. Upon authority from an executive of the company. Agreement and consultation with them.

Q. That is yourself? A. Yes, sir.

Q. The Weber matter he had entire control of, hadn't he? A. In so far as——

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Q. I mean with regard to the saloon license 214 Broad Street? A. As far as the interest of the company was concerned, yes.

Q. In October, 1914, the brewery wasn't the owner of the property, was it? A. In October, 1914?

Q. Of 214 Broad Street? A. The owner of the property? 10

Q. Yes. A. No.

Q. You never did own it? A. No.

Mr. Swift: No pretense they did.

Q. And at one time you were the owner, that is, you were the lessee under a lease made with one Jacob Glazer, isn't that so? A. Yes.

Q. And which expired in April, 1914. 20

Mr. Swift: Under a lease?

Mr. Wilson: Yes.

Q. Since then you have never had any lease for 214 Broad Street, have you?

Mr. Swift: He has answered that question before. The lease is in evidence he has referred to as having been entered into. He said he could not say who signed it. 30

Mr. Wilson: I am asking the general question.

By the Court:

Q. Did you pay rent? A. Yes, sir. Must have a lease, because we are paying rent now under the three year lease.

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By Mr. Wilson:

Q. What is that? A. I can't remember just who signed that particular lease. I sign so many of them.

Q. Who is the owner of the premises 214 Broad Street?

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Mr. Swift: If you know, General.

The Court: What time?

Mr. Wilson: Now. From November—from October, 1914, to the present time.

A. I don't know who owns the premises now.

Q. Who owned the premises in June and July of 1914?

20

Mr. Swift: I object, because it is immaterial and irrelevant to the issue in this case. At least, I can't see its relevancy.

The Court: I do not see any relevancy.

Mr. Wilson: We want to show this: That the brewery did not have any control of this property in 1914, and that they never made a lease with anybody.

The Court: Yes, but he says they have been paying rent right along. He recognizes somebody as the owner.

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Q. To whom did you pay? A. I am not the treasurer of the company. Mr. Nolte signs the checks. I wouldn't want to say. The checks speak for themselves, I guess. I don't wish to hide anything. I simply don't want to testify anything direct I am not absolutely certain about.

Q. Then when Mr. Stamler said that he had made a lease, as you say, with whom did he say? A. Why, he knows more about it than I do. If

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he says we made a lease, why, we have, I will bank on that.

By the Court:

Q. I understand what Mr. Wilson wants to find out is this: You claim in this case that you made a lease on the first of October, 1914, for three years, to Mr. Weber. Mr. Wilson wants to know whether you had a lease for three years. A. I so understood, yes. 10

Q. He wants to know from whom? A. Why, it must be from Glazer, I suppose. I don't know I don't want to say that. From whoever owned the premises at the time.

By Mr. Wilson: 20

Q. Yes, that is it, and if Glazer owned it, then it was satisfactory if Weber made a lease with Glazer? A. I depend on my counsel for those matters. If he lays a lease before me and says, we leased this from John Jones, I suppose he knows John Jones is the owner of the property. I don't go and search properties to find out.

By the Court: 30

Q. What Mr. Wilson wants to know is, Mr. Stamler produced a paper purporting to be a lease signed by Mr. Glazer, for the term of three years, which the brewery did not sign; what Mr. Wilson wants to know is whether you recognized that lease, even though you didn't sign it, and considered yourselves obligated for the term of three years from the first of October, 1914, to Mr. Glazer? A. Certainly do; yes, sir; and we are paying rent now, 40

and have ever since the lease was entered into. Paid it when the store was vacated.

Mr. Wilson: That is all.

The Court: Mr. Swift, I notice in this agreement that the sale is at the option of the party of the first part.

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Mr. Swift: Yes. I mentioned that to your Honor. It says if the party of the first part shall sell.

The Court: That changes your view, doesn't it?

Mr. Swift: I will stick to my idea about it. I noticed that the other night.

Adjourned until 1.30 P. M.

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AFTERNOON SESSION, 1.30 P. M.

HENRY F. LOEHRS, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Swift:

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Q. Where do you reside? A. 507 First Avenue, Elizabeth.

Q. What is your business? A. Bookkeeper.

Q. For whom? A. Peter Breidt City Brewing Company.

Q. How long have you been employed with them? A. About ten years.

Q. Do you remember being in the office of the company at any time when Mr. Stamler and Mr. Weber were present holding a conversation rela-

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tive to the property 214 Broad Street, or Morris Avenue? A. I do.

Q. Tell us when that was? A. It was on the 23d day of October, 1914.

Q. And what was the conversation? A. Mr. Stamler requested Mr. Weber to sign what we term a beer agreement, and including in it a clause of the lease. 10

Q. A lease? A. For the saloon 214 Broad Street, or Morris Avenue, and Mr. Weber told Mr. Stamler that we know he has never sold any other beer but Breidt's, and he don't intend to do so in the future. And he says, I have never done it. My word is good. He says, what is the use of my signing a paper? You can take my word for it. Whereupon Mr. Stamler says, well, I will have to see the General about it, and see what he says. Mr. Stamler went upstairs and saw General Collins and he come back and says, well, all right, the General is satisfied. And Mr. Weber handed him, which I afterwards saw was a check. Whereupon Mr. Stamler told Mr. Nolte, Mr. Nolte, give Mr. Weber a check for 1,000 Elizabeth Avenue, of $125, which he did. 20

Q. Was anything said about the term for which he was to hold the company? A. The conversation between Mr. Weber in regard to this beer agreement and lease clause was for the term of three years. 30

Q. Three years from when? A. From the first of November, I think it was.

Q. November? A. November or October. Well, it was in October. He says, you know we got a lease secured for you for three years, and it is all on account of you we done this, and we want to be protected, and we want you to sign this. It is 40

not only the lease, but a beer agreement, whereupon Mr. Weber said, I never sold any other beer, and as far as the lease goes, I know you all done that for me and I am going to remain there.

Q. Going to remain there for how long? A. For the term of the lease.

10

Q. Did he know what the term of the lease was, or did he say? A. Mr. Stamler told him the lease was three years. We entered upon a lease for three years with Mr. Glazer, and we want you to sign this for the same term.

Q. You say that on that same day he gave a check for his rent? A. At 214 Broad Street; yes, sir.

Q. And you gave him a check for what you owed him down on Elizabeth Avenue? A. Elizabeth Avenue.

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Q. Was that check given that same day? It bears date the 26th. A. It was given practically the same moment, and Mr. Weber turned to Mr. Nolte and requested him not to put the check in the bank until Monday, as he had dated it Monday, that he needed the money for to-morrow being Saturday in his business. He then made that request of Mr. Nolte, the treasurer.

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Q. Was the other check delivered to him at the time? A. I am not positive whether Mr. Nolte handed it to Mr. Stamler and Mr. Stamler in turn handed it to Mr. Weber, or direct to Mr. Weber. I don't exactly recall. But I know that Mr. Nolte wrote it.

Q. As the bookkeeper for the Breidt people, have you an account showing whether there was any account due from Mr. Weber for beer sold and delivered to him? A. Yes, sir.

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The Court: Is that amount in dispute, gentlemen, thirty-eight dollars, or whatever it is?

A. $38.40.

Mr. Wilson: No, we don't admit it. 10
Mr. Weber: That is right.

Q. There is due from the defendant, Mr. Weber, to the Peter Breidt City Brewing Company, account of beer sold and delivered to him, $38.40? A. Yes, sir.

Q. Do you know that certain repairs and alterations were made at the premises 214 Broad Street after Mr. Weber had vacated the premises? A. I do. 20

Q. Do you know why those repairs were necessary, if they were necessary? A. Well, the Peter Breidt brewery rented the store to Mr. Cashmere, who is now conducting a jewelry store, and the present condition of the place did not suit for a jewelry store, thereupon the brewery was compelled to make these alterations to suit the new tenant, which consisted of a new front, an entire new floor, the ripping off of some partitions, and painting the entire place, after the alterations were made. 30

Q. When were the premises rented to this Mr., what is his name, Cashmere? A. Cashmere. He took possession on the 15th day of June.

Q. And has paid rent from that time? A. Paid rent from the 15th day of June.

Q. At how much per month? A. $100 per month.

Q. Will you tell us what the repairs and alterations consisted of, and their cost? Do you want your books? A. I almost have them in mind, 40

O.K.'ing the bills. The new front cost one hundred and eighty-three dollars, made by Boehm and Company. And the new flooring——

Q. Let me have the bill. This is the bill of $183 of W. J. Boehm? A. Yes, sir.

10 Q. Store front on Broad Street, as per contract? A. Yes, sir.

Mr. Swift: I will offer the bill in evidence.

Q. The bill is receipted by Mr. Boehm? A. Yes, sir.

Mr. Wilson: This is subject to our objection that these improvements were not required. I want to cross-examine him about that later on.

20 The Court: Yes.

Q. What is the next bill? A. Next bill is for wainscoting, which had to be put in place where formerly the bar stood.

Q. Who is that to? A. That is to George Schlenning.

Q. That is for material? A. That is for the material of wainscoting.

Q. Furnished to whom? A. Furnished at this 30 place, 214 Broad Street. $45.32. Here is a check for it. I haven't the receipted bill back after it was paid, and I have no——

Mr. Swift: This is the check endorsed by the payee, George Schlenning, dated June 24th, 1916. I offer it in evidence.

A. And the new flooring and labor in tearing down partitions was made by a carpenter employed 40 by the Peter Breidt Brewery, and his time and the

labor and the materials amounting to $55.50.

Mr. Swift: I offer that in evidence.

A. The painting amounting to $48, by a painter by the name of Frank Korn.

Q. This is his bill, $48, receipted? A. Yes, sir. 10

Mr. Swift: We offer that in evidence.

A. A metal ceiling, which had to be put in place also where the bar formerly stood was done by the Elizabeth Cornice Works, amounting to $48.40. Receipted bills.

Mr. Swift: Two bills, one dated May 27th, 1916, and the other June 5th, 1916, of the Elizabeth Cornice Works, the first bill being for $34.40, and the second for $14. They are offered in evidence. 20

A. Then the plumbing work, there were two toilets and a urinal in the place, and Mr. Cashmere naturally in his place of business at the present time didn't need two toilets and the urinal, he wanted that for a workshop, and we had to tear them out. The plumbing bill shows it, $19.10.

Q. That is for disconnecting them? A. Disconnecting them and tearing them out. In addition to other work during the month. 30

Mr. Swift: Items in bill of W. Milenski totaling $19.10 offered in evidence.

A. And here is another bill which later on we were compelled to do by Mr. Cashmere, of course, he could not receive an insurance on his place of business as a jeweler, we had to close up the cellar 40

door from the outside by a large flagging to make it burglar proof, and it cost $12.30.

Mr. Swift: Well, we can strike that out from the minutes. It is not alleged in the declaration.

10 The Court: Eliminate that.

Q. Do you know how long, up to what period Mr. Weber paid the rent for the premises 214 Broad Street? A. Including October, 1915.

Cross-examination by Mr. Wilson:

Q. Mr. Loehrs, what time of the day was it that you say Mr. Weber and Mr. Stamler and you were 20 at the brewery on this day? A. In the morning.

Q. About what time in the morning, do you remember? A. I don't know exactly. I presume about around eleven o'clock.

Q. And you say at that time that Mr. Weber gave his check to you for $100, which was the payment of the rent for October? A. Not to me; no, sir.

Q. Well, while you were there? A. Gave it to Mr. Stamler.

30 Q. And that paid the October rent? A. Yes, sir.

Q. You are sure of that, are you? A. Well, it must have been for October rent, because my books only show one payment.

Q. Did you ever get any rent for any other months from Mr. Weber? A. Personally?

Q. Yes. A. Yes, sir.

Q. Within that year? A. Yes.

Q. The rent for Elizabeth Avenue was generally

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sent in by mail, wasn't it? A. Sent by mail either the first or second of the month.

Q. That was the general custom? A. Yes, sir.

Q. And the other custom was, the rent for 214 Broad Street was collected by Mr. McGurn, who was your agent? A. Yes, usually.

Q. Didn't Mr. McGurn collect this rent for October? A. Mr. McGurn turned it in later on, yes.

Q. What is that? That is not the question I asked you. Didn't he collect this one hundred dollar check from Mr. Weber in his place on Broad Street? A. He could not.

Q. Well, you say no? A. I say no. Certainly not.

Q. When you and Mr. Stamler and Mr. Weber were in there in the brewery in the office there you say Mr. Stamler went upstairs? A. Yes, sir.

Q. And then he came down and reported that the General had said something? A. He reported the General said all right, he is satisfied to take your word for it.

Q. That is, you don't know what the General told Mr. Stamler upstairs, do you? A. I do not.

Q. You don't know what Stamler said to the General upstairs, do you? A. No, sir.

Q. And Mr. Stamler came downstairs and said something? A. Said just the very words that I said.

Q. You didn't think it worth while to take Mr. Weber upstairs, did you? A. Personally I had absolutely nothing to do with it.

Q. And the General didn't think enough of it to come downstairs?

Mr. Swift: I object to the question, asking this witness what he thought.

The Court: The General speaks for himself.

Q. The General didn't come downstairs and have a talk with Mr. Weber, did he? A. He did not.

Q. And Mr. Weber didn't go upstairs and talk with the General? A. He did not.

Q. So that any arrangement made was made by you and Mr. Stamler with Weber downstairs? A. Not with me and Mr. Stamler.

Q. I understand. While you were present? A. It was at my desk in my office where this whole conversation took place, and I was a compulsory witness.

Q. What is that? A. Being there at the time.

Q. Of course, you were in the office. The question of the Glazer lease came up, didn't it? A. Why, in their conversation; yes, sir.

Q. And you didn't know what Glazer leased was, did you? A. What it was? Yes, sir.

Q. Which Glazer leased? A. I knew what it was, yes.

Q. You knew that Mr. Glazer wasn't the owner of the property at this time, didn't you? A. I did.

Q. You knew that Mr. Edward J. Butler was the owner of the property? A. Well——

Q. The deed was in his name, wasn't it? A. I don't know whose name the deed was in.

Q. You knew Mr. Butler was the owner of the property? A. I did not.

Q. Mr. Butler is an officer of the company too, isn't he? A. He is.

Q. And he is a brother-in-law of the General? A. He is not an officer of the company. He is a stockholder.

Q. He is employed by the company? A. Yes.

Q. On the same floor where your office is? A. Exactly.

Q. Mr. Butler wasn't called into this conversation, was he? A. No, sir.

Q. Did Mr. Stamler say anything to Mr. Weber about Mr. Butler being the owner? A. Not as I remember. In fact, he didn't mention anybody's name as being the owner. 10

Q. He mentioned Glazer? A. Not to my knowledge.

Q. Well, he said something about the Glazer lease? A. No, he did not. He said the very words, Mr. Stamler was there, now, Weber, you know we went to all this trouble to secure this lease for that property for the saloon at 214 Broad Street. He never mentioned any name who was the owner, or who executed the lease. 20

Q. Secure a lease? A. He didn't mention. Of course, I suppose Mr. Stamler knew that Mr. Weber knew who the owner was. He didn't mention any names.

Q. Mr. Butler, you say no arrangement was made with him by Mr. Stamler when you were there on this day? A. No.

Q. And he wasn't called into the conversation at all? A. No, he was not. 30

Q. Didn't you know that Butler was the owner of the property on 214 Broad Street? A. I did not. I only knew that Mr. Glazer was the owner by sending him the monthly checks for the rent. Therefore I took for granted that Mr. Glazer was the owner, because he received the check for the rent for 214 Broad Street right along.

Q. He received the check rents up until October, Glazer did, did he? A. At all times. At the present time. 40

Q. What is that? A. At all times.

Q. Up to the present time, too? A. Yes, sir.

Mr. Swift: From the brewery.

Q. From the brewery? A. Yes, sir.

10 Q. Then Mr. Butler does not get the checks at all from the brewery, does he? A. He does not.

Q. You have heard to-day what has been said about Butler being the owner, haven't you?

Mr. Swift: I object. Not cross-examination.

The Court: I will overrule the question.

Q. And Jacob Glazer is the man that gets the

20 checks? A. He does.

Q. And Jacob Glazer is the man you say that you have the lease from now, is that so, the brewery? A. Well, I suppose it is, because he gets the check, and he must have been the one executes the lease. He is the one gets the check from us. We wouldn't pay a check to him if he wasn't the one gave us the lease.

Q. What lease do you refer to when you say you wouldn't pay him the check? A. 214 Broad Street,

30 where this whole conversation is about.

Q. You say those bills in there, did you see this work done? A. Yes, sir. Supervised it.

Q. The floor in there, did this building need a new floor? A. The flooring had to be replaced by tearing out the bar, and underneath the bar, naturally, the flooring was rotted by the wet because of drippings from the bar, and the floor, therefore, had to be renewed.

Q. That would have had to be done anyway? A.

40 Not if the bar remained there.

Q. Why not? A. Because the bar—the space the bar takes up would not be exposed unless you removed the bar.

Q. If the building had continued for the purpose of a saloon, then you would not have had to make this? A. We would not have had to put in a new floor. 10

Q. And not any repairs at all? A. No.

Q. Putting in a new window was merely to suit the fancy of the new tenant? A. The window previously was not suited for a jewelry store. It was suited for a saloon.

Q. You put in the new window because you thought it would be more suitable for a jewelry store? A. Well, the man required it. Demanded it. Otherwise he would not take the store. 20

Mr. Wilson: That is all.

Mr. Swift: A question I overlooked.

Redirect examination by Mr. Swift:

Q. Do you know whether or not a "To let" sign had been placed in the window, or windows, of this place some time previous to it being rented to the present tenant? A. I don't recall whether it was.

Q. What? A. I don't recall whether there was or not. 30

Mr. Swift: That is all. We close.

The Court: With reference to the expenditure of these sums for putting the building in condition for another tenant: The lease had three years to run, then, of course, the duty of the landlord was to minimize the damages as much as possible, and if the only way that he could save three years' 40

rent was by changing the premises, then, of course, he had a right to do it. Suppose, on the other hand, it is construed as a yearly tenancy, then what have you to say as to that?

10 Mr. Stamler: If it was a yearly tenancy and it still was necessary to put these repairs in in order to procure a tenant, which would not exceed the year's rent, that sum might become the damage. In other words, the rent would have been twelve hundred dollars and if we only——

The Court: It was not a whole year's rent due.

Mr. Stamler: No. There would have been

20 due, if we would have stayed there, we would have been entitled to——

The Court: Rent up to when?

Mr. Stamler: Up to July.

The Court: He left in November. He paid October's rent, didn't he?

Mr. Stamler: Yes, sir.

The Court: You had seven months.

Mr. Stamler: We still had no proper notice. Assuming that they gave no proper no-

30 tice three months prior to July 27th.

The Court: Supposing he abandoned the premises before the first of November and then you found you had to get a tenant, you had seven months still to go, which meant seven hundred dollars.

Mr. Stamler: Yes.

The Court: Of course, if there was no changing necessary, you would have been entitled to seven hundred dollars. Now,

40 was it your duty to accept the seven hun-

dred dollars as the full measure of damages, or how much of the three hundred and eighty dollars could you spend?

Mr. Stamler: If he only had seven months to stay we could not get any more than seven hundred dollars, if we spent one thousand to remodel it, because there had been no duty on his part to procure a tenant for us for a longer period of time. We do not claim that. But if the agreement, however, was for a period of three years——

The Court: Yes, my mind is clear about that.

Mr. Stamler: We have framed our whole case on that theory.

The Court: I wanted to get your thought. That would be for the jury to determine whether there was a new lease. If I take the other view as well, then you agree with the Court that then the measure of damages would be the seven months' rent, if it only had seven to run?

Mr. Stamler: It had longer than seven months to run. It had to run to July, and that terminated the first of May, didn't it? Then we had June and July, which made two months more.

The Court: Yes, but you got a tenant.

Mr. Stamler: Yes, but in order to get that tenant for those two months even, we were obliged to spend money.

The Court: How much could you spend?

Mr. Stamler: Not exceeding the two hundred dollars, of course. I agree with the Court on that point that our damage in case your Honor determines that we are entitled

to recover under the old agreement, we cannot, under any event, recover more than nine hundred dollars.

MOTION FOR NONSUIT.

10 Mr. Stein: Before proceeding with the defense I desire to make a motion for a nonsuit upon the ground that the proof thus far made by the plaintiff is to the effect that there was originally between the parties an agreement in writing which determined the tenancy existing between them to be a monthly tenancy. The agreement I refer to is the one dated the 9th day of June, 1910, between Weber, of the first part, 20 and this company, of the second part. At that time it appears that the plaintiff had a lease with Glazer, under the proof in the case.

The Court: What do you do with the subsequent testimony, Mr. Stein, that there was a verbal agreement, good under the statute?

Mr. Stein: I am coming to that in a moment, sir. Which lease terminated, on the testimony of the plaintiff, on April 30th, 30 1914. A suit was brought for possession in the District Court by Glazer against the company, under the proof made by them. In the meantime, pending this suit, and the lease having been terminated, under their proof, there could be nothing existing but a monthly tenancy. Weber could not, under any circumstances in law obtain a greater estate in these premises than the company itself had, at no time. Now, at

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the time this notice was given by Weber, it is our contention, namely, September 24th, that the lease between Glazer and the company had expired, and a suit for possession was pending, and it was given under the original understanding, which was in writing, to the effect that the tenancy was to be a monthly tenancy. The notice read that he would deliver possession on the first day of November, 1915. At that time the plaintiff had no lease, and no title to the premises under the proof thus far made. In that situation, as I understand the plaintiff's case, there was an endeavor made on the part of the company, through counsel, whom the plaintiff claims acted as its agent, to make a verbal lease for three years. Unless the plaintiff has shown in this case thus far that at that time it had an estate for three years or more, no verbal lease could be made for any such period. And it does not appear in the case that any such estate was then the property of the plaintiff. Therefore——

The Court: Why do you say that? I can rent you a property, couldn't I, for three years, that I had no title to at all, so long as I managed to get the title in time to deliver it to you?

Mr. Stein: My understanding is that if you subsequently got the title that would be all right, but there is no proof in this case that there was title at the time, or acquired subsequently.

The Court: Yes, the testimony is that the

brewery has paid rent to Mr. Glazer ever since.

Mr. Stein: Paid rent by the month.

The Court: No.

Mr. Stein: If not by the month, simply paid rent, but there is no testimony before this Court that at that time, or after that, when they tried to make this verbal lease, that the company ever acquired an estate in that property which would permit them to make any such lease.

The Court: The landlord never disputed that right to possession, and beyond that, the testimony is, of course, subject to contradiction, that the whole arrangement was made with Mr. Weber's consent and knowledge and privity. The getting of a new lease, the managing to get Mr. Fink out of the place.

Mr. Stein: The testimony is that Mr. Fink acquired a lease in some way with Glazer, and that presumption, which would be terminated in case the title changed——

The Court: Your client, Mr. Stein, recognized his landlord's right by giving notice that he was going to quit.

Mr. Stein: A monthly notice. A monthly tenancy.

The Court: Recognizing the fact that he had the necessary title would be to give him notice.

Mr. Stein: He could not do anything different.

The Court: If your contention is correct that the brewery had never had any estate of any kind, therefore——

Mr. Stein: I do not contend that.

The Court (continuing): ——therefore the tenant was relieved, of course, he did not have to even give notice.

Mr. Stein: I make no such contention that the brewery had no title. I make the contention that the brewery had not sufficient title at that time to make a lease verbally for three years. My contention is that if there was anything at that time it was simply a monthly tenancy. That is, paying the rent monthly, without any term expressed. After Mr. Fink did move, it went——

The Court: Does it lie in your mouth to make that objection? Is not that an objection which the landlord of the brewery company may raise, but not you?

Mr. Stein: I make objection on behalf of the defendant in this case that this verbal lease they speak of for three years could not have been made; of course, I understand they swear it was made; it could not have been made, under their own proof. They had no such right. If they hadn't a term of three years to give, they couldn't give it. Further, in their own case there is a notice which is produced and made part of their case, served on July 15th, 1914, and signed by Edward J. Butler, as landlord, to Fink. Which further strengthens the contention that at that time their proof to the effect that at that time, in order to get control of the premises, they had to give Mr. Fink a three months' notice under an arrangement which he had with Glazer. In other words, at the very time when they

claimed, in the month of October, to have made a verbal lease for three years with this defendant, they did not have any kind of a tenancy, under their own proof of this notice with Fink, or with anybody else.

10 The Court: I understood Mr. Stamler to testify that he had secured a release from Mr. Fink before he made a new lease with Weber.

Mr. Stein: I do not so understand it. I understood the testimony to be that Mr. Stamler recognized the fact that the only way he could clear this title and get possession of the premises for the company was to comply with the provision in the lease be-
20 tween Glazer and Fink, which required three months' notice to Fink.

The Court: Yes, but that the brewery would not obligate itself until they secured the release, and then having secured Fink's release—you see they gave notice, as I understand it, and then they managed to secure Fink's release, irrespective of the notice. Then having secured it they were ready to make a lease with Mr. Weber.

30 Mr. Stein: Yes, but the testimony clearly is that at that time Mr. Butler was the landlord, and there is no testimony of any lease between Butler and the brewery. Now, my contention is that under those circumstances the company could not make a lease for any premises which they themselves hadn't any estate in. And it don't appear they had any, unless it be a monthly tenancy. I hope I have made myself clear, so as to
40 get the objection of the record properly.

The Court: Yes. I will deny the motion and allow an exception. Exception allowed —sealed accordingly.

Judge.

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JOHN F. KENAH, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct examination by Mr. Wilson:

Q. Mr. Kenah, you are the city clerk of the City of Elizabeth? A. Yes, sir.

Q. And have control of the records of the City of Elizabeth? A. Yes, sir. 20

Q. By virtue of your office of city clerk you are also clerk of the board of excise? A. Yes, sir.

Q. And you were such in 1915? A. Yes, sir.

Q. And are now? A. Yes, sir.

Q. Do you remember whether or not application was made for a license for 214 Broad Street by one Fred Weber in June of this year? A. 1915, July 3d.

Q. I mean July, 1915? A. Yes, sir. 30

Q. And it was granted on July 13th, 1915, is that so? A. That is correct.

Mr. Wilson: I offer that in evidence. This is the application.

Q. To commence when, Mr. Kenah? A. July 25th, 1916, date of expiration.

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By Mr. Swift:

Q. To begin on the 26th and end on the 25th, is that the idea? A. Begin on the 25th and end on the 25th.

10 *By Mr. Wilson:*

Q. Will you kindly look at the paper I show you, called an affidavit, and state if it was filed with you or not? A. Yes, sir.

Q. And can you tell about the date? A. November 23d, 1915.

Mr. Wilson: Notice to Fred Weber——

Mr. Swift: I object to reading any portion of the paper in the record. If it is offered in evidence we want to object to it.

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Mr. Wilson: I offer it in evidence.

Mr. Swift: I object to it on the ground that it has no——

The Court: What is this?

Mr. Wilson: I was just going to state what it was. It is a paper directed to Fred Weber, dated in November, and signed by Scanlon and Butler, Scanlon, the incoming tenant, and Edward J. Butler, as owner of the premises, desiring him to surrender up that saloon to them.

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The Court: At what time?

Mr. Wilson: November 11th, 1915.

The Court: You have no objection to that, have you? Your claim is that you tried to minimize the damage by getting somebody else?

Mr. Swift: This opens another question

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entirely. I presume this is an attempt to prove their claim for damages for an alleged malicious interference with the board of excise, to induce the board of excise to refuse the license, or transfer of the license from this party down on Broad Street to Elizabeth Avenue. I cannot see that it could be material in any other aspect of the case. 10

The Court: Is that the way you offer it?

Mr. Wilson: No. That may be one of the purposes, but the other purpose is this: It is a demand made by Mr. Butler, who claims to be the record owner of the premises.

Mr. Swift: Well, he was. The evidence shows that. 20

Mr. Wilson: And also the notice is signed by Edward J. Butler, record owner, and the person having control and management of the premises herein described. It is contradicting General Collins, and what Mr. Stamler may say, that the Peter Breidt Brewery, at the time, in November, when they make their claim that they were the owner, that Mr. Butler, the record owner of the property, made a demand on Mr. Weber for the very premises that they swear they had the possession and control of, when he swears that he is the record owner and has the possession and control of the same premises. 30

Mr. Swift: This is a matter before the board of excise of the City of Elizabeth.

Mr. Wilson: I will prove it in another way, too.

Mr. Swift: In which the plaintiff in this 40

case is in no wise connected. I submit any matter pending before them, to which the Peter Breidt City Brewing Company was not a party, cannot prejudice them in this case. No relevancy to it, no matter what else somebody else may have claimed with reference to their ownership of the property. In fact, it does not dispute anything here, because it is in evidence here that Mr. Butler was the record owner of the property.

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The Court: Yes. I will overrule it.

Mr. Wilson: I except to your Honor's ruling. Exception allowed—sealed accordingly.

Judge.

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The Court: Claim made by a third party, I do not see how that affects the situation. Suppose I had gone to Mr. Weber and said, I own this property, could that be offered in evidence?

Mr. Wilson: No, it could not be. You are not the brother-in-law of General Collins. You are not employed in the brewery, and one of the stockholders. Mr. Butler may have been a dummy for this very purpose, to throw dust in the eyes, and confuse the whole situation, but there it is. Perhaps I do not make myself clear. I want to show I have a right, for the purpose of contradicting what has been said before, to show that Butler was the owner, and the one that had absolute control of the premises. That he entered into an agreement——

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The Court: Yes, but Mr. Wilson, his statement—the statement of a third party made to somebody else, another third party, does

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not contradict the testimony that has been offered. If you brought Mr. Butler here, Mr. Butler could testify that he had given notice, put it on record. But a statement made by a third party to a third party is not contradiction of direct testimony.

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Mr. Wilson: I know, but this is a statement made by Mr. Butler.

The Court: He might have said anything, but how does that bind either one of you two to it?

Mr. Wilson: There is another point here: They claim rent from us by virtue of having control and possession of those premises.

The Court: You cannot deny——

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Mr. Wilson: I understand.

The Court: You do not claim you owed the rent to Butler, do you?

Mr. Wilson: No. But this is the point about the thing: Butler claims that he is the owner.

The Court: He may have claimed that to some third party at some time, but he never made the claim to you, apparently. But even if he did, if it is offered for the purpose of contradiction, it does not contradict testimony given here.

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Mr. Swift: It is already admitted that this relationship of landlord and tenant existed beween this plaintiff. It is not in the mouth of the defendant to deny the landlord's title, no matter what somebody else may have claimed.

Mr. Wilson: I do not know how to put this shortly. I offer a notice to Fred Weber,

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dated November 15th, 1915, and signed by Edward J. Butler, being the record owner, and the person having control and management of the premises therein described, referring to 214 Broad Street, sometimes called 214 Morris Avenue.

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The Court: The purpose of which is what? Offered for the purpose of contradicting what has been testified here before?

Mr. Wilson: Yes. As affecting the credibility of the witnesses heretofore sworn on the stand, who testified with relation to this lease.

Mr. Swift: To which we object as incompetent.

The Court: It will be overruled.

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Mr. Wilson: There are two in here, and I want to get both of them in. And a similar notice directed to Mr. Weber, dated November 11th, 1915, and signed by William J. Scanlon, as tenant, and Edward J. Butler, as record owner.

Mr. Swift: Same objection.

The Court: Is that the same identical notice, except signed by somebody else?

Mr. Wilson: No, it is a different notice.

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The Court: Let me see what it is. Do you object to these two notices?

Mr. Swift: Yes.

The Court: I understand they are exactly what your contention is, namely, that you tried to get another tenant, and made a conditional agreement, and in accordance with that conditional agreement you tried to get your tenant, and had him transfer it under the act of '91.

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Mr. Stamler: I know it, but we do not want to confuse the issue before the jury, and, therefore, we object to it.

Mr. Swift: While it does in a sense, as your Honor suggests, carry out the idea that we tried to get another tenant under proceedings under that act, in which Mr. Scanlon figured as the prospective purchaser and lessee.

The Court: I will admit these papers and instruct the jury at this time that so far as the statement of Mr. Butler that he is the record owner of the property is concerned, you will have to take that statement of his in connection with the sworn testimony in this case. Statement made by Mr. Butler, the third person, in this notice. I will allow those two to go in evidence.

Mr. Swift: I understand your Honor reverses yourself on the admission as to the other notice, too? You are now admitting all papers?

The Court: One signed by Butler and the other by Scanlon, in which they say that Mr. Weber having abandoned the premises, under the act of 1891, they ask him to consent to the transfer of the license.

Mr. Swift: Your Honor will allow us an exception?

The Court: Yes.

Exception allowed—sealed accordingly.

Judge.

(Notice entered in evidence and marked Exhibit D 1.)

(Notice entered in evidence and marked Exhibit D 2.)

By Mr. Wilson:

Q. I show you a paper called "notice and affidavit" in the matter of the revocation of the license of the premises known as 214 Broad Street, also known as 214 Morris Avenue, and ask if those were filed with you? A. Yes, sir.

Q. On January 20th, 1916? A. January 25th, 1916.

Mr. Wilson: I offer those in evidence.

Mr. Swift: I object to them for the reasons stated heretofore, that it is in a collateral matter entirely, in which the plaintiff in this case was not concerned or mentioned, and cannot be introduced to prejudice the plaintiff.

The Court: I will admit them. They seem to be consistent with your claim, as I understand it.

Mr. Swift: We realize that exhibit, we realize it opens a long discussion about matters we think really not relevant to the main issue in this case, whether this man lost this property, and if so, whether he owes the rent, and that is all there is to that. Mr. Stamler just suggested, it seems to me if they are offered for the purpose of contradiction they are incompetent, for the reason they simply affirm our position, rather than contradict it.

The Court: Yes. I do not think they are admissible for that reason.

Mr. Swift: Does counsel offer them for the reason they are trying to prove an interference with the Board——

Mr. Wilson: That is what I am attempting to prove.

Mr. Swift: A while ago you said that wasn't the reason.

Mr. Wilson: I said it was one of the reasons. We may get them in another way.

Mr. Swift: Prays exception.

The Court: Yes.

Exception allowed—sealed accordingly. 10

Judge.

(Paper entered in evidence and marked Exhibit D 3.)

PATRICK J. MCGURN, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

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Direct examination by Mr. Wilson:

Q. Mr. McGurn, you are a resident of Elizabeth? A. Yes, sir.

Q. You are employed by Breidt's Brewery? A. Yes, sir.

Q. And in what capacity? A. Collector of accounts and of rents.

Q. You are the agent for the collection of rents, I understand? A. Collection of rents and disposition of tenants. 30

Q. And also, I suppose, letting of property? A. Renting of property.

Q. Do you remember 214 Morris Avenue? A. Yes, sir.

Q. That was where Fred Weber formerly was? A. Yes, sir.

Q. Do you remember the fact of his being there? A. Yes, sir.

Q. What have you to say as to whether you col- 40

lected rent, or not, there? You did, didn't you? A. Yes, sir.

Q. What was your habit of collecting the rent, monthly, or weekly, or how? A. At the convenience of Mr. Weber.

10 Q. That was generally every month, wasn't it? A. Yes, sir.

Q. How was the rent paid to you, in money or in check, Mr. McGurn? A. Checks.

Q. When payments were made you gave a receipt, didn't you? A. Yes, sir.

Q. Do you remember the payment of rent October 23d, 1914? Just that fact? A. Yes.

Q. Your custom was what, as to getting the rent? What day of the week did you go there? A. Fridays.

20 Q. Generally Fridays? A. Generally Fridays.

Q. Do you remember that October 23d, 1914, was on a Friday? A. Yes, sir.

Mr. Swift: Was it?

Mr. Wilson: It was.

Q. Do you remember the occasion of collecting this rent in 1914? A. No, sir.

Q. What time of the day did you go there to col-
30 lect your rent, Mr. McGurn? A. No particular time.

Q. Generally in the morning? A. Generally in the afternoon.

Q. On this 23d of October, 1914, do you remember what time of the day you went to get the rent? A. No, sir.

Q. But you got the rent that day, didn't you? A. I can't answer that. I can't remember.

Q. Will you kindly look at that check, a check
40 dated October 26th, 1914, to the Peter Breidt Brew-

ing Company, one hundred dollars, Fred Weber? A. Yes, sir.

Q. Do you know whether you got that check from Weber on the 23d? A. No, sir.

Q. Don't you remember on that occasion that he dated it on October 26th, which was the following Monday? A. No, sir. 10

Q. You don't know that? A. It is on the check. I don't know it any other way than seeing it there.

Q. If Mr. Weber should say that was a check for the October rent, would you be inclined to believe him, or not?

Mr. Swift: We object.

The Court: What is the purpose of all this, Mr. Wilson?

Mr. Wilson: This check we will show by Mr. Weber, and attempt to show by Mr. McGurn, was the check that was paid in Mr. Weber's house. 20

Mr. Swift: To contradict the statement that it was paid at the brewery, is that the idea?

Mr. Wilson: That is it.

Mr. Swift: And that he was paid for the other rent at the brewery?

Mr. Wilson: We are going to attempt to show what Mr. Stamler alleged took place at the brewery was not so. 30

(Question repeated by stenographer.)

Mr. Swift: I move to strike it out.

The Court: Yes. That will be overruled.

Q. Do you remember getting this check at the store, Mr. McGurn? A. No, sir.

Q. You remember getting the money for the month of October from Mr. Weber, didn't you? A. I know I wrote that receipt. 40

Q. And you know that you would not have written the receipt unless you got the money? A. No, sir.

Q. And you got that money from Mr. Weber on that day? A. I got the money.

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Q. And he always paid you in a check, didn't he? A. I always got—when Mr. Weber paid me, he paid me in a check.

Mr. Wilson: I offer the receipt in evidence, receipt dated October 23d, 1914, for one month's rent, beginning October 1st, 1914, and ending October 31st, 1914, for house number 214 Broad Street, Elizabeth.

(Receipt entered in evidence and marked Exhibit D 4.)

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Cross-examination by Mr. Swift:

Q. Mr. McGurn, do you know whether Mr. Weber ever paid any rent at the brewery? A. He may have.

Q. He may have paid this? Have you any recollection of his having paid any rent at the brewery, for which you afterwards gave him a receipt, or gave him a receipt at the same time at the brewery? A. I don't recall now.

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Q. You don't recall any such occasion? A. It is frequently done. I don't recall it in any particular instance.

Q. Do you mean it is frequently done in Mr. Weber's case, or in cases generally? A. Various cases.

Redirect examination by Mr. Wilson:

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Q. You never remember Mr. Weber going to the

brewery to pay you the rent, do you? A. If they paid in the brewery they wouldn't pay me.

Q. And, therefore, they couldn't get a receipt from you? You never gave a receipt unless you got the money? They would get a receipt from me on my next visit. Or by mail. 10

WILLIAM J. SCANLAN, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct examination by Mr. Wilson:

Q. Mr. Scanlan, you are a resident of where? A. Elizabeth. 20

Q. And your place of business is in Newark now, I believe? A. Newark; yes, sir.

Q. Do you know Mr. Edward Butler? A. Yes, sir.

Q. At one time you were the owner of a saloon on the corner of Grand and Broad Street, weren't you? A. Yes, sir.

Q. Previous to November, 1915? A. Yes, sir.

Q. Will you kindly look at this paper, "William J. Scanlan, tenant"? Whose signature is that? A. It is mine. 30

Mr. Swift: Are those the papers that have been offered in evidence?

Mr. Wilson: Yes.

Q. Edward J. Butler, that is Mr. Butler connected with the brewery, isn't it? A. Yes, sir.

Q. You made an application for the license at 214 Broad Street, didn't you? A. Yes, sir. 40

Q. To the Board of Excise of the City of Elizabeth? A. Yes, sir.

Q. That was made when, Mr. Scanlan? A. I think in October. I am not sure.

Q. October, 1914? A. No, sir.

10 Q. I should say 1915? A. Yes, sir.

Q. And Mr. Weber was still in possession of 214 Broad Street, wasn't he? A. No, sir. I didn't believe so at the time I made the application.

Q. Well, it was an application for a license for the same place Mr. Weber had, isn't that so? A. Well; yes, sir.

Q. And you made your application for a license before Mr. Weber had moved out, isn't that so? A. Of course, I don't know nothing about that. The 20 owner of the property gave me a lease, at least, agreed to give me a lease, for a certain amount of money, and I agreed to take the place on a lease if he would give me a transfer of Weber's license to myself.

Q. That is, if he would get a transfer of the license held by Mr. Weber, isn't that so? A. Yes, sir.

Q. You made an agreement to become the tenant of Edward J. Butler, who claimed to be the owner, 30 isn't that so? A. I don't know whether he is the owner. Through Mr. Stamler and my lawyer they drew up an agreement to give me a lease. Butler was supposed to be the owner.

Mr. Swift: The whole transaction then, as I understand, appears by written agreement. I submit then that the agreement speaks for itself.

The Court: I believe Mr. Stamler produced the agreement this morning, and it is in evi- 40 dence.

Mr. Stamler: Yes.

Mr. Swift: That is the one they are talking about.

Q. You agreed with Mr. Butler to become the tenant of 214 Broad Street, didn't you?

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Mr. Swift: I object. I understand whatever arrangement was made with reference to the subject matter was all incorporated in a written agreement, and I object on the ground the agreement speaks for itself.

The Court: Let us see the agreement.

By the Court:

Q. Was this agreement in writing signed by you? 20
A. Why, I don't know. I guess that is all right.

Q. Is that the agreement that was made? A. I believe so.

Q. Referring to exhibit what? A. It has my signature on it.

The Court: Of course, that controls, Mr. Wilson.

Mr. Wilson: Yes. I want to show that in pursuance of that agreement, what he at- 30
tempted to do.

The Court: That was Exhibit P 8.

Mr. Wilson: This agreement was made between Butler——

The Court: Agreement was made between the Brewery Company and Mr. Scanlan. It may have been negotiated by Mr. Butler, but apparently consummated in writing by the Brewery Company.

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Mr. Wilson: This agrement alleges to be made on the 8th of November, 1915, between the Peter Breidt Brewing Company. On the 11th of November, three days thereafter, Mr. Scanlan says he made a written agreement with the Brewing Company for these particular premises, in a writing that he serves on Fred Weber, he says——

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The Court: Who, Scanlan?

Mr. Wilson: Scanlan and Butler. He says this: "By virtue of an agreement made with Edward J. Butler"——

The Court: Suppose he does say so? How does that affect this case at all?

Mr. Wilson: It strikes me it affects it this way——

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The Court: You put a man on as your witness, and then you proceed to contradict him. Where does that get you to?

Mr. Wilson: No, I don't. I just want to show this: that he made two agreements, one with the Peter Breidt Brewing Company on November 8th, in which they agreed to do something for him.

The Court: Ask him whether he made more than one agreement.

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By the Court:

Q. Did you make more than one agreement to lease this place? A. No, sir. One agreement.

Q. And that is the one you have just seen, in writing? A. Yes, sir.

The Court: Mr. Wilson, I think you are confusing the matter. As I understand it,

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when this man Fink got the lease to the property, then, of course, they had to devise a way to get him out of there, for whosever benefit it was. And then there was a deed made from Glazer to Butler, and then a lease made from Butler and Glazer to the Brewing Company. At least, that was what was attempted to be made. In the meantime Mr. Fink gives a release, so that the intervention of the dummy, Butler, apparently, for the purpose of getting rid of Fink, was no longer necessary. Then the lease is signed by Glazer alone, which has been introduced in evidence here, and although not signed by the Brewing Company, the testimony is that they have been operating under it. So it seems to me I think that must be what is confusing about Butler. Butler is not a material man in the case. What difference does that make?

Mr. Wilson: They do take these steps against Fink, in a line with the whole conduct in the whole matter.

The Court: You cannot complain of anything Fink consented to, apparently. You have no right to complain about Fink and his conduct. You are dealing with Mr. Weber and the Brewery.

Mr. Wilson: That is what I want to prove. I want to show by Scanlan, this witness, that he made a lease on November 8th with the Peter Breidt Brewing Company, and on November 11th, that by a notice served on Fred Weber, he said that he was the tenant of these premises, 214 Broad Street, rented from one Edward J. Butler.

The Court: Suppose you concede that, what is the effect of it afterward?

Mr. Wilson: It is for the effect it may have on the jury, what the plaintiff says in this cause with regard to the whole proceedings, is correct or not. As affecting the credibility of the Peter Breidt Brewing Company, when they say one moment we are the owners and then when it is necessary to get Weber out in another way, Butler is the owner, the brother-in-law of the General. That is the purpose. As affecting the credibility of the plaintiff in this cause.

The Court: Any statement Mr. Scanlan made could not affect it at all.

Mr. Wilson: Then there is another purpose: At this time Mr. Scanlan swears that by an alleged agreement made with Mr. Weber October 23d they had a lease, the Peter Breidt Brewery Company had a lease with Mr. Weber for the term of three years. I want to show by Mr. Scanlan that on November 8th, several days afterward, they made the agreement with the owner of the same property——

Mr. Stamler: That is the next year, Mr. Wilson. You are a year ahead of us, that is all.

Q. When did you make an agreement with the Peter Breidt Brewing Company for the lease of these premises? A. The date?

Q. Yes? A. I couldn't tell you.

Q. With whom did you make the lease? A. Mr. Stamler and General Collins.

Q. Where? A. Why, we talked about it at the

brewery, and the lease was drawn up, I believe, in Stamler's office, given to my lawyer, Judge David, and he showed it to me and I was satisfied.

Mr. Wilson: That is all.
Mr. Swift: That is all. 10

EDWARD J. BUTLER, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct examination by Mr. Wilson:

Q. Mr. Butler, you are a resident of Elizabeth? A. Yes, sir. 20

Q. You are connected with the Peter Breidt Brewing Company? A. Yes, sir.

Q. You are an officer, aren't you? A. No, sir.

Q. What particular office do you hold? You are a stockholder? A. Yes, sir.

Q. What part of the business do you manage? A. Superintendent.

Q. Superintendent of what? A. Superintendent of the outside part. That is, the stable, and garage and everything. Outside of the buildings. 30

Q. Do you know Jacob Glazer? A. Yes, sir.

Q. Will you kindly look at this paper? Are you the Edward J. Butler mentioned there? A. Yes, sir; I guess so.

Q. This is with reference to the ownership of 214 Broad street, isn't it? A. So I understand.

Q. Don't you know? A. I don't know anything about it.

Q. You don't know anything at all about it? A. 40

Not owning it? If I owned it I don't know anything about it.

Q. If you owned it you don't know anything about it? A. No, sir.

Q. Didn't you execute a mortgage on this property? A. Me?

Q. Yes. A. No, I didn't.

Q. Are you sure of that? A. I didn't, I say.

Q. You never made any lease of this property to anybody, did you? A. Why, no, I couldn't if I didn't own the building.

Q. Of course. And you never signed any lease with regard to this property, did you? A. Nothing to do with it. I might have signed some papers an attorney put in front of me. I don't know what they were. I thought they were all right if he put them there.

Q. I understand that, but you never signed any lease for this particular property to anybody at all, did you? A. I may have.

Q. Well, you don't remember? A. I didn't own the building. I don't know how I could sign it.

Q. Did you make any mortgage on this property on or about June 27th, 1914? A. Not as I know of.

Q. You know William J. Scanlan, don't you? A. Yes, sir.

Q. Do you remember having any talk with him in November 11th with reference to this property? A. No, I do not.

Q. You never made any agreement with Scanlan, did you, to rent this property to him? A. Did I make any agreement?

Q. Yes. A. No, sir.

Q. You never made any application, did you, for the transfer of any license of this property from Weber to Scanlan?

Mr. Swift: I submit——

The Court: I will allow the question.

Mr. Swift: I thought the papers would speak for themselves.

The Court: It is quite evident the witness says he signed whatever papers were put before him, and had no knowledge of what they were, and relied on Mr. Stamler. That seems to be the sum of it. 10

Q. That is your name, is it, Edward J. Butler? A. Yes, sir.

Q. Witness being shown notice to Fred Weber, dated November 11th, 1915. He says that is his signature. Did you see William J. Scanlan sign his name thereto? A. No, sir. 20

Q. Witness being shown affidavit dated 22d of November, 1915, is asked, is that your signature? A. Yes, sir.

Q. Witness' attention is called to the paragraph: "Deponent further shows that the said Fred Weber is and was a tenant of deponent in the premises in question," that is 214 Broad street. Isn't that so?

Mr. Swift: I object to that on the ground that it is contradicting his own witness. 30

The Court: Yes. I will overrule the question.

Mr. Stamler: That is all.

Mr. Stamler: That is all.

October 13th, 1916.

Fred Weber, the defendant, being duly sworn according to law on his oath, saith: 40

Direct examination by Mr. Wilson:

Q. Mr. Weber, you are a resident of what? A. Elizabeth.

Q. How long have you lived there? A. Forty-two years.

10 Q. Do you know where 214 Broad street, sometimes called Morris avenue, is? A. Yes, sir.

Q. Were you ever the owner of the property there? A. Yes, sir. Saloon.

Q. How long were you in that saloon? A. About six years.

Q. Under a lease from whom? A. No lease. A monthly tenant.

Mr. Swift: I object to his last answer and
20 move to strike it out, as his conclusion.

By the Court:

Q. You went in under this agreement made June, 1910? A. Yes, sir. Under one of those agreements to the brewery. Mr. Stein drew the papers.

The Court: That will be stricken out.

30 *By Mr. Wilson:*

Q. When did you first get your license, the first time? A. July 26th, 1910.

Q. And every succeeding year thereafter? A. Thereafter; yes, sir.

By the Court:

Q. And they ran for a year? A. One year; yes,
40 sir.

By Mr. Wilson:

Q. When did you take possession of the premises? A. Around September, I think. I don't know what was it, the first, or what.

Q. Your rent ran from when? A. From the first of the month to the thirty-first. 10

Q. First of what month? A. First of each month. Every month.

Q. The first month was when, September? A. September.

Q. 1910? A. Yes, sir.

Q. Did you see anybody when you first went there, before you went into possession? A. Before I went to take possession of the place?

Q. Yes. A. Yes, sir. I went over to the brewery and saw General Collins. 20

Q. When you went to the brewery did you make any arrangement with General Collins as to what your tenancy was?

Mr. Swift: When was this?

Mr. Wilson: Before he went in, in September, 1910.

Mr. Swift: I object on the ground that the agreement of the parties is in writing, and it speaks for itself. 30

The Court: It speaks a certain distance, however.

(Question repeated by stenographer.) A. Yes, sir.

Mr. Swift: This was prior, as I understand it, to the execution of a written agreement?

Mr. Wilson: No, it is after.

The Court: It is subsequently to it. 40

Q. Did you see General Collins? A. I did.

Q. Did you have a talk with him? A. Yes, sir.

Q. What was said at that conversation? A. Well, I took the place under conditions I was——

Mr. Swift: I object.

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A. What was said in regards to my place of business there?

Q. Yes. A. Well, he asked me to take the place. I didn't want the place.

The Court: This is after the agreement was signed you are asked, Mr. Weber. After the agreement in 1910, where the rent was agreed upon. After that.

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A. Well, yes. We agreed on this, that my rent would be one hundred dollars a month.

Q. Is this after the agreement was signed? A. No, sir; this is before the agreement was signed.

The Court: Do not tell that.

Q. You say that when you went in to pay your rent in September— A. What is that?

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Q. When you went in in September, after making this agreement, did you see General Collins? A. If I saw him after I went in?

Q. Yes. A. No. Before I went in I had the agreement with General Collins.

Q. You didn't get in until some time when? A. Later. Cleaned the place up. Might take two or three weeks to clean the place up. I couldn't just say. It was around September, either the last part of August, or September, I can't say exactly, and the first of the month my rent started off.

40

Q. Why did it start off on the first of the month, that is what I want to get at? A. Well, because I agreed to pay him from month to month.

Q. That is what I want to get at. A. I agreed to take from month to month. I didn't make no lease with him. That is the reason I had those papers drawn, to show that I was a monthly tenant, and that I had the privilege of selling the place. 10

The Court: Strike that out.

Q. What was said between you and General Collins when you went there?

Mr. Swift: When?

Mr. Wilson: In September.

Mr. Stamler: He testified he didn't see him in September. He saw him before making the contract. 20

The Court: About September, he said.

Q. Where did you pay your first rent? A. Why, I says around September.

Q. Where? A. In my place of business. Paid to Mr. McGurn in checks. I always paid Mr. McGurn by check. I paid my beer bill by check. I never went over to the brewery to pay a check for rent, nor beer bill. I paid—all my checks, rent and beer, was to be paid in my place of business. I never made it a business to pay it at the brewery at any time. 30

Q. After you had made this agreement of June, 1910, did you afterwards see General Collins? Did you go to see General Collins? A. I saw him before I went in the business, I tell you.

Q. I understand, that is in June? A. Yes.

40

Q. Between that and the time you got into your premises in September, did you see General Collins? A. I seen General Collins this way: When he told me about the place I went there——

10 The Court: He means after you made your agreement in June, and signed it, both of you, did you have a talk with General Collins after that; that is what Mr. Wilson wants to know.

A. Not as I know of.

Mr. Stamler: That is what he said before.

Q. When did you pay your first rent? A. It
20 must have been around September, first of September.

Q. To whom did you pay it? A. Mr. McGurn, collector for the brewery.

Q. How did you pay it? A. I paid it by check.

Q. Weekly or monthly? A. Monthly.

Q. And how long did you pay it? A. Until I quit the place, until I got out. Until I sent notice.

Q. On October, you paid? A. Yes, sir.

30 Mr. Wilson: Paid in October, 1915.

Mr. Stamler: You say that. Not the witness.

Q. How did you fix on the payment of one hundred dollars a month?

Mr. Swift: For what?

Mr. Wilson: For the premises.

Mr. Swift: I object.

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A. Just for the store, the bottom floor.

The Court: At what time, Mr. Wilson?

Mr. Wilson: When he commenced to pay rent.

The Court: That had already been fixed by the agreement. 10

Mr. Wilson: I understand the agreement was there.

A. Before I went in the place I had the understanding that my rent would be one hundred dollars.

Mr. Swift: I object. No question before the Court.

The Court: One moment, Mr. Weber. Stricken out. 20

Q. Before you went to the premises 214 Broad Street did you have any agreement in regard to the payment of rent?

Mr. Swift: I object.

The Court: Question overruled.

A. Yes.

Q. After June, 1910, when this agreement was made, and before you went into the premises in September, as you say you did, was any agreement made with regard to the payment of rent? 30

Mr. Swift: I object. He has answered this question two or three times.

The Court: He has answered, but I will let him answer it once more.

A. Yes. 40

By the Court:

Q. With whom? A. With General Collins.

Q. You said a few moments ago you hadn't seen him and hadn't talked with him? A. First off I said I did, I went up and saw General Collins before
10 I took the business.

Q. Didn't you hear what Mr. Wilson asked you? A. No, I didn't.

The Court: That will be stricken out.

Q. He asked you after you signed the agreement in June whether you had any further agreement with General Collins, between that time and the time you went in? A. No. I had it before I went
20 in.

By Mr. Wilson:

Q. I show you a check for $100.00, marked Exhibit P 5, and ask you what that was used for? A. That check was used for the last month I was there, for the rent. That was made out——

Q. Wait a minute. I will ask you. Explain the check? A. This check was made out on Friday and was to be collected on Monday. That is, three
30 days later.

By the Court:

Q. That is the reason it is dated the 26th of October instead of the 23rd? A. Yes, sir. That was the way I always done the business. When he came on Friday I made it payable on Monday.

By Mr. Wilson:

40 Q. To whom was it paid? A. Mr. McGurn.

Q. When you paid it to him did he give you anything in return? A. Gave me a receipt.

Q. Look at this Exhibit D 4. What is that? A. Yes, sir; that is the receipt for the last month's rent of the place.

Q. Is it a receipt for the check? A. This is the check for that receipt you have got there. 10

Q. What time of the day was this paid, Mr. Weber? A. That was paid about half past ten in the morning.

Q. Half-past ten? A. Yes, sir.

Q. Where? A. In my place of business.

Q. Mr. McGurn came there? A. Mr. McGurn; yes, sir.

Q. How long did he stay when he got there? A. Well, about fifteen minutes. 20

Q. And went away about when? A. About quarter of eleven, around there.

Q. Mr. Stamler says that on October 23rd, in the morning, that you were in the Peter Breidt Brewing Company's place, when Harry Loehrs was there. Is that true or false? A. No, sir. That is false.

Q. Where were you that morning? A. In my place of business.

Q. Mr. Harry Loehrs says that on the 23rd of October, 1914, in the morning before eleven o'clock, that you and Mr. Stamler and himself were in the brewery offices. Is that true or false? A. No, sir. That is false. 30

Q. Mr. Stamler says——

The Court: Mr. Wilson, it is not proper to put your questions in that form. It is characterizing testimony as false, and that is a thing for a jury to do. Not the wit- 40

ness. He can state that he was not there, and that contradicts it. Not to characterize testimony as false.

Q. Mr. Stamler says the same thing——

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The Court: It is even wrong to repeat the testimony. You may ask this witness if he was there at a certain time, and if he says no, that contradicts the testimony.

Q. You say this check was given——

The Court: You may ask whether the check was given.

20 Q. Was this check given by you to Mr. Stamler, on the 23rd of October, at the brewery's office? A. I never give Mr. Stamler a check whatsoever.

Q. Was it given in the office that morning? A. No, sir. That was given in my place of business.

Q. Was a check for $125.00 for the rent of your property down on Elizabeth Avenue given to you by Harry Loehrs that morning? A. No, sir. It was sent to me by mail. I never got a check over at the brewery, only sent to me by mail, one single 30 time. If it was the 15th of the month, or the 2nd of the month, he sent me the check, and the last one I asked him for, I telephoned up and I said, please send me that check, I want to square up and I want to give you my rent that day, and that is how I come to give it on the 23rd.

By Mr. Swift:

Q. Who did you telephone to? A. Yes, sir; I 40 telephoned to Joe Knolte.

By Mr. Wilson:

Q. Was the check sent to you by Knolte, or not? A. By Joseph Knolte, by mail. I always received all checks by mail. Never went to the brewery for any.

Q. It is said by Mr. Stamler that when you were there on the 23rd that you made an oral lease for three years, from October following. Is that—— A. No, sir; never made a lease with Mr. Stamler at no time. Now, Mr. Stamler——

Q. I will ask you the question. Mr. Stamler says——

The Court: Do not repeat the testimony.

Q. Mr. Weber, something is said here with regard to a $250.00 check. Will you kindly explain about that? A. Yes, sir. I will. About pretty near the first of April, say about March 22nd or 23rd, somewheres around that, I went to Mr. Stamler's office, and I says to Mr. Stamler, I says, I see there is a notice on the top, up above Mr. Fink's office, in the window, that there was a hand pointing downstairs to the bottom floor and says, this store will be to let after April 1st. So I went over to Mr. Stamler and I said, Mr. Stamler, I said, so they have got a sign on it, what have I got to do, have I got to get out of here? If I do, I says, let me know and I will make preparation to get out. So he said, no, you stay there until you hear from me. So I says all right. Well, I didn't hear nothing from Mr. Stamler for about two weeks, or three weeks, somewheres around that, and in he come. He says, well, he says, everything is all right, he says, we fixed the lease. I says, is that so. He said, yes. So he said to me, he said, if you want to

come down to the brewery, he said, and bring $250.00 down there. I said, what for? I says—why, he says, to pay for the fixing of the lease. I said, no, sir, I will not. Well, he said, you will see, he said, if you don't, you will have to come down. I said, is that so, I won't. Well he said, we can take that license and bring it down in the Port where we can sell forty or fifty half barrels; it don't pay us to have it here. I said, you can? That license belongs to me and nobody else, I paid for that myself, I paid the city, I want to see you take it down. So he said to me going down, he said, we have got the power of attorney. I said, is that so. I said, you have got no power of attorney over me, understand that. I said, that is one thing you haven't got. He said, well, we will see, come over to the brewery. All right. I went over to the brewery and went upstairs with Mr. Stamler and went upstairs to General Collins' office. And Mr. General sat at the big desk in a chair, like this, swinging around, one of those big tables before him, and he says to me—General, he says, Mr. Weber is here, he says, and he ain't going to pay that $250.00. Well, he says, then if that is the case, John, go down there Monday morning and we will close the place up. Oh, I says, that is pretty good, going to close the place up. He says, yes. Well, I said, I suppose I will have to pay you $250.00 in the fix I am in now. So he says, well, now, John, he says, Mr. Weber is here, we will have him draw up a lease. I said, no you don't John, no lease for me. Yes, he said, we will draw up a lease. I said, no lease drawn up to me. Well, the General said, never mind, he said, Mr. Weber and I will settle that between ourselves later on. And that is all I ever heard from that day to this,

and not a word from anybody until I got into this trouble where I am at now. I thought everything was all right, but it turned out as it is. And then to make it good, Mr. Stamler will tell you, I come down the street here one day and met Mr. Stamler right out here at the court house, walking down the street with me he says, how about that stunt we pulled off up at your place? Well, I said, pretty good. I said, what stunt? Why, he said, that lease. Oh, I said, that is all right. He said, I was to get half of that and Morris kept it all, that is the $250.00 that I paid him. And that is all the conversation I ever had with Stamler from that day to this.

Q. Do you remember the notice being given? A. Sir?

Q. You got out of the premises on the first of November, didn't you? A. Yes, sir.

Q. Did you make any application afterward? A. I made application——

Q. Wait, now. Don't answer until the Court lets you. To have that license transferred from 214 Broad Street to 1000 Elizabeth Avenue? A. Yes, sir; I did.

Q. Was it transferred? A. No, sir. It was rejected by the Board.

Q. The Board of Excise? A. Yes, sir.

Q. Were you present at the meetings of the Board of Excise when it was rejected? A. I was present at every one.

Q. Could you tell, looking around, what other members were present there? A. Yes. Mr. Swift and Mr. Stamler.

Q. Well, who else? A. And yourself.

Q. Don't leave me out. What was the effect? Was your license transferred or not?

Mr. Swift: Do you mean the result?
The Court: He said it was not transferred.
Mr. Wilson: The record shows no.

Q. Do you know whether Mr. Stamler took any active interest before the Board of Excise?

10

Mr. Swift: I object to that question. The question, it seems to me, should be as to what was said and done.
The Court: Do you want to know whether he opposed it?

Q. What did Mr. Stamler do before the Board of Exise, if you know? A. Well, he got up and he opposed my license. He put in a remonstrance what he had, that paper. I don't mean to say remonstrance, but that paper he served me with, that notice to stop my license.

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Mr. Swift: This question releated, I thought, to your application for transfer, didn't it?
The Court: Yes.
Mr. Swift: Isn't the witness answering as to something else?
Mr. Wilson: No.
Mr. Swift: I think so.

30

Q. Notices were served on you with regard to the transfer, weren't they? A. Given that I should give my license up to Mr. Scanlon, and I told them no, I wouldn't do it. That the license belonged to me, and I said, I am going to see if I can't get it transferred. And consequently I couldn't get it transferred.

40

Q. And you were not successful at all, were you?

A. No, sir. The Board had nothing against me, but they wouldn't grant a license——

Mr. Swift: I object.

The Court: Strike that out.

Q. Mr. Weber, was the 214 Broad Street a profitable place of business? 10

Mr. Swift: I object.

The Court: I will overrule it, until we have some further proof, Mr. Wilson.

Mr. Wilson: What is that?

The Court: Unless there is some further proof sustaining your contention of a counterclaim, I will not take up that question. 20

Q. Do you know, Mr. Weber, why your license wasn't transferred by the Board of Excise?

Mr. Swift: I object.

The Court: I will overrule that.

A. That I couldn't say.

Mr. Swift: I object. 30

Q. When the matter was up before the Board of Excise do you know whether—who led the objection? A. Sir?

Q. Who was in the front at the time your application for a transfer—— A. Mr. Stamler and Mr. Swift.

Mr. Swift: For what do you mean? Do you mean the transfer of his license to 1000 Elizabeth Avenue?

Mr. Wilson: Yes. 40

By Mr. Swift:

Q. Did I take any part in the transferring of your license to Elizabeth Avenue? A. You fought against me.

Q. No, I didn't. It was on another matter. It was the application to transfer your license from you to Scanlon on Broad Street? A. You said you didn't.

Q. Then you didn't understand counsel's question. That is just what I am getting at.

By Mr. Wilson:

Q. Do you remember the occasion when your application was made for a license—the transfer of your license from 214 Broad Street to 1000 Elizabeth Avenue? A. Yes, sir.

Q. Do you remember that? A. Yes, sir.

Q. That matter came up before the Board of Excise? A. Yes, sir.

Q. Was that remonstrated against? A. Yes, sir; there was a remonstrance.

Q. By whom? Who opposed it particularly? A. The remonstrance?

Q. No. Who opposed the transfer of your license from 214 Broad Street to 1000 Elizabeth Avenue? Any lawyer? A. Well, all I know is Mr. Stamler.

Q. Well, that is what I want. Were you at that meeting when Mr. Stamler got up and opposed your license? A. Yes, sir; I was.

Mr. Stamler: You are saying something which is not so. You are getting your client to say a whole lot of yes.

Mr. Wilson: You were up there, I heard you say so, that you came down there as a private citizen.

The Court: Let us take the testimony.

Q. Were you at the meeting of the Board at the time your application for a transfer to 1000 Elizabeth Avenue was pending? A. Yes, sir.

Q. What was the result? A. Well, the result was, refused. 10

Q. Among others, who opposed your transfer? A. Well, that is to my——

By the Court:

Q. To the board? A. I had it transferred from myself to Mr. Wade, if that is what you are asking me, why, Mr. Stamler—I wasn't at the meeting, but I seen Mr. Stamler, in the papers, that he opposed it. 20

By Mr. Wilson:

Q. Did you seek for a transfer from 214 Morris Avenue? A. I certainly did.

Q. To 1000 Elizabeth Avenue? A. Yes, sir; I did.

Q. Do you know by whom the application was made for a license of 1000 Elizabeth Avenue? A. Fred Weber. That is me.

Q. What had Matty Wade to do with it? 30

The Court: What is the purpose of this?

Q. Had you made any transfer of your license—

Mr. Swift: I object to the question as leading.

Q. Was the business at 214 Morris Avenue a profitable one to you? 40

Mr. Swift: I object.

Q. Are you able to state the net receipts up to the time when you left the premises 214 Morris Avenue?

10 The Court: You gave notice to quit yourself. You abandoned the premises, didn't you?

Mr. Wilson: Yes.

The Court: I will overrule the question.

Mr. Wilson: I mean as applying to the transfer from 214 Broad Street to 1000 Elizabeth Avenue. The value of the license in the hands of Fred Weber at 214 would be the basis—the measure of damages, and we 20 want to show that anyway.

The Court: I will overrule it.

The Court: They didn't get it in any other location, because the Excise Board did not give it. I will overrule this.

Mr. Wilson: That is all.

Mr. Swift: I move to strike out all this evidence.

The Court: I will hear you on that later, after your cross-examination.

30

Cross-examination by Mr. Swift:

Q. When did you cash this check, Mr. Weber, of $125.00, dated October 23rd? A. I didn't cash it. I give it.

Q. To whom did you give it? A. What check is it? Let me see what it is.

Q. Check to your order, of the Peter Breidt City Brewery Company, dated October 23rd, 1914, for 40 $125.00? A. Where did I cash it?

Q. Where did you cash it? A. Well, I might have cashed it in the Trust Company, and I might have cashed it in the State Bank.

Q. You don't recall? A. No, sir; I do not.

Q. Do you recall whether you cashed it in the same day that you received it? A. That I don't know. I might have cashed it the same day, might cash it two days after, might cash it a week later. That I don't know. 10

Q. Do you know what day you did receive it? A. What, received the check?

Q. Yes. A. Well, what is the date on there?

Q. 23rd? A. Then I must have received it the 23rd.

Q. Is that the only conclusion, because it is dated that date, that you received it that date? A. That is when I must have got it, the 23rd. 20

Q. Did you receive it in the morning, or the afternoon? A. That I don't know. I can't exactly say.

Q. Did you cash it personally? A. Well, that I don't know. I might have put it in my account. I might have given it to somebody.

Q. Anything to indicate whether you cashed it personally? A. I don't know. That is my signature on there, and what it was used for I don't know. 30

Q. It passed to nobody else then, did it? A. Certainly not. That is my last rent's receipt.

Q. That is what? That is the check for the last rent that you received? A. That is the last rent that I received, that is October 23rd, that is what I received.

By Mr. Wilson:

Q. That is for 1000 Elizabeth Avenue? A. Yes, 40

that is rent for 1000 Elizabeth Avenue. That is what that $125.00 is for.

By Mr. Swift:

Q. And this you say was mailed to you? A. Yes, sir.

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Q. Mailed to you? A. Yes, sir.

Q. You are positive about that? A. Yes, sir; I am positive it was mailed to me.

Q. 1000 Elizabeth Avenue is property owned by you, was it not? A. Yes, sir.

Q. And which you had leased to the Peter Breidt Company? A. Yes, sir. For ten years.

Q. For ten years? A. Yes, sir; monthly rent of $125.00.

20

Q. And it expired, I think, in 1915?

The Court: It is within a few minutes of the adjournment hour, and I think I ought to indicate to you what my notion of the case is, so far as the legal side of it is concerned. It seems to me that the first question to go to the jury would be whether there was a new lease made in October, 1914, for three years. The plaintiff's witnesses testifying that there was such a lease, and Mr. Weber saying that there was none such. If the jury finds that there was a lease, then there will be a certain rule for measure of damages applied, which would include the reasonable cost of putting the building in shape so as to minimize the damages for the balance of the three years. If the jury find that there was no lease entered into in three years, then I am inclined to hold that under the agreement that was

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made, and the circumstances of the case, that at least it was an agreement from year to year, which required three months notice on the part of the brewery to put Mr. Weber out, and also a three months notice on his part to relieve himself. And it appears that none such was given. So that if the jury found there was no new lease entered into, then I would be inclined to hold that the old lease being a lease from year to year, that Mr. Weber had not absolved himself, and was liable for the rent for the balance of the term. With such reasonable cost of changing the building as would be necessary under the circumstances, but not exceeding the sum of $200.00. And that I will take from the jury entirely the question of the counterclaim, because I do not see anything upon which to base it. I thought I ought to indicate that to you, how my mind was running, because we have no time to discuss it between now and the hour of adjournment, and if you have any ideas upon the subject to change my mind on Monday morning, of course, I will be glad to hear you. Give you opportunity to show me that I am wrong, if you think so.

Mr. Swift: With the direction of verdict on the part of the Court we are inclined to accept your Honor's view on the matter, with the direction on the question of liability.

The Court: There could be no direction, because the jury must determine first whether there was a new lease, and if there was no new lease, then there must have been

the old one. Then there are different measures of damages to be applied. If there was a new lease then, of course, the reasonable and proper expenses, such as the jury might find, of altering the premises in order to get a new tenant, and not hold Mr. Weber for three years, would be reasonable.

Mr. Wilson: Does not this question arise too: There is a question of fact as to whether they did not abandon Mr. Weber?

The Court: Mr. Weber gave notice that he was going to abandon the premises.

Mr. Wilson: I want to present that to the Court in another way on Monday.

The Court: What have you in mind, Mr. Wilson?

Mr. Wilson: I have this in my mind: Weber did give notice.

The Court: Weber did give notice that he would leave on the first of November, and left.

Mr. Wilson: Perhaps the notice wasn't a legal notice, but if they accepted it as a legal notice, and in pursuance of that notice proceeded to seek another tenant, then they waive any illegality of the notice.

The Court: The man left the premises actually. And when he didn't have sufficient justification by a proper notice, and he left the premises, what could they do?

Mr. Wilson: Yes. Well, now——

The Court: What was it their duty to do? Their duty was not to make as much damage as possible for the man, but to minimize it and make it as small as possible, and get another tenant, if possible.

Mr. Wilson: The Court may say there is a tenancy. Butler was the owner of the premises from June. He is alleged to have made a lease with Glazer from that date for three years.

The Court: Mr. Wilson, if the jury finds that there was a new agreement, that disposes of it. If the jury finds that there was no new agreement, then they must have been operating under something, and what was it, except the original agreement? Neither party alleges there was any other one except the original and the one of three years. They must have been operating under one or the other. Mr. Weber continued under the original agreement, whatever intervened so far as the ownership of the property may be.

Mr. Wilson: I understand, but the Breidt Brewing Company had a lease with Glazer, which expired in April.

The Court: How does it benefit you any what transaction took place with reference to the ownership of the property, if the jury does not find there was a new agreement, they went in under the agreement of 1910. And they stayed there—he stayed there under that agreement because there was no other. It does not make any difference whether Mr. Butler, Mr. Jones or Mr. Brown did something, or what manipulation there was with reference to the property, Mr. Weber continued to be a tenant of the Brewing Company.

Mr. Wilson: There is a difference in the mind of your Honor and myself with regard

to the effect of that agreement. Our contention is this: That that agreement is just in a line with the case of Stephans vs. Earle, and if I can get your Honor to think just the same as I can in that particular case——

10 Mr. Swift: That was a renting for one month.

The Court: My mind is not closed on it. I only suggest it so that I may have the benefit of what you gentlemen are thinking about, but I think you ought to have the benefit of what I was thinking about, so that you might be able to meet it.

Mr. Wilson: Forewarned is forearmed.

The Court: That is the situation. I would

20 like very much to hear you on Monday morning.

The Court: Gentlemen of the Jury—Do not talk with anybody about the case, or do not let anybody talk with you about it. You are now sworn to try this case according to the evidence, and if anybody attempts to interfere with you, or suggest anything to you, or talk to you, you report it to the Court, and we will take care of it.

30 Adjourned until Monday, October 16th, 1916, at 9.30 A. M.

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NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

October Term, 1916.

10

PETER BREIDT CITY BREWERY COMPANY, a Corporation, against FRED WEBER.	No. 28 in the List.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before HON. GEORGE S. SILZER, Circuit Court Judge, and a Jury, at the Court House in the City of Elizabeth, N. J., on the sixteenth day of October, A. D., 1916, at 9.30 A. M.

20

Appearances:

JOHN J. STAMLER, Esq., and C. ADDISON SWIFT, Esq., for the Plaintiff.

WILLIAM R. WILSON, Esq., ALFRED A. STEIN, Esq., for the Defendant.

30

FRED WEBER, the defendant, resumed.

Mr. Wilson: I suppose the counsel admit the receipts from the first day, September 2nd? Do you want to admit those, or shall I prove them in the regular way?

Mr. Stamler: Those are our receipts. You do not have to prove them.

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Mr. Wilson: The receipts, payable monthly, counsel admit, so we do not have to prove them.

That is all, Mr. Weber.

10 That is our case.

Defendant rests.

PLAINTIFF'S REBUTTAL TESTIMONY.

DENNIS F. COLLINS, recalled.

Direct examination by Mr. Swift:

20 Q. General Collins, Mr. Weber testified that he went in the Brewery with Mr. Stamler, saw you, and that you were sitting at your desk, and Mr. Stamler told you that Mr. Weber was there and that he wasn't going to pay that two hundred and fifty dollars, and that you said, then if that is the case, John, go down there Monday morning and we will close up the place. Did you ever make such a statement as that? A. Never made such a statement.

30 Q. Was there any question at all raised about who should pay the two hundred and fifty dollars? A. Never.

Mr. Swift: That is all.

Mr. Wilson: No questions.

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JOHN J. STAMLER, recalled.

Direct examination by Mr. Swift:

Q. Mr. Weber testified that he went with you to the brewery and that you told General Collins that Weber was here and that he wasn't going to pay the two hundred and fifty dollars. Did you make any such statement as that? A. Never made any such statement.

Q. And that the General said in reply that if that is the case, John, you go down there Monday morning and we will close up the place. Was such a statement as that made on that occasion? A. No, sir; never.

Q. Or upon any occasion? A. Never.

Q. Was any such discussion at all had with reference to the two hundred and fifty dollars? A. It never occurred.

Q. Mr. Weber says further that he afterwards met you and that you told him that the matter of the lease had been fixed up, and that you said you were to get half of that and Meyers—I suppose he meant Mr. Meyer—kept it all, that is, the two hundred and fifty dollars that I paid him. Did you ever make such a statement as that to Mr. Weber? A. Never had any talk about it after the whole arrangement was over with. I was paid by my clients.

Mr. Swift: Cross-examine.

Mr. Wilson: That is all.

HENRY F. LOEHRS, recalled.

Direct examination by Mr. Swift:

10 Q. Mr. Loehrs, Mr. Weber testified that he did not receive the check of $125.00, dated October 23d, 1914, at the office of the brewery; that he called up the office on the telephone and that it was mailed to him. I show you the check, which is marked Exhibit P 4, and ask you if there is anything about that check which shows when it was cashed? A. That check was cashed the same day it was given to him.

Q. The same day that it was dated? A. It was dated October 23d, and dated by the bank October 20 23d, so it was cashed the same day it was given to him in the office.

Q. That is shown by the perforated marks on the paper? A. The day of the bank's stamp.

Q. According to your custom of mailing letters at the brewery, could that check have been mailed on the 23d and reached him in time to have been cashed that day? A. Impossible.

Q. Why? A. Mr. Nolte does not come in the office until about quarter after nine, or half-past 30 nine——

Mr. Wilson: I object, unless you fix it that he came in that hour this day.

A. Well, every day. Mr. Nolte, the treasurer, does not arrive until about 9.15, 9.30, and if he does write any letters, or mails any checks, he keeps those on his desk, and we have a separate space for the mailing of letters, from which the let- 40 ter carrier takes them, and he at times puts them there when he goes to lunch, about 12.30, or in the

afternoon when he goes to the bank at 2.30, and at either time the letter carrier, if he puts them there at 12.30, the letter carrier will take them away there at two. And if he put them there at 2.30, our office boy will put them in the letter box when he goes home at 5 or 5.30. Under those two conditions the letter could not be delivered the same date, because the letter carrier don't get back to the postoffice until about four. And he having that letter in his possession, will not be delivered until——

Mr. Wilson: I object to all that. That is a conclusion. I move that all be stricken out.

The Court: Stricken out.

Mr. Wilson: That is all.

DEFENDANT'S SUR-REBUTTAL TESTIMONY.

FRED WEBER, the defendant, recalled.

Direct examination by Mr. Wilson:

Q. Mr. Stamler on Friday stated that in a suit brought against the Breidt Brewing Company in the District Court, with Mr. Glazer, that you and he appeared. What have you to say about that, is that so, or not? A. What is that?

Q. Mr. Stamler in his testimony said that in a suit for possession, brought by Glazer against the Breidt Brewing Company, in which Mr. Clarence Meyer was interested, that on the occasions that the case came up you were present with him. A. No, sir; never.

Q. Were you ever at the District Court, in the suit by Glazer against Breidt Brewing Company, for possession? A. No, sir.

Q. Mr. Stamler says that in this matter of the negotiation with Mr. Meyer, who was acting for Mr. Glazer, that he appeared as your attorney in that matter. What have you to say about that? A. No, sir.

Q. He also says that at your request he made the arrangement with Meyer as to the payment of $250.00. What have you to say about that? A. No, sir.

By the Court:

Q. Mr. Weber, what is the license fee paid? A. Five hundred dollars.

The Court: That is all.
Mr. Wilson: That is all.

CLARENCE D. MEYER, a witness produced on behalf of the plaintiff, in sur-rebuttal, being duly sworn according to law on his oath, saith:

Direct examination by Mr. Swift:

Q. Mr. Meyer, you reside in Elizabeth? A. I do.

Q. You are an attorney and counselor at law of this state? A. I am.

Q. Were you attorney for Mr. Jacob Glazer? A. I am.

Q. Mr. Weber has just testified that he was never in the District Court at a time when the case of

Glazer against Peter Breidt Brewing Company was before the Court. Is that true, or not? A. That case never went to trial, but I recall on one occasion that Mr. Stamler came in, and I am quite positive Mr. Weber was present. Whether as an interested spectator or not, I don't know. He wasn't called to testify. 10

Q. But he was there? A. He was in court, I am quite positive.

Cross examination by Mr. Wilson:

Q. Was that on the conclusion of the arrangement that you had made with Mr. Stamler about discontinuing the suit, Mr. Meyer? A. I don't recall what day. That suit had been carried for some time. 20

Q. That was on the last day when you and Mr. Stamler had arranged to dismiss or discontinue the suit, wasn't it? A. Well, shortly after that the case was settled.

Q. Well, at this time you and Mr. Stamler came out of the District Court room, and Mr. Weber was at the front of the court house, wasn't he, and you told him that you and Stamler had arranged the matter? A. No. 30

Q. You don't remember that? A. No conversation of any kind.

Mr. Wilson: That is all.
Mr. Swift: That is all.
Mr. Wilson: That is all.
The Court: Both sides rest.

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Motion for Direction of Verdict.

Mr. Swift: I would like to renew my motion to strike out the counterclaim on the ground——

10 The Court: That motion will be granted.

Mr. Swift: And also the testimony that was introduced for that purpose, supporting it.

The Court: Yes.

Mr. Wilson: The Court does not care to hear me on that, I suppose?

The Court: My mind is very clear about it.

Mr. Wilson: Then I except to your

20 Honor's ruling.

The Court: No evidence of any maliciousness at all. In fact, no evidence at all.

Mr. Wilson: If the Court has made up its mind, I do not want to go into that.

The Court: If I thought you could change my mind I would be very glad to hear you, but my mind is very clear. I will allow you an exception.

Exception allowed—sealed accordingly.

30 Judge.

Mr. Wilson: Is the Court going to put its construction on the lease, or may I comment on the fact before the jury on that agreement for a lease?

The Court: I do not think there is any necessity, because I intend to instruct the jury about that. Limit your argument first whether there is a new lease or not, and then to the question how much the damages

40 should be—if there is a new lease, what a

reasonable sum would be for fixing up under the old.

Mr. Wilson: Then the Court will not permit me to comment on the fact of this old agreement for a lease, or a lease, and express what my views are in regard to it? I do not want to go counter to the Court.

The Court: Anything incidental to what I have just outlined, of course, you may discuss. But if the Court is going to tell the jury that if the original agreement, if in existence, compelled you to give three months' notice, and you did not give it, it would be perfectly useless for you to argue that before the jury, because I intend to instruct the jury what the law is.

Mr. Wilson sums up the case for the plaintiff.

Mr. Swift sums up the case for the defendant.

The Court: Mr. Wilson, don't all these requests relate to the counterclaim?

Mr. Wilson: Yes, except the last four or five. I did not know your Honor was going to determine that question.

Court's Charge.

NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

10 October Term, 1916.

PETER BREIDT CITY BREWERY COMPANY, a Corporation,

against

FRED WEBER.

20 Charge to the Jury, by HON. GEORGE S. SILZER, Circuit Court Judge, as follows:
Gentlemen of the Jury:

A case of this kind, as it proceeds, simplifies itself, and the suit now before you is a suit for seven months' rent from the first of November, 1915, to and including May, 1916, seven months, at one hundred dollars a month; a beer account of $38.40; and a claim for repairs that were made amount-
30 ing to $398.92; making a total of $1,137.32.

It appears that in June, 1910, an agreement was entered into by the parties for the possession of the premises and conducting of a saloon business. The following month, in July, 1910, the 26th, a license was granted, which license ran for a year, carrying with it a payment of five hundred dollars license fee. That license was renewed from year to year for the whole term of Mr. Weber's tenancy. On September 24th, 1915, Mr. Weber gave notice
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that on the first of November, 1915, he would vacate the premises, and on the first of November, 1915, he did vacate the premises. The landlord did not succeed in renting the place until the following June, and the suit is brought for the rent during the time the property was vacant. 10

I might say in passing that the Court has certain duties to perform, and certain responsibilities, just as you have, and it is the responsibility of the Court in this case, as it is in every case, to determine what the law is, and it is your function and your duty and your responsibility to determine the facts; and you must take the law from the Court, and the Court must accept the facts as you find them; so each has its place, and it is my duty and my responsibility to declare what the 20 law is, and you must take the law from the Court, and not from somebody else.

The first question, as you retire to your jury room, that you should take up, is the question as to whether there was a new lease made by the parties, to run from the first of October, 1914, for the term of three years, until the first of October, 1917. Was there a new lease made by the parties at that time? A lease for three years in this State does not have to be in writing. A verbal lease may be 30 made for the term of three years, but over three years it would be void under our statute of frauds. Was there a lease made for the term of three years from the first of October, 1914? You have heard testimony from one party saying there was, and the other party saying there was not, and you must determine from all the facts whether there was or was not a new lease made. If you find that there was a new lease made, and that Mr. Weber did not live up to that lease, but vacated the prem- 40

ises before the lease expired, then, of course, he is responsible. A man cannot make a lease for three years, and then give a month's notice and get out before the three years is up, because a lease is something that binds both parties. If a man agrees to lease his property to another for three years, he can be held for the three years, and the man who takes it, if he is going to hold the other man for three years, must be held himself. Otherwise a lease would be a one sided affair. But it is mutual, you see. If there was a lease for three years, and then Mr. Weber did quit, I charge you as a matter of law that he did not, by giving one month's notice, relieve himself of the responsibility, and he was liable then for the rent for the balance of the three years. But the landlord could not sit still and say, now I will leave this store vacant and I will just collect the rent from the tenant for the next three years. It was his duty to minimize the damage, to do the best he could to rent the property, and if he did not succeed in renting the property at as good a rent as was called for by the lease, then to hold the tenant for the difference. And in this case they did succeed in renting the property, starting from the first of June, and the rent for the time it was vacant, for the seven months' rent at one hundred dollars a month, that is now being sued upon. The beer bill there is no dispute about, that is $38.40. That the defendant admits he owes. But there is another item of $398.92. You see, as I have said before, if there was a lease for three years, the landlord could not sit still and simply wait for Mr. Weber to pay the rent for three years. He had to do the best he could, in order to get a new tenant and stop the rent running as against Mr. Weber. The plain-

tiff's claim that in doing that they were obliged to spend the sum of $398.92 in order to change the premises, and in order to put them in condition so that they could secure another tenant, and in that way relieve Mr. Weber from the payment of full three year's rent.

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So take up those items, the papers will be before you and consider them in connection with the testimony to determine whether in your judgment the sum of $398.92 was a proper sum, or whether the various items were proper and reasonable to be expended under the circumstances of the case for the purpose of minimizing, and saving Mr. Weber from further damages in this case. If you determine that there was not a three years' lease, then take up the second proposition, because if there was not a new agreement for a lease made running from the first of October, 1914, to 1917, then they must have been operating under their old agreement. The old agreement still carried over, unless they had a new one. There was an agreement, when they originally contracted on June 9th, 1910, but it did not fix a term. But where there is no term fixed and the parties themselves construe the lease, where the parties themselves act, which indicates what they themselves decided the term was, then that is what fixes it. And in this case you see that Mr. Weber advanced five hundred dollars year after year, running from the 26th of July, 1910, to 1911, 1911 to 1912, 1912 to 1913, 1913 to 1914, 1914 to 1915, and the Court charges you that it was not a monthly tenancy. It could not be possible that a man would put up five hundred dollars license fee, and built up a business, and then expect under all the circumstances of this case that he could say, I am going to get out at the end of one month; or that

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the landlord could say to him, now you have got to get out at the end of next month. So you can readily see how the parties themselves construed the agreement. But whether it was running from year to year, from the 26th of July, or from the first of June to the first of June, makes no difference. Under either view of the case which the Court takes, and by which you are bound, it was not a monthly tenancy, and Mr. Weber could not relieve himself by one month's notice. So that if you come to the second part of the case then you come to the question of damages again. The landlord would undoubtedly be entitled to the rent up to June, because under either construction, whether the rent ran until the license died, or whether it ran to the first of June, either one, Mr. Weber abandoned the place in November, and if the rent ran until June, that is all the plaintiff is claiming, this seven hundred dollars, and the beer bill; but your difficulty arises then on the other claim. You see if this lease only ran until June, or even until July, the landlord certainly would not be authorized to expend $398.00, unless that meant a minimizing of the damages to the tenant. If this ran until the 26th of July, which would carry the rent for June and July, as you see, then all that the landlord could have saved was $200. He certainly would not be authorized, if you find that there was no new lease, to spend $398.00 to save $200. But he would be authorized to spend such reasonable sum as you think, as men of good judgment would be proper, and such proportion of the $398.00 as you think would be fair, in order to save this additional rent, if you find that it ran to the 26th. Of course, you can see at once it could not exceed $200.00, and such less sum as you think under all the circum-

stances is proper and honest and fair and reasonable between the parties.

So take the case and take up first the question, was there a new three years' lease, and if you find there was, then determine as I have outlined to you. If you find that there was not a three years' lease, then take up the old arrangement and find as you determine the facts to be there.

Mr. Stamler: Will Your Honor instruct the jury that we are not claiming any damages by reason of the loss of business, that seven hundred and fifty dollar claim, as set forth in the third or fourth item?

The Court: I think I have already instructed the jury that all the plaintiff claims is the rent and repairs.

I might say I have eliminated from the case the counter claim. Under the law of this case it is very clear that the defendant has no right to a counter claim for damages against the plaintiff for the failure to transfer, or the failure to get a license at a new place. The law does not permit that, under the testimony in this case. The figures are seven months' rent, $700.00; beer account, $38.40; repairs, $398.92. You will have all those exhibits before you so that you may look over them and consider them.

Fourth Juror: Would the notice that was served have any effect whatever upon a yearly tenancy?

The Court: No. If it was a yearly tenancy, the law required a three months' notice. That a month's notice was not sufficient. I charge you as a matter of law the

notice Mr. Weber gave was not sufficient to terminate his tenancy, either under the three-year lease, or under the old one.

Mr. Wilson, those requests of yours that refer to the counter claim, of course, are not necessary now.

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Mr. Wilson: Your Honor thinks so, but I suppose Your Honor refuses to charge that.

The Court: I have already eliminated that, and if I am in error, you have an exception which covers that. Now, as to the others, have I covered those?

Mr. Wilson: Not just exactly the way I want you to.

The Court: Those requests which refer to the counter claim, of course, are refused, because I have already eliminated them from the case.

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10. Refused. That refers to the present situation.

11. Refused.

12. Refused.

13. Refused.

15. Refused.

Mr. Wilson: I except to Your Honor's charge, as I requested you to charge, and you refused.

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Exception allowed—sealed accordingly.

Judge.

Mr. Wilson: I except to that part of Your Honor's charge where you said: "Where there is no term, and parties fix what they believe to be the term, then that fixes the term."

The Court: I did not say that, but whatever it refers to.

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Mr. Wilson: That is the way I took it down.

The Court: I said the parties might construe it.

Mr. Wilson: Yes, that is it, that the parties might construe it. To that part of Your Honor's charge where you say: "This is not a monthly tenancy, under the agreement of June, 1910."

The Court: Yes.

Exception allowed—sealed accordingly.

Judge.

Mr. Wilson: To that part where Your Honor charged it was a yearly tenancy under the lease and that therefore a three months' notice was necessary, and Weber's giving a monthly notice was not sufficient.

The Court: A tenancy from year to year.

Mr. Wilson: Yes, a tenancy from year to year.

Exception allowed—sealed accordingly.

Judge.

Mr. Wilson: I except to that part of Your Honor's charge where you refused to consider the counter claim as filed by the defendant.

The Court: Yes.

Exception allowed—sealed accordingly.

Judge.

Mr. Wilson: And also to that part of Your Honor's charge where you say that notice given by Mr. Weber under this lease of June, 1910, was of no validity whatever.

The Court: Not sufficient.

Mr. Wilson: Yes, not sufficient.

Exception allowed—sealed accordingly.

Judge.

Defendant's Requests to Charge.

The Court is requested to charge as follows:

(1)

"Every servant acting in the execution of his master's business represents the master himself, and his acts are in contemplation of law, the acts of his master."

(2)

"A master is responsible provided the act is done by the servant within the scope of his employment, and in furtherance of his master's business, or for the master's benefit."

(3)

"Whatever a servant does in order to give effect to his master's will may be treated, as we have seen, as the act of the master."

(4)

"The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service, and for the master's or principal's benefit, though no express command or privity by the master or principal be proved."

(5)

"Where fraud has been committed, and a third person is concerned who was ignorant of the fraud, such person is innocent of the fraud only so long as he does not insist upon deriving any benefit from it, but when once he takes the benefit he becomes a party to the fraud."

(6)

"If a fraudulent act has been committed by an agent without the knowledge of the principal, and the latter afterwards adopts the act, and takes the benefit of the fraud, he will be responsible in damages to the person who has been deceived and injured by the fraudulent act." 10

(7)

"The foundation of every action of tort is a wrongful act, but it need not be malicious, for malice is not a necessary ingredient in a wrong."

(8)

"Every malicious act is wrongful in itself in the eye of the law, and if it causes hurt or damages to another, it is a tort, and may be made the foundation of an action." 20

(9)

"If the jury believe that the defendant has been a victim of a malicious prosecution or persecution then they are not limited in estimating the damages, to the actual damages proved or sustained, but they are at liberty in their sound discretion, if the facts proved justify it, to award exemplary or punitive damages, not to enrich the defendant, but to a certain extent to punish the plaintiff." 30

(10)

"That under the agreement in writing of June 9, 1910, between the parties to this action as there was no definite term, then the tenancy is to be considered a monthly one, and a month's notice to quit is sufficient." 40

(11)

"That if the jury believe that the necessary requisites of mutuality are lacking in the agreement of June 9, 1910, for the premises in question then the tenancy is from month to month."

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(12)

"That the writing of June 9, 1910, should be construed to be a lease for an indefinite period, making it a monthly tenancy and the Court should so instruct the jury."

(13)

"That under the counterclaim filed by the defendant he can recover in this cause."

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(14)

"That the business of the defendant was such property as entitled it to protection from unlawful interference and if the plaintiff or its agents interfered with it, maliciously so that injury resulted, an action arises from this interference."

(15)

"That the jury are the judges of the amount of damages to be awarded to the defendant if they believe from the evidence in the cause he is entitled to the same."

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(16)

"That if the jury believe that the plaintiff or its agents in any way interfered with the transfer of the license of 214 Broad Street, to 1000 Elizabeth Avenue, on Weber's application, by reason of which the Board of Excise was led to refuse the application, then a right of action will lie by Weber against the plaintiff."

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PLAINTIFF'S EXHIBITS.

Exhibit P-1.

AGREEMENT entered into this ninth day of June, One thousand nine hundred and Ten, between Frederick Weber, party of the first part; and the Peter Breidt City Brewery Company, a corporation, party of the second part, both of the City of Elizabeth, in the County of Union and State of New Jersey,

WHEREAS, the party of the second part is the lessee of the building known and number as 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and wherein is conducted a saloon or liquor business by one William Moore, and

WHEREAS, it has been mutually agreed by and between the parties hereto that the party of the first part shall conduct the said business and have the occupancy of the said building, therefore it is agreed as follows:—

For and in consideration of the sum of One Dollar ($1.00) each party unto the other paid, the receipt of which is hereby acknowledged, the party of the second part obligates itself to put in a new front, suitable for the business to be conducted therein at the premises number 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and to make such repairs and renovations on the interior of the said store as will be necessary to put it in proper shape for the conduct of the business, and to rent the store floor with basement underneath same to the party of the first part at a monthly rent of One Hundred Dollars ($100.00) payable in advance.

Exhibit P-1

SECOND: The party of the first part obligates himself to make proper and legal application for the license or transfer of license from the Excise Authorities of the said City of Elizabeth, and if granted, to conduct the business of Retail Liquor Dealer at the premises No. 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey, and to pay a monthly rental for the store, or first floor and the basement underneath same, of One Hundred Dollars ($100.00) per month payable in advance.

THIRD: It is, however, agreed by and between the parties hereto that in the event of a sale of the business to be conducted at the premises No. 214 Broad Street, in the City of Elizabeth, County of Union and State of New Jersey by the party of the first part, that the amount paid for the sale of the said business shall be equally divided between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have affixed their hand the seal the day and year first above mentioned.

Frederick Weber (LS)
The Peter Breidt City Brewery Co
by D F Collins (LS)
Prest

Signed sealed and delivered
in the presence of
Patrick J. McGurn

Exhibit P-2.

THIS AGREEMENT, made the twenty-seventh day of June, in the year of our Lord One Thousand Nine Hundred and Fourteen,

BETWEEN EDWARD J. BUTLER, owner, and JACOB GLASER, mortgagee, of the City of Elizabeth, in the County of Union and State of New Jersey, part of the first part, 10

AND THE PETER BREIDT CITY BREWERY COMPANY, a corporation, of the State of New Jersey, with a principle office in the City of Elizabeth, in the County of Union and State of New Jersey, party 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, 20

ALL that first floor of the premises known as No. 214 Morris Avenue, in the City of Elizabeth, County of Union and State of New Jersey, for the term of three (3) years, to commence on the first day of October, A. D., 1914, at the yearly rent of twelve hundred ($1200.00) dollars, payable one hundred ($100.00) dollars on the first day of each and every month, payable in advance, 30

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: 40

Exhibit P-2

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: the sum of one hundred ($100.00) dollars, on the first day of each and every month, payable in advance.

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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 thereof will permit, damage by the elements excepted.

And the said party of the first part covenants 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.

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IN WITNESS WHEREOF, the party of the first part has hereunto set their hands and seals, and the party of the second part has caused these presents to be signed by its President and attested by its Secretary, the day and year first above written.

Signed, sealed and delivered in the presence of }

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THE PETER BREIDT CITY BREWERY COMPANY.
Per

President.

JACOB GLASER. (Seal)

Attest:

Secretary.

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Exhibit P-3.

The Peter Breidt
City Brewery Company.

No. 41760 Elizabeth, N. J. JUL. 15 1914

UNION COUNTY TRUST COMPANY 55-101

PAY TO THE ORDER OF - C. D. Meyer -
TWO HUNDRED AND FIFTY DOLLARS - -
Dollars - $250.00/100.

10

THE PETER BREIDT CITY BREWERY CO.
J. H. Nolte,
Treasurer.

(ENDORSED) Fred Weber

Exhibit P-4.

The Peter Breidt
City Brewery Company

No. 41760 Elizabeth, N. J. OCT 23 1914 191
UNION COUNTY TRUST COMPANY (55-101) 20

PAY TO THE ORDER OF - Fred Weber - -
ONE HUNDRED AND TWENTY-FIVE DOLLARS - Dollars - $125.00/100

THE PETER BREIDT CITY BREWERY CO.
J. H. Nolte,
Treasurer.

(Endorsed) C. D. Meyer
Deposit on
Clarence D. Meyer 30

Exhibit P-5.

No. 1242 Elizabeth, N. J. Oct. 26, 1914
THE NATIONAL STATE BANK
OF ELIZABETH

PAY TO THE ORDER OF PETER BREIDT
BREWING CO. ONE HUNDRED DOLLARS.
$100.00/100 FRED WEBER. 40

Exhibit P-6.

Peter Breidt City Brewery Company.

Please take notice that I will quit and surrender the premises rented by me from you known as 214 Broad Street, City of Elizabeth, County of Union and State of New Jersey, on the first day of November, Nineteen Hundred and Fifteen, on which day the monthly tenancy existing between you and me is hereby terminated and the premises surrendered to you.

You are also notified that you are hereby given authority to post upon said premises a "To Let" sign or notice, if you so desire.

FRED WEBER.

Dated Sept. 24th, 1915.

Exhibit P-7.

September 27th, 1915.

Fred Weber, Esq.,
214 Broad Street,
Elizabeth, N. J.

Dear Sir:—

Your notice of the 24th of September, 1915, addressed to Peter Breidt City Brewery Company notifying it that you are to terminate the existing tenancy for the premises 214 Broad Street, Elizabeth, N. J., on the first day of November, 1915, was referred to me for reply.

On behalf of the Company I desire to refresh your memory in order to correct the error in your mind that you are a monthly tenant.

You will recall that by an agreement made with you, and at your request I obtained a lease from the owners of the premises for your benefit for a

period of three years commencing the first day of October, 1914, at a monthly rental of $100. per month, and that during the month of October, 1914, you actually agreed to become the tenant for the period of three years from that date.

Do you recall paying Mr. Clarence D. Meyer the sum of $250. for services in connection with this lease or have you forgotten that fact? This was all done for your benefit and at your request and upon your expressed agreement to remain a tenant of the premises for a period of three years from the first day of October, 1914. 10

Therefore, on behalf of the Peter Breidt City Brewery Company I beg to notify you that if you attempt to vacate and remove from said premises that the company will hold you liable on the lease in question and expect you to pay the rental for said premises until the expiration of the term. 20

Personally, I am very much surprised at your conduct in view of the fact that you well know that General Collins refused to enter into any negotiation relative to a renewal of the lease for the premises in question and in fact abandoned the same, but it was only on your solicitation that this new arrangement was made, and therefore, you ought to be man-enough to keep your agreement. 30

Yours truly,

JOHN J. STAMLER,

Exhibit P-8.

AGREEMENT, made this eighth day of November, Nineteen hundred and fifteen, Between THE PETER BREIDT CITY BREWERY COMPANY, a corporation duly organized under and by 40

virtue of the laws of the State of New Jersey, with its principal office in the City of Elizabeth, in the County of Union and State of New Jersey, party of the first part, and WILLIAM J. SCANLON of the City of Elizabeth, in the County of Union and State of New Jersey, party of the second part.

WHEREAS, the party of the first part has an interest in the premises No. 214 Broad Street (also known as No. 214 Morris Avenue, in the Tenth Ward, Elizabeth, N. J., and it claims that it has a right to procure a new license to said premises from the Board of Excise Commissioners of the City of Elizabeth; and whereas the party of the second part is desirous of acquiring the right, title and interest in and to said premises and saloon business upon the following conditions:

1. That the party of the first part will procure a saloon license for said premises, to be granted to the party of the second part by the proper authorities.

2. That the party of the first part will cause to be delivered to the party of the second part a lease for the first floor and basement of said premises for a period not exceeding five (5) years at the monthly rental of One Hundred ($100.) Dollars per month. The party of the second part agrees that upon compliance with the aforesaid the following conditions:

a. That he will deliver his promissory note to the party of the first part for the sum of Fifteen Hundred ($1500.00) Dollars in payment for said business and in addition thereto will execute a chattel mortgage

for the actual value of the fixtures to be hereafter agreed upon by the parties hereto. The chattel mortgage is to be a standing mortgage and no payments to be required thereon or thereof.

10

b. That he will pay the license fee to the City of Elizabeth for said license if procured.

c. That he will become a tenant of said premises and execute an agreement to exclusively sell all the products of the party of the first part in said premises, except that the party of the second part shall have the privilege of selling two halfs of beer, per week, of another manufacturer to be agreed upon between the parties.

20

d. That the note of Fifteen Hundred ($1500.00) Dollars mentioned in paragraph "A" herein the party of the second part will repay the same at the rate of fifty cents (.50) per half barrel of beer until the full obligation is paid.

30

e. The party of the second part covenants and agrees not to sell or dispose of said business to any other person or persons unless said person or proposed purchaser of said business shall first execute a like agreement relative to the sale of beer in the premises herein mentioned.

3. The party of the first part agrees to cause the aforesaid premises to be put in proper condition for the use intended.

40

Exhibit P-8

4. The party of the first part also covenants and agrees to save harmless the party of the second part, if the license so granted by the Board of Excise Commissioner of the City of Elizabeth, is in any way attacked by any proceeding at law or equity, and the party of the first part will pay all the necessary expenses to defend the costs of litigation relative thereto.

It is represented by the party of the second part that he is the owner of a saloon business at No. 200 Broad Street, Elizabeth, N. J., and that in the event that the makes sale of said business, he will pay to the party of the first part the sum of One Thousand ($1000.00)) Dollars in cash on the aforesaid obligation of Fifteen Hundred ($1500.) Dollars, and that the balance of the sum of Five Hundred ($500.) Dollars shall be repaid as hereinbefore provided.

It is further agreed by and between the parties that in the event of the party of the second part is desirous of disposing of his said business at No. 200 Broad Street, Elizabeth, N. J., and cause the same to be transferred to a location to be agreed upon between the parties hereto, that the party of the first part will then credit the party of the second part with the sum of Fifteen Hundred ($1500.00) Dollars, upon the condition that the said license shall be transferred to such location as the parties may hereafter agreed upon and as shall be agreeable to the Excise Commissioners of the City of Elizabeth. In addition thereto the party of the first part covenant and agree that in the event the said license should be transferred as herein provided for, and if the party of the first part should be able to use the fixtures now in the premises No. 200 Broad Street, Elizabeth, N. J.,

that the party of the first part will pay to the party of the second part the value therefor.

This agreement is made upon the express understanding that the Board of Excise Commissioners of the City of Elizabeth will grant a new license to the premises known as No. 214 Broad Street (also known as No. 214 Morris Avenue), Elizabeth, N. J., otherwise this agreement shall become null and void. 10

This agreement shall bind the respective parties hereto, its successors, administrators and assigns.

IN WITNESS WHEREOF, the party of the first part hath caused these presents to be signed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, and the party of the second part has hereunto set his hand and seal the day and year first above written. 20

THE PETER BREIDT CITY
BREWERY CO.
Per D. F. Collins.
William J. Scanlan. (L. S.)

Signed, sealed and delivered }
in the presence of } 30

Exhibit P-9.

To WILLIAM C. FINCK, Esquire,
214 Broad Street, Elizabeth, N. J.

Dear Sir:

PLEASE TAKE NOTICE, that I, the undersigned, Edward J. Butler, by deed of Jacob Glaser and 40

wife, recorded this date, have become the owner of the premises No. 214 Broad Street, Elizabeth, N. J.

Take further notice that I hereby demand of you to deliver unto me, your Landlord, the possession of the premises No. 214 Broad Street, in the City of Elizabeth, County of Union, and State of New Jersey, on the first day of November, Nineteen hundred and fourteen, upon which date your right of possession of said premises will expire.

This notice is given to you in pursuance to a lease heretofore made relative to the premises herein described, dated the twenty-sixth day of February, Nineteen hundred and fourteen, between Jacob Glaser, former owner, and William C. Finck, tenant.

Dated Elizabeth, N. J., July 15, 1914.

EDWARD J. BUTLER,
Landlord.

Exhibit P-10.

THIS INDENTURE, made the twenty-seventh day of June, in the year of our Lord One Thousand Nine Hundred and Fourteen,

BETWEEN JACOB GLASER and WILHELMINA GLASER, his wife, of the City of in the County of and State of New Jersey, parties of the first part,

AND EDWARD J. BUTLER, of the City of Elizabeth, in the County of Union and State of New Jersey, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of ONE DOLLAR

and other good and valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey,

BEGINNING on the westerly side of Morris Avenue, formerly known as the Morris Turnpike at the southeasterly corner of Prescheur and Bettner's land; thence south forty-nine (49) degrees, and forty-five (45) minutes west, fifty (50) feet more or less to a point; thence in a southerly direction seven (7) feet more or less to the northwesterly line of land belonging to Julia D. A. Jones; thence along her line north eighty-eight (88) degrees and twenty-five (25) minutes east, twenty-five (25) feet more or less to the corner of Stratemeyer's land; thence along said land north forty-nine and three-quarter (49¾) degrees east thirty-three (33) feet and six (6) inches to Morris Avenue; thence along said Morris Avenue north thirty-nine and three-quarter (39¾) degrees, west twenty (20) feet and one and one-half (1½) inches to the place of BEGINNING.

Exhibit P-10

Being a part of land and tract conveyed to Jacob Glaser by Edward McNaughton et als., executors, &c. by deed recorded in Book 365, page 26 of Deeds for Union County, New Jersey.

10 TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof.

20 TO HAVE AND TO HOLD all and singular, the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever:

AND the said Jacob Glaser and Wilhelmina Glaser, his wife, do for themselves, their heirs, executors and administrators covenant and agree to and with the said party of the second part, his 30 heirs and assigns, that they are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended 40 to be made, for the above described land and prem-

ises, can or may be changed, charged, altered or defeated in any way whatsoever:

AND ALSO, that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid: 10

AND ALSO, that Jacob Glaser and Wilhelmina Glaser, his wife, will WARRANT, secure, and forever defend the said land and premises unto the said Edward J. Butler, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of incumbrances whatsoever: 20

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JACOB GLASER (L. S.)
WILHELMINA GLASER (L. S.)

Signed, sealed and delivered }
in the presence of }

WARREN H. SMOCK. 30

Acknowledged July 8, 1914, and recorded 15, 1914, in Book 646 of Deeds for Union County, page 62 &c.

40

DEFENDANT'S EXHIBITS.

Exhibit D-1.

To Fred Weber,

Formerly conducting the saloon at 214 Broad Street, and also known as 214 Morris Avenue, Elizabeth, N. J.

10 Dear Sir:—

In compliance with an act of 1891, page 405, entitled:

> "An Act to provide for the revoking and annulling of licenses of inns, and taverns, and saloons, as to the place of licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and shall re-
> 20 fuse to consent to a transfer of such license by the court or other licensing body which granted the same, and fixing the fees for transferring such license should the same be transferred."

We hereby demand and request of you to execute a consent in writing requesting the Board of Excise Commissioners of the City of Elizabeth to transfer the saloon license now in your name and granted
30 to you by the Board of Excise Commissioners of the City of Elizabeth on or about the twenty-sixth day of July, Nineteen Hundred and Fifteen, to conduct a saloon business at 214 Broad Street, or 214 Morris Avenue, Elizabeth, New Jersey, for a period of one year from that date, requesting the Board of Excise Commissioners to transfer the said license to the undersigned, William J. Scanlon, for the unexpired term thereof, and the said William J. Scanlon does hereby offer to pay to you, when said
40 license is transferred to him by the Board of Ex-

cise Commissioners of the City of Elizabeth, the proportionate license fee for which said license has not yet run and stand ready to pay such sum of money to you as the Board of Excise Commissioners of the City of Elizabeth shall fix and determine.

This request is made of you by the undersigned, the record owner of the premises in question, and of the new tenant that is to occupy said premises under an agreement of lease made with the landlord. 10

Dated, Elizabeth, N. J., November 11th, 1915.

WILLIAM J. SCANLON (Seal)
Tenant.

EDWARD J. BUTLER, 20
Record Owner.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } SS.:

Thomas L. Carey, being duly sworn according to law upon his oath deposes and says, that on Thursday the 11th day of November, 1915, he personally served a true copy of the annexed demand for transfer of saloon license as herein set forth, upon Fred Weber personally, and at the same time demanded of the said Fred Weber to sign a consent to the transfer of said license; that thereupon the said Fred Weber informed deponent that he would not at this time consent or refuse to sign the said transfer, but would first get advice from his attorney and would act accordingly. 30

Deponent further says that on Saturday, the 13th day of November, 1915, deponent again inter- 40

viewed the said Fred Weber and again demanded of the said Fred Weber to execute a consent to the transfer of the license to the premises herein described, and that the said Fred Weber then and there refused to sign a consent to said transfer.

10 THOMAS L. CAREY.

Sworn and subscribed to before me this 13th day of November, 1915.

THOMAS HUESTON,
Notary Public of N. J.

Exhibit D-2.

20

NOTICE TO FRED WEBER OF APPLICATION TO HAVE LICENSE REVOKED.

To Fred Weber, Esq.,

Sir:

Take Notice, that pursuance to an act of the legislature, Session laws of 1891 page 405, entitled:

30 "An Act to provide for the revoking and annulling of licenses of inns, and taverns, and saloons, as to the place licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and shall refuse to consent to a transfer of such license by the court of other licensing body which granted the same, and fixing the fees for transferring such license should the
40 same be transferred."

Exhibit D-2

I hereby give you notice that on Tuesday, the twenty-third day of November, Nineteen Hundred and Fifteen, at eight o'clock in the afternoon of that day at the City Hall in the City of Elizabeth, or as soon thereafter as the Excise Commissioners of the City of Elizabeth can attend to the same, I shall apply to the Excise Commissioners of the City of Elizabeth for an order to revoke and annull your license heretofore granted to you by said Excise Commissioners on the twenty-sixth day of July, Nineteen Hundred and Fifteen, for the premises 214 Broad Street, also known as 214 Morris Avenue, Elizabeth, New Jersey, for the following reasons:

1. That you have vacated and removed from the premises herein described and have not procured said license to be transferred to another place.

2. Because you have refused in writing to consent to a transfer of such license for the unexpired term thereof, as provided by the act herein above referred to.

Dated, Elizabeth, N. J. November 15th, 1915.

EDWARD J. BUTLER,
Edward J. Butler, Record Owner and the person having control and management of the premises herein described.

Exhibit D-2

STATE OF NEW JERSEY, }
COUNTY OF UNION. } SS.:

THOMAS L. CAREY, being duly sworn according to law upon his oath, deposes and says, that on the fifteenth day of November, Nineteen Hundred and Fifteen, he personally served upon the within named Fred Weber, a true copy of the within notice by serving upon him personally a true copy thereof.

THOMAS L. CAREY.

Sworn to and subscribed before me }
this 16th day of November, 1915. }

SAMUEL KOESTLER,
M. C. C. of N. J.

BEFORE THE EXCISE COMMISSIONERS OF THE CITY OF ELIZABETH.

In the Matter of Revocation of the License of the Premises Known as No. 214 Broad Street (also known as 214 Morris Avenue in the Tenth Ward) in the City of Elizabeth.	Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } SS.:

Edward J. Butler, being duly sworn according to law upon his oath, deposes and says, that he is the

owner of record of the premises known as No. 214 Broad Street, and also known as No. 214 Morris Avenue, by a deed recorded on the Fifteenth day of July, Nineteen Hundred and Fourteen, in the Register's Office of the County of Union in Book 646 of Deeds for said County, on page 62 etc.; that on or about the twenty-sixth day of July, Nineteen Hundred and Fifteen, the Board of Excise Commissioners of the City of Elizabeth, granted a license to one Fred Weber to sell ale, lager beer and wine in the premises above described for a period of one year from said date to the twenty-sixth day of July, Nineteen Hundred and Sixteen.

That on the Thirty-first day of October, Nineteen Hundred and Fifteen, the said Fred Weber vacated the building and premises herein named, for which such license was granted, before the expiration of the term for which said license was granted, and has refused to consent in writing to transfer such license for the remainder of the unexpired term thereof to the incoming tenant of said premises or to such person or persons as the Board of Excise Commissioners of the City of Elizabeth may deem a proper person or persons for that purpose.

Deponent further shows that the said Fred Weber is and was a tenant of deponent in the premises in question, and has vacated and removed from such premises, and has not procured such license to be transferred to another place by the Excise Commissioners of the City of Elizabeth; and that the said Fred Weber refused to consent to a transfer of such license for the unexpired term thereof, as provided for in an act entitled:

"An Act to provide for the revoking and

annulling of licenses of inns and taverns, and saloons, as to the place licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and shall refuse to consent to a transfer of such license by the court or other licensing body which granted the same and fixing the fees for transferring such license should the same be transferred."

P. L. 1891, pg. 405.

Deponent further says that for at least ten years last past the said premises was duly licensed by the Excise Commissioners of the City of Elizabeth as a lawful place wherein ale, lager beer and wine was sold.

Deponent therefore prays that an order may be made by this honorable body revoking the license in question for the unexpired term thereof in pursuance to the act of the legislature hereinbefore referred to.

EDWARD J. BUTLER.

Sworn and subscribed to before me
this 22d day of November, 1915.

JOHN J. STAMLER,
Master in Chancery of N. J.

Filed Nov. 23, 1915.

Exhibit D-3.

In the Matter of Revocation of the License to the Premises Known as No. 214 Broad Street (also known as 214 Morris Avenue in the Tenth Ward) in the City of Elizabeth.	Affidavit.

10

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

Edward J. Butler, being duly sworn according to law, upon his oath deposes and says, that he is the owner of premises known as Number 214 Broad Street, also known as 214 Morris Avenue, in the City of Elizabeth, New Jersey, for which premises, one Fred Weber held a saloon license, granted to him by the Board of Excise Commissioners of the City of Elizabeth, which said premises, the said Fred Weber vacated on the Thirty-first day of October, Nineteen hundred and fifteen, the said premises being now vacant.

20

Deponent further says, that after the vacation of said premises by the said Fred Weber and on November Eleventh, Nineteen hundred and fifteen, one William J. Scanlan, of the City of Elizabeth aforesaid, was a bona fide incoming tenant of said saloon premises, which said William J. Scanlan joined with this deponent in the service of a statutory notice given to said Fred Weber requesting the transfer of said license to said William J. Scanlan.

30

EDWARD J. BUTLER.

Sworn and subscribed to before me }
this 19th day of January, 1916. }

40

SAMUEL REIBEL,
Commissioner of Deeds for New Jersey.

Exhibit D-3

STATE OF NEW JERSEY, }
COUNTY OF UNION. } SS.:

Thomas L. Carey, of full age, being duly sworn according to law, upon his oath says, that on the Nineteenth day of January, Nineteen hundred and Sixteen, he served upon Fred Weber, the annexed notice dated January Nineteenth, Nineteen hundred and Sixteen, by handing to him personally, a duplicate thereof, together with copies thereto attached of the affidavits and papers, true copies of which are hereto attached.

THOMAS L. CAREY.

Sworn and subscribed to before me }
this 24th day of January, 1916. }
CHAS L. MORGAN,
Master in Chancery of New Jersey.

To Fred Weber, Esq.,

Sir:

Pursuant to an act of the legislature, Session laws of 1891 page 405, entitled:

> "An Act to provide for the revoking and annulling of licenses of inns, and taverns, and saloons, as to the place licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and shall refuse to consent to a transfer of such license by the court or other licensing body which granted the same, and fixing the fees for transferring such license should the same be transferred."

Exhibit D-3

You are hereby notified that on Tuesday, the Twenty-fifth day of January, Nineteen Hundred and Sixteen, at eight o'clock in the afternoon of that day at the City Hall in the City of Elizabeth, or as soon thereafter as the Board of Excise Commissioners of the City of Elizabeth can attend to the same, I shall apply to the Board of Excise Commissioners of the City of Elizabeth for an order to revoke and annul your license heretofore granted to you by said Board of Excise Commissioners on the twenty-sixth day of July, Nineteen Hundred and Fifteen, for the premises 214 Broad Street, also known as 214 Morris Avenue, Elizabeth, New Jersey, for the following reasons:

1. That you have vacated and removed from the premises herein described and have not procured said license to be transferred to another place.

2. Because you have refused in writing to consent to a transfer of such license for the unexpired term thereof, as provided by the act herein above referred to.

Appended hereto are true copies of the affidavits or proofs upon which said application will be based.

This notice is in addition to notice previously given you, the matter having been regularly continued by said Board to the above mentioned date.

Dated Elizabeth, N. J. January 19th, 1916.

EDWARD J. BUTLER,
Owner, and the person having control and management of the premises herein described.

Exhibit D-3

To Fred Weber,

Formerly conducting the saloon at 214 Broad Street, and also known as 214 Morris Avenue, Elizabeth, N. J.

10 Dear Sir:—

In compliance with an act of 1891, page 405, entitled:

> "An Act to provide for the revoking and annulling of licenses of inns, and taverns, and saloons, as to the place of licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and
> 20 shall refuse to consent to a transfer of such license by the court or other licensing body which granted the same, and fixing the fees for transferring such license should the same be transferred."

We hereby demand and request of you to execute a consent in writing requesting the Board of Excise Commissioners of the City of Elizabeth to transfer the saloon license now in your name and
30 granted to you by the Board of Excise Commissioners of the City of Elizabeth on or about the twenty-sixth day of July, Nineteen Hundred and Fifteen, to conduct a saloon business at 214 Broad Street, or 214 Morris Avenue, Elizabeth, New Jersey, for a period of one year from that date, requesting the Board of Excise Commissioners to transfer the said license to the undersigned. William J. Scanlon, for the unexpired term thereof, and the said William J. Scanlon does hereby offer
40 to pay to you, when said license is transferred to

him by the Board of Excise Commissioners of the City of Elizabeth, the proportionate license fee for which said license has not yet run and stand ready to pay such sum of money to you as the Board of Excise Commissioners of the City of Elizabeth shall fix and determine. 10

This request is made to you by the undersigned, the record owner of the premises in question, and of the new tenant that is to occupy said premises under an agreement of lease made with the landlord.

Dated, Elizabeth, N. J. November 11th, 1915.

WILLIAM J. SCANLON,
Tenant. 20

EDWARD J. BUTLER,
Record Owner.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } SS.:

Thomas L. Carey, being duly sworn, according to law upon his oath deposes and says, that on Thursday the 11th day of November, 1915, he personally served a true copy of the annexed demand for transfer of saloon license as herein set forth, upon Fred Weber personally, and at the same time demanded of the said Fred Weber to sign a consent to the transfer of said license; that thereupon the said Fred Weber informed deponent that he would not at this time consent or refuse to sign the said transfer, but would first get advice from his attorney and would act accordingly. 30

Deponent further says that on Saturday, the 40

13th day of November, 1915, deponent again interviewed the said Fred Weber and again demanded of the said Fred Weber to execute a consent to the transfer of the license to the premises herein described, and that the said Fred Weber then and there refused to sign a consent to said transfer.

THOMAS L. CAREY.

Sworn and subscribed to before me this 13th day of November, 1915.
THOMAS F. HUESTON,
Notary Public of N. J.

To Fred Weber, Esq.,

Sir:

Take notice, that pursuance to an act of the legislature, session laws of 1891, page 405, entitled:

> "An act to provide for the revoking and annulling of licenses of inns and taverns, and saloons, as to the place licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and shall refuse to consent to a transfer of such license by the Court of other licensing body which granted the same, and fixing the fees for transferring such license should the same be transferred."

I hereby give you notice that on Tuesday, the twenty-third day of November, Nineteen hundred and fifteen, at eight o'clock in the afternoon of that day at the City Hall, in the city of Elizabeth,

or as soon thereafter, as the Excise Commissioners of the City of Elizabeth can attend to the same, I shall apply to the Excise Commissioners of the city of Elizabeth, for an order to revoke and annul your license heretofore granted to you, by said Excise Commissioners, on the twenty-sixth day of July, Nineteen hundred and fifteen, for the premises 214 Broad Street, also known as 214 Morris Avenue, Elizabeth, New Jersey, for the following reasons: 10

1. That you have vacated and removed from the premises herein described and have not procured said license to be transferred to another place.

2. Because you have refused in writing to consent to a transfer of such license for the unexpired term thereof, as provided by the act hereinabove referred to. 20

Dated, Elizabeth, N. J., November 15th, 1915.

EDWARD J. BUTLER,
Edward J. Butler, Record owner and the person having control and management of the premises herein described. 30

STATE OF NEW JERSEY, }
COUNTY OF UNION. } SS.:

THOMAS L. CAREY, being duly sworn, according to law, upon his oath, deposes and says, that on the fifteenth day of November, Nineteen hundred and fifteen, he personally served upon the within 40

named Fred Weber, a true copy of the within notice by serving upon him personally a true copy thereof.

THOMAS L. CAREY.

10 Sworn to and subscribed before me this 16th day of November, 1915.
SAMUEL KOESTLER,
M. C. C. of N. J.

BEFORE THE EXCISE COMMISSIONERS OF THE CITY OF ELIZABETH.

20 In the Matter of Revocation of the License to the Premises Known as No. 214 Broad Street (also known as 214 Morris Avenue in the Tenth Ward) in the City of Elizabeth. } Affidavit.

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

30 Edward J. Butler, being duly sworn according to law upon his oath, deposes and says, that he is the owner of record of the premises known as No. 214 Broad Street, and also known as No. 214 Morris Avenue, by a deed recorded on the Fifteenth day of July, Nineteen Hundred and Fourteen, in the Register's Office of the County of Union in Book 646 of Deeds for said County, on pages 62 etc., that on or about the twenty-sixth day of July,
40 Nineteen Hundred and Fifteen, the Board of Ex-

cise Commissioners of the City of Elizabeth granted a license to one Fred Weber to sell ale, lager beer and wine in the premises above described for a period of one year from said date to the twenty-sixth day of July, Nineteen Hundred and Sixteen.

That on the Thirty-first day of October, Nineteen Hundred and Fifteen, the said Fred Weber vacated the building and premises herein named, for which such license was granted, before the expiration of the term for which said license was granted and has refused to consent in writing to transfer such license for the remainder of the unexpired term thereof to the incoming tenant of said premises or to such person or persons as the Board of Excise Commissioners of the City of Elizabeth may deem a proper person or persons for that purpose.

Deponent further shows that the said Fred Weber is and was a tenant of deponent in the premises in question, and has vacated and removed from such premises, and has not procured such license to be transferred to another place by the Excise Commissioners of the City of Elizabeth; and that the said Fred Weber refused to consent to a transfer of such license for the unexpired term thereof, as provided for in an act entitled:

> "An Act to provide for the revoking and anuulling of licenses of inns and taverns, and saloons, as to the place licensed, where the licensee is a tenant and shall remove from and vacate the licensed premises before the expiration of such license and shall refuse to consent to a transfer of such license by the court or other licensing body which granted the same and fixing the fees for

transferring such license should the same be transferred."

P. L. 1891, pg. 405.

Deponent further says that for at least ten years last past the said premises was duly licensed by the Excise Commissioners of the City of Elizabeth as a lawful place wherein ale, lager beer and wine was sold.

Deponent therefore prays that an order may be made by this honorable body revoking the license in question for the unexpired term thereof in pursuance to the act of the legislature hereinbefore referred to.

EDWARD J. BUTLER.

Sworn and subscribed to before me this 22d day of November, 1915.

JOHN J. STAMLER,
Master in Chancery of N. J.

In the Matter of Revocation of the License to the Premises Known as No. 214 Broad Street (also known as 214 Morris Avenue in the Tenth Ward) in the City of Elizabeth.	Affidavit.

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

Edward J. Butler, being duly sworn according to law, upon his oath deposes and says, that he is the owner of premises known as Number 214 Broad

Street, also known as 214 Morris Avenue, in the City of Elizabeth, New Jersey, for which premises, one Fred Weber held a saloon license, granted to him by the Board of Excise Commissioners of the City of Elizabeth, which said premises, the said Fred Weber vacated on the Thirty-first day of October, Nineteen hundred and fifteen, the said premises being now vacant.

Deponent further says, that after the vacation of said premises by the said Fred Weber and on November Eleventh, Nineteen hundred and fifteen, one William J. Scanlan, of the City of Elizabeth aforesaid, was a bona fide incoming tenant of said saloon premises, which said William J. Scanlan joined with this deponent in the service of a statutory notice given to said Fred Weber requesting the transfer of said license to said William J. Scanlan.

EDWARD J. BUTLER.

Sworn and subscribed to before me
this 19th day of January, 1916.
SAMUEL REIBEL,
Commissioner of Deeds
for New Jersey.
Filed Jan. 25, 1916.

Exhibit D-4.

THE PETER BREIDT CITY BREWERY COMPANY.

Elizabeth, N. J. Oct. 23, 1914.

10 RECEIVED from Mr. Fred. Weber
One Hundred 00/100 Dollars
Rent for whole House No. 214 Broad Street for one month, beginning October 1, 1914, and ending October 31, 1914.

THE PETER BREIDT CITY BREWERY COMPANY.

$100.00/100. Per P. J. McGurn.

20 THE PETER BREIDT CITY BREWERY COMPANY.

Elizabeth, N. J. Oct. 9, 1915.

RECEIVED from Mr. Fred Weber
One Hundred 00/100 Dollars
Rent for Store in House No. 214 Broad Street for one month, beginning October 1, 1915, and ending October 31, 1915.

30 THE PETER BREIDT CITY BREWERY COMPANY.

$100.00/100. Per P. J. McGurn.

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