

INDEX

	PAGE
Bill for Specific Performance	1
Schedule A	6
Answer and Counter-claim	11
Replication and Answer to Counter-claim..	18
Conclusions of Advisory Master	319
Decree	345
Notice of Appeal	349
Petition of Appeal	350
Answer to Petition of Appeal	353

TESTIMONY.

For Complainant.

Jacob Granat,	
direct examination	25
cross "	34
re-direct "	49, 65
re-cross "	63, 66
Sol Lewine,	
direct examination	72
cross "	78
re-direct "	82
Solomon Silverfelt,	
direct examination	83
cross "	91
re-direct "	96
re-cross "	98
(recalled) direct "	108
John Edward Dippel,	
direct examination	99
cross "	104
re-direct "	106

	PAGE
<i>For Defendant.</i>	
A. Harry Adelman,	
direct examination	109
cross "	124
re-direct "	179, 188
re-cross "	181, 189
(recalled) direct "	256
cross "	259
Samuel M. Adelman,	
direct examination	190
cross "	198
re-direct "	214
re-cross "	215
Harry Cohen,	
direct examination	215, 218
cross "	221
re-direct "	237
Benjamin Schwartzberg,	
direct examination	238
cross "	242

Complainant's Rebuttal.

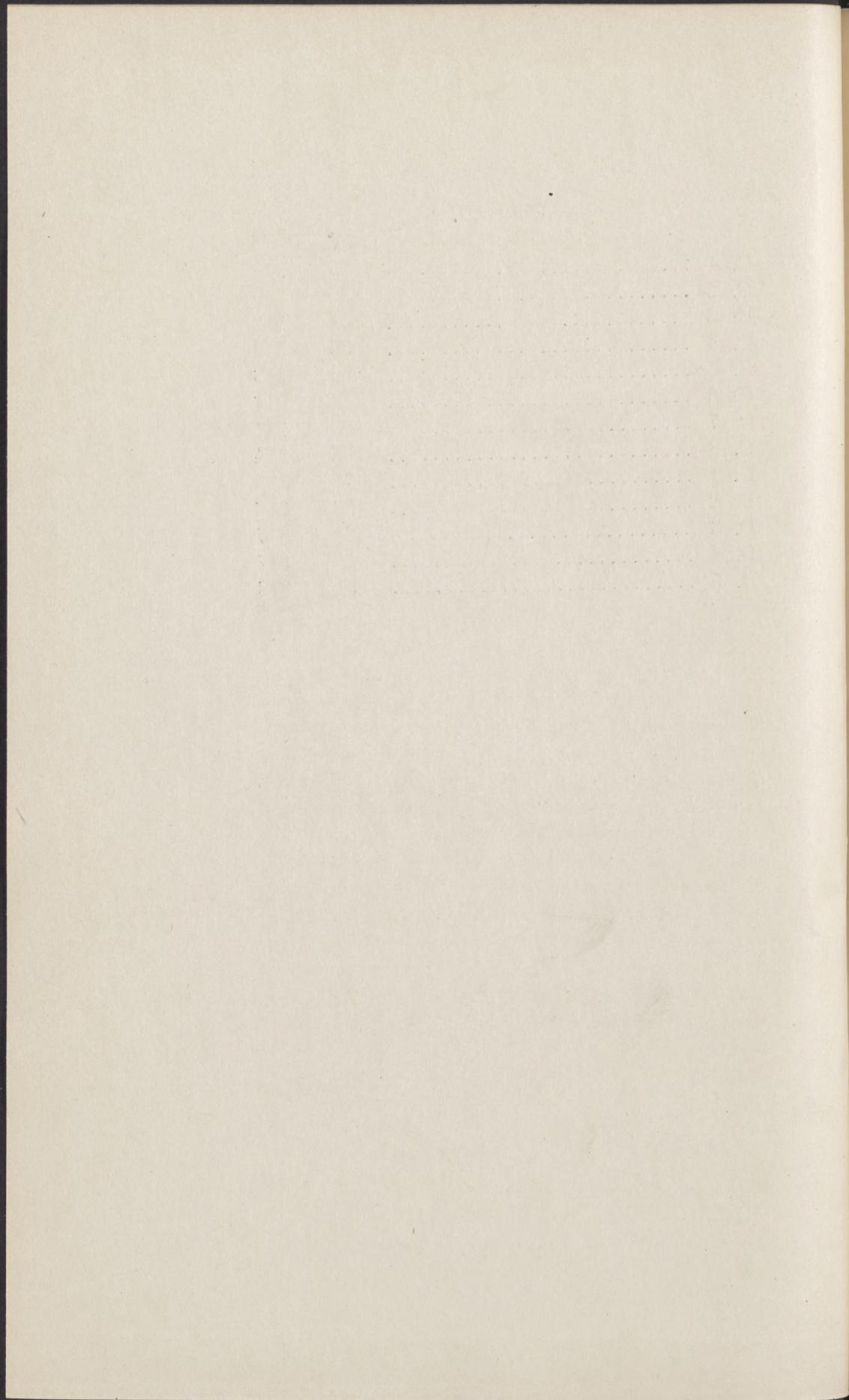
Jacob Granat,	
direct examination	266
cross "	276
re-direct "	282
Sol Lewine,	
direct examination	282
cross "	289
Solomon Silverfelt,	
direct examination	290
cross "	298

Defendant's Rebuttal.

A. Harry Adelman,	
direct examination	305
cross "	307.

EXHIBITS.

	Off'd	P't'd
C. 1	25	310
C. 2	28	310
C. 3	51	312
C. 4	55	313
C. 5	59	313
C. 6	84	313
C. 7	108	314
C. 8	108	314
D. 1	34	315
D. 2	39	316
D. 3	41-124	317
D. 4	69	317
D. 5	91	318



Bill for Specific Performance.

BILL FOR SPECIFIC PERFORMANCE.

Filed April 28, 1920.

In Chancery of New Jersey

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:* 10

The complainant, West Heights Realty Corp., a corporation of the State of New Jersey, respectfully shows:

1. On and prior to March 9th, 1920, defendant, Samuel M. Adelman, of the Township of Weehawken, Hudson County, New Jersey, was, and still is, the owner of certain lands and apartment houses thereon erected, situated, lying and being in said Township of Weehawken, Hudson County, New Jersey, known as Gladdon Hall, A-B-C, situate on the northwest corner of Liberty Place and Boulevard East, in said Township of Weehawken, aforesaid, and more particularly described as follows, viz.: 20

“All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Weehawken, in the County of Hudson and State of New Jersey, 30

COMMENCING at the corner formed by the intersection of the northerly side or line of Liberty Place with the westerly side or line of the New County Road (also known as Hudson County Boulevard Loop) as both of said streets are laid down, designated and delineated upon a certain map, entitled, “Map of Eldorado, Weehawken, Hudson Co., N. J., as modified by the joint consent of all the owners dated June, 1895, made 40

Bill for Specific Performance.

by Thomas H. McCann, Civil Engineer, Hoboken, N. J." and duly filed in the Hudson County Register's Office on August 27, 1895, and from said point of beginning, running thence (1) westerly and along the northerly side or line of Liberty Place a distance of one hundred and thirty-two (132) feet, more or less, to the southeasterly corner of lot numbered two hundred and eighteen (218) as shown and designated upon the map of Eldorado above mentioned; thence (2) running northerly and for part of the distance along the easterly side of said lot number two hundred and eighteen (218) a distance of one hundred and twenty-five (125) feet more or less, to a point in the southerly boundary line of lands and premises shown and delineated upon a certain map entitled "Map of Clifton Park, Weehawken, N. J., made by John Van Horne, January 3, 1900," and duly filed in the Hudson County Register's Office January 4th, 1900, which said point in said southerly boundary line of said lands is distant one hundred and fifteen (115) feet westerly at right angles from the westerly side of the New County Road (also known as Hudson County Boulevard Loop) and running thence (3) from said point easterly a distance of one hundred and fifteen (115) feet to the westerly side of said New County Road, and running from thence (4) southerly and along the westerly side or line of said New County Road (also known as Hudson County Boulevard Loop) a distance of one hundred and twenty-five (125) feet to the point or place of beginning."

2. On or about said 9th day of March, 1920, the said Samuel M. Adelman, being desirous of letting, leasing and renting the aforesaid lands

Bill for Specific Performance.

and the buildings and apartments thereon erected, did, on said day, enter into an agreement in writing with complainant, a copy of which agreement is hereto annexed, marked Schedule "A," and hereby made a part hereof, wherein the said Samuel M. Adelman agreed among other things, to let, lease and rent to the said West Heights Realty Corp., and the said West Heights Realty Corp. agreed to lease and rent of and from the said Samuel M. Adelman, the lands and premises hereinabove described, together with the buildings and apartments thereon erected, for the term of three years to commence on the 1st day of April, 1920; which said agreement, although actually made and entered into on the 9th day of March, 1920, was, by error, dated March 9, 1919.

10

20

3. Thereafter, and on the 12th day of March, 1920, said agreement was recorded in the office of the Register of the County of Hudson in Book 1349 of Deeds for said county, page 504, &c.

4. In and by said agreement, it was agreed between the parties that a lease, in accordance with the terms thereof, was to be made, executed and delivered at the office of Gaede & Gaede, at No. 91 Washington street, Hoboken, New Jersey, not later than March 25th, 1920, and which said lease was to contain the provisions contained in said written agreement, Schedule "A" hereto annexed, and any further provisions, clauses and agreements to be made in addition to the provisions therein mentioned and later to be agreed upon.

30

5. Said West Heights Realty Corp. paid defendant, Samuel M. Adelman, the sum of \$500 referred to as part of the consideration for the

40

Bill for Specific Performance.

making of said agreement, and has always been ready, able and willing, and still is ready, able and willing to perform said agreement in all things to be performed on its part.

6. The defendant, Samuel M. Adelman, has at all times since the making of said agreement,
10 refused and still does refuse, to perform the said agreement or any of its terms; has refused to enter into or execute a lease in accordance with the terms of said agreement; but, on the contrary, after the making of said agreement and before said 25th day of March, 1920, the said Samuel M. Adelman informed complainant that he would not execute a lease for said premises in accordance with the terms of said agreement nor would he permit said West Heights
20 Realty Corp. to take possession of said premises or any part thereof in accordance with the terms thereof, or in accordance with the terms of any lease that was to be made in pursuance the westerly side of said New County Road, and thereof.

7. Complainant is now, and always has been ready, able and willing to enter into a lease with the defendant in accordance with the
30 terms and conditions mentioned in said agreement, and to pay the rent therein specified, and to perform all of the covenants and conditions contained in said agreement, and the lease to be executed in accordance thereof, and before and on said 25th day of March, 1920, tendered itself ready and willing so to do, but the defendant, Samuel M. Adelman, refused to carry out said agreement or to execute a lease as aforesaid.

Bill for Specific Performance.

8. Defendant, Samuel M. Adelman, is now in possession of said premises, and collects the rents, issues and profits derived therefrom.

9. All of which actings and doing of the defendant, Samuel M. Adelman, are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of the complainant in the premises. 10

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

1. That Samuel M. Adelman, who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made.

2. That the said defendant be decreed specifically to perform said agreement, dated March 9, 1919 (a copy of which is annexed to this bill of complaint and marked Schedule "A"), complainant hereby offering to perform specifically the said agreement on its part. 20

3. That the said defendant be decreed to enter into a written lease with complainant, embodying the terms and conditions contained in the agreement herein referred to, and to deliver possession of said lands and premises to the complainant herein according to the terms and conditions of said lease. 30

4. That the defendant may be decreed to account to the complainant for the rents, issues and profits of said premises from the day when he should have delivered possession thereof to complainant in accordance with the terms of said agreement. 40

Bill for Specific Performance.

5. That defendant be decreed to make compensation to the complainant for any damages it has sustained.

6. That a writ of subpoena may issue, commanding said defendant, Samuel M. Adelman, to answer this bill of complainant, and abide by
 10 such decree as this Court may make in the premises.

7. That the complainant may have such further or other relief in the premises as may be equitable and just.

And complainant will ever pray, &c.

LICHTENSTEIN & LICHTENSTEIN,
 Solicitors for Complainant.

20 JULIUS LICHTENSTEIN,
 Of Counsel.

SCHEDULE "A."

AGREEMENT made on this the ninth day of March, Nineteen Hundred and Nineteen.

BETWEEN S. M. Adelman, of the Township of Weehawken, County of Hudson, and State of
 30 New Jersey, party of the first part,

AND West Heights Realty Corporation, of the City and State of New York, having its principal office at 441 West 151st street, Borough of Manhattan, party of the second part,

WITNESSETH: For and in consideration of the sum of Five Hundred Dollars (by check on Bank of Washington Heights No. 37) duly given and paid unto the said party of the first part by the party of the second part. The party of the first
 40 part hereto does agree that he will let, lease and

Bill for Specific Performance.

rent that certain lot of land together with the buildings, apartments, to the said party of the second part for a period of three years to commence on the first day of April, in the year 1920. The lease is to contain among its provisions the following:

The party of the first part is to paint the front fire-escapes and replace the stone caps, and rough terra cotta on the parapet walls on the roof, also to repair the hall lincrusta where same is loose, and replace such marble treads as are loose. 10

The party of the second part is to keep the buildings in good repair and the party of the first part shall judge whether the buildings are in good repair, and if he finds that same are not in satisfactory repair he shall notify the party of the second part who shall repair same within one month from receipt of such notice from party of the first part. Should the party of the second part refuse or neglect to make such repairs to the satisfaction of the party of the first part then such lease is to be forfeited and the party of the first part shall enter into the premises for his own possession free of the rights of the party of the second part. Any entry of the party of the first part or his representatives upon the leased premises shall not be tresspass. 20 30

The premises leased are known as Gladdon Hall A-B-C-situate on the NW corner Liberty Place and Boulevard East, Weehawken, N. J.

The party of the second part shall pay to the party of the first part the sum of Twenty-four Thousand Seven Hundred and Fifty (\$24,750.) Dollars as a rental per annum payable in equal monthly installments on the fifteenth day of 40

Bill for Specific Performance.

each and every month during the term of this lease.

The party of the first part is to pay all taxes up to the amount of Five Thousand Dollars (\$5,000.) the party of the second part to pay any amount in excess of the said sum of (\$5,000.).

10 The party of the second part is to keep the building on the interior and exterior of the said building in repair satisfactory to the party of the first part, and his judgment shall be binding.

The party of the second part shall pay for all water, coal, gas and electric, repairs, consumed, or needed to keep the said buildings in accordance with the City, County and State laws. The party of the first part shall turn over to the party of the second part for remedying all city, state and national violations, and the said party
20 of the second part shall at once rectify and remedy such violations and upon its failure to do so the party of the first part shall remedy same and the party of the first part may thereupon consider this lease at an end and may then enter into possession of the premises.

The party of the first part is to pay interest on the mortgages, on the premises, pay taxes up to the sum of Five Thousand Dollars, and pay
30 for fire and rent insurance, and public liability insurance. The party of the second part to pay for all other insurances.

The party of the second part is to return to the party of the first part the above mentioned plot, apartment, and house in the very same condition and repair as it is now of the date of lease, and the party of the first part shall be the judge of such condition of repair, and only the party of the first part shall judge.

40

Bill for Specific Performance.

The party of the second part shall return with the return of the building all screens in good repair for all windows, and awnings for all windows on the east, west, and south sides of the said buildings, such awnings to be in good repairs.

Failure of the party of the second part to pay the agreed rental to the party of the first part on the fifteenth day of the month and an allowance of one days grace to the sixteenth shall constitute a forfeiture of the rights of the party of the second part and the party of the first part shall take possession of the premises free of any rights of the party of the second part. 10

All doubtful covenants, and agreements herein contained together with all doubtful clauses shall be construed in the favor of the party of the first part. 20

The party of the second part shall pay for all coal in the cellars as of April 1, 1920, at the price he paid. All water, gas and electric, to be adjusted.

Any further provisions, clauses, agreements to be made in addition to the above mentioned, and later to be agreed upon shall be incorporated in addition to the provisions herein contained, in a lease to be made in the office of Gaede & Gaede, 91 Washington St. Hoboken, N. J., not later than March 25, 1920. 30

All the provisions herein contained shall be binding upon the successors of the party of the second part, and heirs, executors of the party of the first part. This agreement and the lease to be made later shall not be assignable, nor sublet or underlet without the express written permission of the party of the first part. 40

Bill for Specific Performance.

10 The party of the second part to insure faithful performance of all the covenants to be contained in the lease shall deposit with the party of the first part the sum of Four Thousand One Hundred and twenty-five (\$4,125.) Dollars from which is to be deducted the consideration of this agree-
 10 ment (Five Hundred Dollars). And the said security shall be held by the party of the first part to insure faithful performance of the party of the second part during the full term of the lease. And the party of the second part shall apply the last two months rent as the return of the said security. The deposit is to draw interest at 6% during the term it is held, payable semi-annually.

20 Signed, Sealed and delivered in the presence of:

(Signed) S. M. ADELMAN (L. S.)
 THE WEST HEIGHTS REALTY CORP.,

(Signed) Sol. Lewine,
 Pres.

Attest:

(Signed) Jacob Granat,
 Sec.

30

Witness:

(Signed) S. SILBERFELD.

Answer and Counter-claim.

ANSWER AND COUNTER-CLAIM.

Filed July 7, 1920.

The answer of the defendant, Samuel M. Adelman.

This defendant, Samuel M. Adelman, answering the bill of complaint, says that: 10

1. He admits the statements contained in paragraph 1 of the answer.

2. He denies the statements contained in paragraph 2 of the answer except that he admits on or about the 9th day of March, 1920, he signed a certain written instrument, and for greater certainty with respect to the contents thereof refers to the original. 20

3. He has no knowledge of the contents of the third paragraph.

4. With respect to the contents of the fourth paragraph, he says that he refers to the said written instrument for particulars as to the agreement, if any.

5. In answering the fifth paragraph, he denies that the West Heights Realty Corp. paid him the sum of \$500. He says that there was delivered to him a check of one Sol Levine for the sum of \$500, which said check has not been used by defendant; on the contrary, has been tendered back. 30

6. He admits that he has refused to enter into or execute any lease to the complainant and he admits that he will not permit the complainant to take possession of the premises referred to in the bill of complaint or any part thereof, 40

Answer and Counter-claim.

and he denies that he is under any obligation either to make such lease or to permit complainant to take possession of the said premises.

7. He denies the contents of the seventh paragraph.

10 8. He admits the contents of the eighth paragraph.

9. He denies the contents of the ninth paragraph.

Further answering the bill, defendant says:

20 1. That the interest sought to be obtained by the complainant is an interest in lands and under the Statute of Frauds any agreement or contract in reference thereto must be in writing, or a memorandum thereof, must be in writing, and defendant says that the said alleged paper writing signed by this defendant is not sufficiently within and does not comply with the provisions of the Statute of Frauds and defendant pleads the Statute of Frauds and specifically sets it up.

30 2. Defendant further shows that said agreement is too uncertain for enforcement by specific performance.

40 3. Defendant further shows that said instrument in writing contemplated that before any lease or agreement should be, in fact, executed there should be a further agreement between the parties and terms to be inserted in said lease were to be agreed upon; that no such terms were agreed upon in writing as required by the Statute of Frauds, and no completed agreement in writing or a memorandum of which is in writing has been made between the parties.

Answer and Counter-claim.

4. Defendant further answering, shows that at the time of the execution of the said paper writing by defendant and subsequent thereto it was represented by the complainant to the defendant that a bond would be given by the complainant to secure the performance of any contract which was to be made as a result of the said instrument in writing and that the bond so to be given was to be a bond of a bonding company, and that in addition to the giving of said bond two months' rent should be paid in advance. Defendant refused to consider any proposition from the complainant without a bond being given which would secure defendant for the performance of the entire contract; that it was represented to the defendant that the details with respect to said bond would be subsequently agreed upon and that it would be better to get the other matters out of the way first; that as a result the other matters were discussed and an instrument in writing signed by defendant, but at no time did defendant waive the giving of the said bond; that subsequent to the signing by defendant of the said written instrument the said complainant agreed to give a bond which would secure the performance of the entire contract; said defendant insisted that the amount of said bond should be the amount of the rent; complainant insisted that the amount of the said bond should be a smaller amount; that complainant refused to give the said bond.

5. Defendant further shows that on or about the 25th day of March, 1920, there was a meeting between the officers of the complainant and the defendant, in which the matter of the giving of a lease was discussed, and at said conference

10

20

30

40

Answer and Counter-claim.

10 it was then and there conceded that under the terms of the said written instrument there were provisions, clauses and agreements to be agreed upon between the parties; that such provisions, clauses and agreements as were required to be agreed upon were not, in fact, agreed upon either orally or in writing, and defendant says that even if agreed upon orally they were not agreed upon in writing, nor was the agreement evidenced by writing within the Statute of Frauds, and defendant specifically pleads the Statute of Frauds.

20 6. Defendant further answering, says that the West Heights Realty Corp. is a corporation recently organized for the purpose, as defendant charges and insists, of speculating in rentals, and that such corporation is of little, if any, financial responsibility. During the early part of 1920 there was a very great scarcity of renting property, and because of the scarcity of such properties and the excessive demand as well as because of the increased price of all commodities, rents were being increased in the class of properties referred to in the bill of complaint. It became the practise of various speculators by the organization of corporations to get control of buildings such as referred to in the bill of complaint under lease from the owners, and to forthwith raise the rents without regard to legitimate increase based upon increase in values and in cost of commodities, but based wholly upon what the tenants would stand; that the complainant was incorporated for the purpose aforesaid, and it was the purpose of the complainant if it obtained the lease referred to in the bill of complaint to immediately raise the

Answer and Counter-claim.

rents in the premises in question and to fix them at excessive amounts; that is, amounts not measured by increase in value or by increased cost of commodities, but measured solely by what it would be possible to exact from the tenants. That it proposed to fix unconscionable and excessive rents and to take as its profit for the period of the said lease the difference between the amount which it would pay to defendant and the excessive amounts which it would receive from the tenants. That the effect of the act of the said complainant would be to create enmity between defendant and his tenants, so that at the end of the lease the defendant would be unable to rent the property; it would also lead the municipal authorities to increase the tax value of the said premises based upon the inflated increase in rent, and the result would be that at the conclusion of the period of the said lease the property would be handed back to defendant with large increased valuation for taxing purposes and that a condition would be established which would prevent defendant from utilizing said property for renting purposes. That it was the intent and purpose of the said complainant so to act and said complainant induced the defendant to sign said instrument in writing concealing from the said defendant its purpose aforesaid. That as hereinbefore set forth, the said complainant is without financial responsibility, is organized and incorporated for the sole purpose of taking advantage of the situation, so that it might exact unconscionable increases in rent, and if the said defendant be obliged to execute the agreement as prayed for in the bill of complaint, it would place him and his property at the mercy of an irresponsible corporation.

10

20

30

40

Answer and Counter-claim.

7. Defendant shows that the act of the said complainant is inequitable, the instrument in writing is inequitable, unfair and unjust and that the course of conduct of said complainant is contrary to public policy and that the complainant does not come into this court with clean hands.

10

8. Defendant further shows that the time within which said contract was to be closed was the 25th of March, 1920; that on or about the 25th of March, 1920, the said complainant had full knowledge that defendant would not execute the lease referred to in the bill of complaint, which said lease was to go into effect on the 1st of April, 1920. That process in this suit was not issued until on or about the 7th day of June, 1920, a period of approximately three months after complainant had knowledge that the lease would not be executed. That defendant assumed that complainant had abandoned any idea of obtaining the lease as referred to in the bill of complaint and thereupon proceeded to deal with and operate said property in a manner which otherwise he would not have. That defendant had no knowledge that the complainant was going to insist upon performance of the said contract as referred to in the bill of complaint until process was served upon him, and defendant says that the said complainant is guilty of laches and is also equitably estopped from asserting any rights under said contract.

20

30

By way of counter-claim against complainant, West Heights Realty Corp., the defendant, Samuel M. Adelman, says that:

1. He repeats the statements contained in the answer, and further says that the said instru-

40

Answer and Counter-claim.

ment has been recorded and constitutes a claimed lien or charge upon the property of defendant referred to in the bill of complaint.

2. That the contract is grossly unfair, unjust and inequitable and the conduct of the complainant in securing the same grossly unfair, unjust and inequitable, and that the complainant is equitably estopped from proceeding against the said defendant upon said instrument in writing either at law or in equity, and that the attempt of complainant to secure the lease referred to in the bill of complaint without giving a bond set forth in the answer constitutes a fraud upon defendant, and that said instrument in writing evidences a contract, if it evidences a contract at all, which is contrary to public policy and void. 10

This defendant therefore prays: 20

1. That the said complainant may answer this counter-claim and each statement herein made.

2. That it may be decreed by this Court that said instrument in writing referred to in the bill of complaint does not evidence a complete contract between the complainant and that it is not binding upon the defendant, and that it be delivered up by the complainant for cancellation and that the record thereof be cancelled. 30

MERRITT LANE,
Solicitor for Defendant.

Replication and Answer to Counter-claim.

**REPLICATION AND ANSWER TO
COUNTER-CLAIM OF DEFENDANT.**

Filed July 16, 1920.

The replication of West Heights Realty Corp., complainant, to the answer of Samuel M. Adelman, defendant, says:

1. It denies that the agreement, a copy of which is attached to bill of complaint herein, is not sufficiently within the Statute of Frauds, and it denies that the said agreement does not comply with the said Statute of Frauds.
2. It denies that the said agreement is uncertain.
3. It denies that the said agreement contemplated that there should be further agreement and it denies that the said agreement was not complete in every respect.
4. It denies that at the time of the execution of the said agreement or at any other time or at all, it was agreed or understood that any bond, to secure the performance of the said contract, would be given by the complainant. It alleges the truth to be that nothing was mentioned about a bond being required at the time of or prior to the execution of the said contract. That there was a general discussion prior to the execution of the contract as to the amount of security that the complainant should deposit, and it was agreed as recited in the contract that \$4,125. should be deposited, from which \$500. was to be deducted as consideration for the agreement.
5. It denies that at the meeting on the 25th day of March, 1920, or at any other time, it was conceded by the complainants that there were

Replication and Answer to Counter-claim.

other clauses or agreements to be agreed upon between the parties. The complainants allege the truth to be that at a meeting held on or about March 25, 1920, at the law office of Merritt Lane, defendant urged the claim that complainants should, in addition to the deposit agreed upon in said contract, furnish defendants with a bond but that no agreement was made to that effect.

10

6. It denies that it is engaged in speculating in rentals and denies that it has but little financial responsibility, or that it was incorporated or is or ever was a profiteering landlord. But it alleges the truth to be that the defendant, prior to the execution of the said contract, told the complainant to raise the rents moderately and that if it, the complainant, could not that he, the defendant, would raise the rents. That it is not and never was the intention or purpose of the complainant to raise the rents beyond a fair and moderate rental. That the said contract provides that if the taxes for the said premises so agreed to be leased should exceed \$5,000. the complainant was obligated to pay such excess.

20

7. It denies that said contract is inequitable, unfair or unjust, or that the course of conduct of the complainant is contrary to public policy. But it alleges the truth to be that the contract is fair, just and equitable in all its parts, and that its purpose and plan is as it has ever been to carry on and conduct its business in a fair and honorable manner.

30

8. It denies that the defendant assumed or had any basis for assuming that the complainant would not insist upon the performance of said agreement. That between the date of the execution of said agreement, March 25, 1920, and up

40

Replication and Answer to Counter-claim.

to the time of the commencement of this suit, the complainant had several conferences with the defendant, at all of which meetings said complainant requested and insisted upon the compliance and performance with the terms of said contract. It denies that it has been guilty of laches or
10 that it is equitably estopped from now asserting its rights under said contract.

To the counter-claim contained in said answer, complainant says:

9. It admits that the said agreement has been recorded and is now a lien on said property.

10. It denies that the said contract is unfair, unjust or inequitable or that the conduct of the complainant was unfair, unjust or inequitable,
20 and denies that it is estopped from proceeding to enforce said contract, and it denies that by proceeding to enforce said contract without the giving of a bond not called for by said contract, any fraud is committed upon the defendant, and denies that said contract is contrary to public policy or void. But it alleges the truth to be that said contract is fair, just and equitable in all its parts; that the conduct of the complainant has
30 been fair, just and equitable; that it has acted at all times in full reliance upon the said contract and had notified the defendants at numerous times since the execution of said contract that it relied upon it and demanded of defendant several times since the execution of said contract that it deliver and surrender over the premises to the complainant, and that it execute the lease as in the contract provided, but defendant has refused on divers and different occasions since March 25, 1920 so
40 to do. That it has not waived any of the pro-

Replication and Answer to Counter-claim.

visions of said contract or led the defendant to believe that the complainant would not enforce said contract.

LICHTENSTEIN & LICHTENSTEIN,
Solicitors for Complainant.

10

20

30

40

Opening.

FINAL HEARING.

10 Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Thursday, September 29, 1921, at 10 o'clock in the forenoon, before his Honor, Eugene Stevenson, Vice-Chancellor.

Appearances:

Julius Lichtenstein, Esq., for the complainant.
Merritt Lane, Esq., for the defendant.

The Court: What is the case, gentlemen, we have for trial this morning?

20 Mr. Lichtenstein: This is an action to enforce the specific performance of an agreement to execute a lease. The defendant has failed to execute any lease.

The Court: Vendee's suit?

Mr. Lichtenstein: Vendee's suit. I telegraphed for the original papers day before yesterday, but they haven't arrived yet.

The Court: You must give the Clerk a longer notice than that.

30 Mr. Lichtenstein: This case was down once before and our office thought the papers were still here. They found out that they were not here and I telegraphed at once. Does your Honor desire to hear the reading of the bill?

The Court: Yes. I suppose your bill alleges that the lessee was willing to take and the lessor has refused, and it sets forth the disputes?

Mr. Lichtenstein: No, it doesn't set forth any particulars; simply that he refused.

40 The Court: What is the defense set up in the answer, Mr. Lane?

Opening.

Mr. Lane: First, that the agreement is too uncertain for performance, arising on the face of the agreement, and, consequently, comes within the Statute of Frauds. Second, that there was an agreement contemporaneous with and prior to the making of the agreement, which provided for the giving of a bond to secure the return of the property back in the same condition as originally, which provision was omitted from the agreement by mistake. We file a cross-bill to set aside the contract on the ground of mistake. 10

The Court: Not praying for reformation?

Mr. Lane: No, I don't think so. I think we say we elect to rescind it. We don't ask for reformation; we don't ask for any relief in this court, as a matter of fact. We are coming in and saying that is a reason why the equitable discretion vested in your Honor to enforce specific performance should not be exercised. 20

The Court: I understand you filed a counter-claim?

Mr. Lane: I did, but what I pray for is rescission.

The Court: On the ground of mistake?

Mr. Lane: On the ground of mistake; and also upon a third ground which I will come to. At the time this contract was made there was a shortage of property for selling purposes and profiteering in rent, and an agreement contemplating profiteering in rents is contrary to public policy and ought not to be enforced, and it is upon that ground that I base the counter-claim of our right to rescind. 30

The Court: You don't base it on the ground of mistake? 40

Opening.

Mr. Lane: No, we don't ask for any relief in this court for that; that is merely set up as a defense to this suit. And, fourth, that our defense generally is more a matter of law. It is a case where a court of equity will leave the parties to a court of law for a breach of the contract.

10

The Court: Well, Mr. Lichtenstein, you may read the agreement.

Mr. Lichtenstein: The bill also asks for an accounting. This is an agreement, if the Court please, that was prepared by the son of the defendant who is now a lawyer and who, at that time, was a law student and was about to be admitted to the bar. If I am not mistaken, he was admitted to the bar a few months thereafter.

20

(The contract is here read in full by Mr. Lichtenstein.)

Mr. Lichtenstein: I offer in evidence the agreement to execute the lease, referred to in the bill of complaint, which is dated March 9, 1919 on the face of it, but I think it should be March 9, 1920.

The Court: What is the date of it?

30

Mr. Lichtenstein: 1919, but that is an error. We allege that in the bill of complaint.

The Court: Well, is the execution of this agreement admitted?

Mr. Lane: Yes, it is.

The Court: And is it admitted that the date is erroneously stated and made 1919 instead of 1920?

Mr. Lane: Yes, sir.

40

Jacob Granat, direct.

Mr. Lichtenstein: The acknowledgment is taken on the 12th day of March, 1920.

(Admitted in evidence and marked "Exhibit C. 1.")

JACOB GRANAT sworn on behalf of the complainant, testified as follows:

10

Direct examination by Mr. Lichtenstein.

Q Mr. Granat, you are an officer of the West Heights Realty Corporation? A Yes, sir.

Q What position do you hold with the company, or did you in 1920? A Secretary.

Q And were you also one of the managers? A Yes, sir.

Q And Mr. Sol Lewine was he an officer of the company? A Yes, sir.

20

Q What was he? A President.

Q And also one of the managers? A Yes, sir.

Q Both you and he managed the affairs of the company? A Yes, sir.

Q And do you know Mr. Samuel M. Adelman? A Yes sir.

Q And were you introduced to him on any occasion during the month of March 1920? A Yes, sir.

30

Q By whom? A By Mr. Solomon Silverfelt.

Q Mr. Silverfelt's business was what? A Mr. Silverfelt's business was that of real estate broker.

Q And where did he introduce you to Mr. Adelman? A Mr. Adelman was building a private home at that time opposite these houses.

Q And who took you to see Mr. Adelman? A Mr. Silverfelt.

40

Jacob Granat, direct.

Q And was anyone with you at the time? A Nobody.

Q Was there anyone else there at the time you were introduced to Mr. Adelman? A Nobody.

Q After this introduction did you see him again? A Yes.

10 Q And where? A In the office, in the Leventhal Building.

Q That is, the office of the defendant? A Yes.

Q Mr. Adelman had an office in these very buildings that are the subject of this suit? A Yes.

Q What time did you meet him there? A March 9th.

Q The date of this agreement? A Yes.

20 Q Who was with you at that time? A Mr. Silverfelt.

Q Anyone else? A Mr. Adelman, Mr. Adelman, Jr., and a party by the name of Mr. Cohen. He was in the office at the time.

Q We will refer to Mr. Samuel M. Adelman as "Mr. Adelman Senior," and to the son as "Mr. Adelman Junior." After you were introduced to Mr. Adelman, Sr., and Mr. Adelman, Jr., what took place between you? A Mr. Adelman, Jr., took out the book and opened it up, and gave me a sheet of paper and told me to copy the rentals.

30 Q Then you had a discussion, did you? A Yes, sir.

Q How long did this discussion last? A It lasted for some time.

Q How many hours? A It was evening, because people were coming in and going out, and when they would come in we would stop talking and didn't talk about this.

40

Jacob Granat, direct.

The Court: What is the object of this?

Mr. Lichtenstein: I will get right down to the important part of it.

Q After you were there with him for some time was this agreement, which has been admitted in evidence and marked "C. 1.," signed? 10

A It was signed, yes.

Q After the execution of this agreement were you at all times ready to go on and complete your part of the contract? A Yes, sir.

Q Were you willing to sign the lease provided for under this agreement? A Yes, sir.

Q Were you able to go on and carry out its terms? A Yes, sir.

Q Did you, after the execution of the agreement, tender yourself ready and willing to go on and execute the lease according to the terms of the agreement? 20

Mr. Lane: I object to that as calling for a conclusion. What good would it do for him to tender himself.

The Court: Does the contract name any time and place? It gives the date when the term commenced, doesn't it? 30

Mr. Lichtenstein: Yes; and it also provides just as I read:

Any further provisions, clauses or agreements to be made in addition to the above-mentioned, and later to be agreed upon, shall be incorporated in addition to the provisions herein contained in a lease to be made in the office of Gaede & Gaede, 91 Washington street, Hoboken, N. J., not later than March 25, 1920. 40

Jacob Granat, direct.

The Court: When was the contract to begin?

Mr. Lichtenstein: On April 1st.

Q (Question read by the stenographer as follows:) Did you, after the execution of the agreement, tender yourself ready and willing to go on and execute the lease according to the terms of the agreement? A Yes, sir; I did.

Q Prior to the 25th day of March did you cause a letter to be sent to Mr. Samuel M. Adelman? A Yes, sir.

Mr. Lichtenstein: I call upon the other side to produce that letter.

(The letter is produced by Mr. Lane and handed to Mr. Lichtenstein.)

Q I show you a letter, dated March 19, 1920, signed by the West Heights Realty Corporation, and addressed to Mr. Samuel M. Adelman, and ask you if that is the letter that was sent by your company? A (After looking at the paper.) This is the letter.

Mr. Lichtenstein: I offer it in evidence. (Admitted and marked Exhibit C. 2.)

Mr. Lichtenstein: This letter reads as follows:

Dear Sir:—

We have communicated with your attorneys, Messrs. Gaede & Gaede, regarding the preparation and execution of the lease under our agreement for premises known as Gladdon Hall Apartments, A, B, and C, located at 847 Boulevard East, Weehawken, N. J., and were advised by Mr. Henry

Jacob Granat, direct.

J. Gaede that it was impossible for him to attend to this matter.

We therefore hereby notify you that we are ready and willing to comply with all the terms and conditions under the said agreement on our part to be performed, and accept the written lease outlined therein, upon your notification to us at the above address by registered mail of the day and hour to appear at the office of Gaede & Gaede, on or before March 25, 1920. 10

Very truly yours,
West Heights Realty Corp.

Q After the execution of the agreement between the company and Adelman did you see Mr. Adelman? A That was about the 22d or 23rd of March. 20

Q After the writing of this letter? A After the writing of this letter.

Q (By the Court.) Did you receive any answer to the letter? A We did not.

Q So after waiting a few days and having received no reply— A We went over to see him.

Q Where did you see him? A We found him at his home. 30

Q When you say "we," whom do you mean? A Mr. Cohen, Mr. Dippel, and myself.

Q Mr. John Dippel sitting here? A John Dippel, yes.

Q And he at that time was your attorney, was he? A Yes, sir.

Q Did you talk with Mr. Adelman Senior? A We did. 40

Jacob Granat, direct.

Q And what did you say to him and what did he say to you? A We told him that we were ready to proceed with the contract—ready and willing to take the lease, and will be ready on the 25th, and we wanted to know if he would be ready. He said that he won't be ready; that we wouldn't get it.

10 Q Did he give any reason why you wouldn't get it? A Yes; he said he wants a bond.

Q Did he tell you what bond he wanted? A He wanted a surety bond.

Q Did he mention the amount of the bond? A \$75,000.

Q And what did you say to him? A I said, "We can't give you such a bond and we don't have to give it to you. Our contract does not provide for it."

20 Q What did he say then? A He said, "Then you can't get the property."

Q Thereafter did you see him again? A Thereafter we met in Mr. Lane's office.

Q Mr. Merritt Lane's office? A Mr. Merritt Lane's office.

Q And do you know what day that was? A That was the 24th.

30 Q (By Mr. Lane.) 25th, wasn't it? A The 24th of March. It was the day before the closing.

Q And whom did you go there with? A Mr. Dippel, Mr. Lewine, Mr. Silverfelt and myself.

Q And did you have an arrangement to go to Mr. Lane's office? A It was an appointment made in Mr. Adelman's home to meet in Mr. Lane's office instead of Gaede & Gaede's office.

40 Q What was the purpose of going to Mr. Lane's office? A For the purpose of getting

Jacob Granat, direct.

together, to see whether we can't come to any agreement to give us the lease.

Q You wanted the property? A We wanted the property.

Q At that time was Mr. Adelman, Jr., present? A He was.

Q Now, will you tell us what took place there at that conference; what was said by you and your partner and the Adelmans? A Mr. Adelman insisted upon a bond—

10

Q For how much? A \$75,000. He insisted at that time upon a bond; and we told him that inasmuch as it is not a part of our agreement we don't have to give it to him, and we can't give it to him. Then he says, "You can't get the property." In fact, there was a lengthy discussion. Mr. Adelman, Jr., said for his father that the father would waive the question of the bond if we would agree not to raise the rent of the outside rooms to any more than \$14 per room at any time during the term of the contract, and the inside rooms not more than \$13 a room, and we agreed to that.

20

Q When you say you agreed to that you mean you were willing to do it? A We were willing to do it.

30

Mr. Lane: That is suggestive, Mr. Lichtenstein.

Q The young man, you say, said that his father was willing to waive the question of the bond provided you would agree not to raise the rent of the outside rooms beyond how much? A \$14 a room, and the inside not beyond \$13; and we then agreed to that.

40

Jacob Granat, direct.

Q And not to raise the outside rooms beyond what? A Beyond \$14 a room, and the inside \$13 per room, and we then agreed to that.

Q When you say you agreed to it, what do you mean? Just tell us. A I told him that we agreed to his demand.

10 Q And then what happened, when you said that you agreed to his demand? A He had a talk with the father. The son told him, "Pop, they have agreed to it," and we had a talk and they had a talk; I don't know what they were speaking as they spoke in a low voice—those two; and the father said, "No, sir; we will insist upon a bond"; he said he had changed his mind.

Q When he said he had changed his mind, what was the demand then made by you, if any?

20 A There was no other demand made but the bond.

Q What bond did he say he then wanted? A A surety bond.

Q For how much? A \$75,000.

Q And what did you then say? A I said, "We can't give it to you, because it is not any part of our agreement."

Q And did that speak up the session? A That broke up the conference there.

30 Q And you left, did you? A We left.

Q Now, the next day was the 25th, as I understand it? A Yes, sir.

Q What did you do on that day? A On the 25th we went over with you to Gaede & Gaede's office to make a tender there.

Q And was Mr. Gaede there? A No, he was not.

Q And at that time did you find out whether Mr. Gaede was going to be there? A Yes; they told us that he wouldn't be there.

40

Jacob Granat, direct.

Q And was Mr. Adelman or his son there?

A He was not.

Q Did you inquire whether they had made any arrangement to be there that day? A They had made no arrangements.

Q Did you at that time have any moneys with you? A We had the full amount of money in legal tender. 10

Q That is, the amount of money called for by this contract? A The amount of money called for less \$500.

Q How much money, altogether; do you recall? A \$3,625.

Q Well, the amount of the deposit was to be \$4,125, and you had that \$4,125 less \$500? A Yes.

Q Do you recall whether word was left there if Mr. Adelman or Mr. Gaede came they were to call you up at my office? A Yes. 20

Q Which was right around the corner? A Yes.

Q You waited there for some time? A Yes, and then we waited at your office and received no call of any kind.

Q Did you at the time of the execution of the agreement give Mr. Adelman a check for \$500? A Yes, sir. 30

Q Did you ever receive any lease from them, in accordance with the terms of the contract, or any lease at all? A We did not.

Q And you have never had possession of the property? A Never had.

Q And Mr. Adelman is still in possession of it? A Yes.

Q (By the Court.) Who has collected the rents? A Mr. Adelman. 40

Jacob Granat, cross.

Q You never collected any? A No, sir; we weren't in possession.

Cross examination by Mr. Lane.

10 Q This is the check you gave Mr. Adelman, is it not (showing paper to the witness)? A Yes, sir.

Mr. Lane: I offer it in evidence.
(Admitted and marked Exhibit D. 1.)

Q And that check was tendered back to you by Mr. Adelman, was it not, on a separate occasion or on several occasions? A On one occasion.

20 Q When? A At your office.

Q You say it wasn't tendered back to you before? A No, sir.

Q You say it was tendered back to you on one occasion; what date was that? A The 24th we had a certified check of ours to pay the balance, and we tendered that check, and then Mr. Lane tendered this one.

30 Q On that occasion you tendered your certified check and we tendered back the check you had already given us, and that was the end of the conference, wasn't it? A Yes, sir.

Q When was your company, the West Heights Realty Corporation, formed? A I believe in November, 1919.

Q It is a corporation of what State? A State of New York.

Q What is its capital stock? A \$10,000.

Q How much is paid in? A Five.

40 Q In cash? A All cash.

Jacob Granat, cross.

Q On March 25, 1920, when this lease was to be delivered, what did that company own? A Leaseholds.

Q How many leaseholds? A Four, I believe.

Q Where? A In New York.

Q What part of New York? A On the Heights—Washington Heights. 10

Q All apartment houses? A All apartment houses.

Q Involving rentals amounting, in the aggregate per year, to what? A Well, offhand, I couldn't tell you. (The witness pauses.) About \$55,000.

Q Altogether? A Yes.

Q That is, those are rentals that you had to pay? A No, not that we had to pay; collected.

Q What rentals did you have to pay? A We had to pay— 20

Mr. Lichtenstein: Is this material, if the Court please? It will raise a whole lot of issues as to what the leases were; what they were to do and what we were to do.

The Court: I understand one defense is that this contract is against public policy and the lessee is profiteering in rents. What there is in that remains to be seen. It applies to that subject, does it not, Mr. Lane? 30

Mr. Lane: To that subject and other subjects.

The Court: Well, proceed.

Q What rentals did you have to pay? A I don't remember the exact amount.

Q Well, can you tell me about? A About \$34,000, I believe.

Q About \$34,000? A About that much, yes. 40

Jacob Granat, cross.

Q When were these leases entered into? A From November, 1919.

Q Up until when? A Different times; for three-year terms.

Q How many apartments were there in each of the apartment houses? A Well, some had
10 an average of 20.

Q Are you still operating those apartments? A Not those; others.

Q What? A Not those.

Q Why not? A The leases expired.

Q Three years? A They have cancellation clauses.

Q When were they cancelled? A At different times.

Q Why? A It was sold.
20

Q Property sold? A Yes.

Q Has the company done any other business except that? A Yes, sir.

Q Is it now leaving property? A Buying—owning property.

Q Have you any leases at all now? A No leases; we own it.

Q In these other properties which you leased your profit, of course, consisted in the difference
30 between the amount you had to pay the landlord and the amount you could get from the tenants? A Well, there are expenses; deducting those.

Q In each instance that you went into possession you raised the rents, didn't you? A No, sir.

Q You didn't? A In some instances we did and in some we didn't.

Q In any one of these particular instances did you fail to raise some of the rentals of the premises? A Yes, sir.
40

Jacob Granat, cross.

Q You mean that there was at least one of these apartments where you didn't raise any rents at all? A Some apartments we raised and some we did not.

Q In each one of these apartment houses you had under lease there were some apartments that were raised? A Yes.

10

Q They had to be raised in order that you might make any profit? A No, sir.

Q You could have made a profit by leaving the rents as they were? A Yes, sir; we could have made a profit.

Q How did you determine that? A Well, that is a question of figuring.

Q Sitting down and going over the figures? A Yes, sir.

Q Have you those figures? A No, I have not.

20

Q Had you done any business in the State of New Jersey up to the time you made this contract? A No, sir.

Q Did you have any license to transact business in the State of New Jersey? A We filed a certificate of incorporation.

Q When? A I believe it is a public record. I don't remember exactly the date.

Q It was just before the commencement of this suit, wasn't it? A Quite some time before.

30

Q On the 25th of March did you have a license to do business in the State of New Jersey?

A Yes, sir.

Q Sure? A Sure.

Q Did the company have any other assets on the 25th of March excepting these leaseholds?

A In New York; in the company.

Q The \$5,000 capital stock is actually paid in? Is that right? A Yes, sir.

40

Jacob Granat, cross.

Q And I suppose that went for organization expenses, didn't it? A No, that went to take leaseholds.

Q And the money which was offered to Mr. Adelman as a deposit upon this lease was not money of the company, was it? A It was.

10 Q Loaned to the company? A No, sir.

Q Well, how did the company get it? A We had it.

Q The check is a check of Mr. Lewine? A You mean this check?

Q Yes, this check I am talking about. A When we were at Adelman's office we didn't have the company's check, and we told Mr. Adelman that we would give him an individual check.

Q Did the company give a check to Mr. Lewine in payment of this? A Yes, sir.

20 Q Whose check was the \$3,625 check that was tendered to me? A The company's check.

Q Where did the company get the money to make good that deposit? A That was from the business.

Q Did it borrow that money at that particular time? A It did not borrow it.

Q Have you got the bank book here? A Yes, sir.

30 Q Will you produce it as of that time? A Yes, sir; it will show the deposit. (Mr. Lichtenstein hands bank book to the witness, and the witness continues:) That was the day we made the deposit of the check, the 26th day of March.

Q The day before the \$3,625 was tendered to me in a certified check there was a deposit of \$3,525; where did you get that? A It was in the bank.

40 Q No it wasn't; it was deposited that day, according to your deposit slip. A We first

Jacob Granat, cross.

made a certified check and drew the check for \$3,625.

Q That isn't the deposit of the certified check; that's a deposit before your certified check. Where did that come from? A I don't know.

Q You have got another deposit there of \$3,625 besides the deposit of your certified check. A If I had the deposit slip I would remember it. 10

Q Don't you know where you got that \$3,625 that you deposited the day you drew the certified check? A I couldn't tell without the deposit slip.

Q Don't you know you borrowed the money? A No.

Q And you can't tell us where you got it? A It was in the company. 20

Q It was put in by the company that day, according to your deposit slip; where did you get it? A If I could recollect— (witness hesitates).

Q Have you got any book here that will show? A I think one of our leases was cancelled about that time and we got the money.

Q And the amount which was paid by the cancellation of the lease by good fortune just happened to equal the amount that you had to pay on this contract to Adelman; is that right? 30

A Well, we had some other money, too.

The Court: Is the bank book offered in evidence?

Mr. Lane: I will offer it in evidence now, the whole book.

(The same is admitted and marked Exhibit D. 2.)

Jacob Granat, cross.

Q Who was present at the time this paper which has been marked C. 1, the agreement, was executed? A Who was present?

Q Yes. A You mean to say when this was closed?

10 Q Yes. A Mr. Silverfelt, and Mr. Lewine, and Adelman, Jr., and Sr., and myself.

Q How long a time did you take before this was consumated? A Between 8 and 9 hours, from the first minute I met them.

Q And there were a great many terms discussed, weren't there? A Yes, sir.

Q The agreement was drawn by young Adelman, wasn't it? A Yes, sir.

20 Q Do you remember his making some memoranda from time to time as to what was to be included in the lease? A I do not.

Q I show you a paper writing and ask you whether you recollect Mr. Adelman had that memoranda before him at the time? A (The witness looks at the paper but does not answer.)

Q (By the Court.) Do you recognize the paper? A I do not, your Honor.

30 Q Never saw it before, so far as you know? A No, sir.

Q Is it your recollection that no notes were made by Mr. Adelman of what was to go in this paper? Did he sit down to the typewriter and typewrite it off without any notes of any kind? A He made notes for those clauses in this agreement and then he typewrote it.

Q That is what I am asking you, if he didn't make notes in his own handwriting? A Yes, he did.

40 Q On a piece of paper? A Yes.

Jacob Granat, cross.

Q And on a piece of paper like this piece of paper which I show you? A I do not remember the size of the paper.

Q In ink, didn't he? A I don't remember.

Q Do you remember his having a fountain pen as you were talking, and putting a memorandum on a piece of paper in front of him, and from that paper drew up this writing on the typewriter? A I believe he had a fountain pen. 10

Q Do you remember his borrowing your fountain pen to write it with? A Yes, I believe he had a fountain pen.

Q Do you remember his borrowing your fountain pen to make this memorandum? A Yes.

Q Now that your recollection is stimulated can't you tell us whether or not you don't recollect it was on a piece of paper like this one that he wrote on? A Do you mind reading this? 20

Q I do mind reading it, yes; I am asking you whether he wrote on a piece of paper the size of that, not whether that is the paper? A I do not remember.

Mr. Lane: I ask to have that marked for identification.

(The same is marked D. 3 for identification.) 30

Q How long did it take him to draw this paper that was finally signed? A About two and one-half hours, I should judge.

Q He wasn't a very expert typist, was he? A I don't believe he was.

Q And he sat there fingering the thing out for a couple of hours? A The typewriting didn't take so long as the discussion of the different clauses. 40

Jacob Granat, cross.

Q I am asking you how long it took to do the typewriting. A The whole thing took about two and one-half hours to make it, including the typewriting and discussion.

Q And while he was typewriting it the discussion continued? A Yes.

10 Q And you were all in the same room? A Yes, we were all in the same room.

Q And the discussion with respect to the terms really didn't cease until after the paper writing had been wholly prepared and signed? A No.

Q (By the Court.) In whose office was this? A In Mr. Adelman's office.

Q Not in Mr. Gaede's office? A No, sir.

Q (By the Court.) Did you have counsel? A No, we did not.

20 Q While the young man was drawing this contract you were sitting right by him, weren't you? A Yes, sir.

Q And do you remember picking up the piece of paper upon which Mr. Adelman had his notes, from time to time, and looking at it? A I do not.

Q There was talk at that time with respect to security, was there not? A Yes, sir.

30 Q And there was talk of a bond, wasn't there? A No, sir.

Q (By the Court.) Was there discussion as to the amount of cash that was to be deposited as security? A Yes, sir; that was stipulated in the agreement.

Q Well, was there any difference of opinion between the parties? A There was a difference of opinion.

40 Q How much did Mr. Adelman first say he wanted? A Mr. Adelman first wanted six months' cash security.

Jacob Granat, cross.

Q Well, how much is that? A That would be a half of \$24,750.

Q Over \$12,000? A A little over \$12,000; and finally, after a long discussion, he agreed on two months' cash.

Q Wasn't there also a discussion with respect to a bond security that you would return the building in the same condition that you got it, or something of that kind? A No word was mentioned about a bond of any kind during these discussions. 10

Q Nothing was said whatever? A Nothing about a bond whatsoever.

Q When was it that a bond was first mentioned? A That was a few days after this agreement was signed.

Q When and where? A That was mentioned over the telephone. I didn't know about it first; and Mr. Lewine was notified first about it. 20

Q Where and when, as near as you can place it? A At his home.

Q (By the Court.) Do you know about that or did he tell you? A First, Mr. Lewine was notified—

Q No, did you know about being notified or did somebody tell you? A I didn't know it until he told me. 30

Q Well, never mind what he told you.

Q Well, I want to know when Mr. Lewine told you. A That was a few days after the agreement was signed.

Q What did you do? A I didn't do anything.

Q Well, when did he first tell you anything about it? A When I was told first Mr. Lewine told me about it. 40

Jacob Granat, cross.

Q When were you next told? A When next I was told was when we met at Mr. Adelman's home.

Q When was that? A On about the 23rd or 24th of March.

10 Q Can you tell me about how many days it was before you had this first meeting at Mr. Adelman's house that Mr. Lewine told you about the bond? A I am sorry to say that I cannot testify for Mr. Lewine what took place between him—

Q (Interrupting.) I understand that, but can you tell me how long it was before you had your meeting at Mr. Adelman's house that you talked with Mr. Lewine? A Well, I spoke to him the very next week and told him about it.

20 Q That is, the next week after the contract was signed? A The next week after the contract was signed.

Q Did you call up the bonding company? A I did.

Q To find out whether you could get a bond or not? A Did I find out what?

Q Whether or not you could get a bond? A Not whether I could get a bond.

30 Q Well, whether who could get a bond? A Mr. Adelman Junior told Mr. Lewine that he can get a bond for us.

Q Well, you called up the bonding company to find out whether they would issue a bond for the West Heights Realty Company? A For Mr. Adelman.

Q I don't care for whom; you called up to find out, didn't you? A I called up to find out for Mr. Adelman, not for us.

Q The bond was to be drawn to secure them?

40 A Not so far as we were concerned.

Jacob Granat, cross.

Q Then why did you call the bonding company up? A To satisfy Mr. Adelman.

Q Couldn't Adelman call them up? A He could.

Q What did you say to the bonding company when you got them on the wire? A Mr. Adelman Junior—I spoke to him once or twice— 10

Q I am asking you what you said to the bonding company; I don't care for what you said to Adelman. A I said to the bonding company—to the man who answered the 'phone—can he furnish a bond under this contract. He asked me how much assets we can show, and I told him we can show about \$22,000. He said, "That settles the matter; you would have to show \$100,000 assets in order to get a \$25,000 bond, and he mentioned \$25,000 instead of \$75,000. 20

Q What did you call them up for? A I called up, as I said before, to satisfy Mr. Adelman, because that wasn't a part of our agreement.

Q If it wasn't a part of your agreement why did you try to find out whether you could get a bond or not? A I did not try to find out for us. Mr. Adelman Junior said that he could get a bond. There was at no time anything mentioned about a bond. 30

Q When Adelman first suggested a bond why didn't you tell him it wasn't called for by your contract and you wouldn't give it? A We did tell him.

Q Where? A I can't tell. Mr. Lewine was the first one—

Q I'm talking about you. A My conversation wasn't with Mr. Adelman; it was with Mr. Geiger of the National Surety Company. 40

Jacob Granat, cross.

Q What did you tell Mr. Adelman Junior?

A I told him that such bonds were not to be written, and I told him inasmuch as it is not a part of our agreement we don't have to give it.

10 Q Where did you tell him that such bonds were not to be gotten and that you couldn't get them? A (The witness pauses.)

Q (By the Court.) Had you heard from the other side that a bond would be demanded, before this letter of March 19, 1920 was written? A Yes, sir.

Q I understand you had heard it through Mr. Lewine? A I heard it through Mr. Lewine.

20 Q But when you looked up Mr. Adelman, after you failed to receive any answer to this letter and had an interview with him and he demanded a bond did he say what he wanted a bond for? A To secure three years' rent.

Q Sure of that? A I'm sure.

Q Wasn't the bond to secure the delivery back of the premises in good repair? A No, sir; it wasn't, because our contract provides for that.

Q You remember the talk in my office on the 23rd or 24th of March? A That was in reference to what?

30 Q As to the conditions of the lease and so forth. A Mention to me what you want me to answer.

Q Well, there was a discussion there as to what was to go in the lease, wasn't there? A No, sir.

Q There wasn't? A There was not. The lease was complete so far as we were concerned.

40 Q Why did you agree, then, that you wouldn't raise the rent from thirteen to fourteen dollars a room? A We were willing to agree to that.

Jacob Granat, cross.

Q Why? A To satisfy Mr. Adelman; because we wanted to get the property.

Q Didn't you say at that time that you were willing to give a bond but that you wouldn't pay for a bond to the bonding company? A No, sir; we did not.

Q Was there any talk with reference to a bond at that time? A There was. 10

Q What was the talk? A That was talk with Mr. Adelman at that time that he demnded a bond.

Q Well, what was said? A He wanted a bond and I said, "If you can get one go and get it; we don't have to give it to you."

Q Are you sure you said you didn't have to give it? A I'm sure.

Q Do you remember there was a discussion at that time as to whether the old tenants should be raised? A There was. 20

Q And was there an agreement with respect to that? A An agreement?

Q Yes. A That was the situation that Mr. Adelman made.

Q Was there an agreement? A No, sir.

Q Then you didn't agree that you would not raise the old tenants without consultation with Mr. Adelman? A No, sir. 30

Q There was some talk about that, wasn't there? A There was some talk in general about raising the rents.

Q I'm not talking about raising the rents; I'm talking about a specific thing, to wit, the raising of the old tenants without consultation with Adelman? A No, sir.

Q Sure of that? A Yes, sir.

Q There wasn't any talk with reference to it? A No, sir. 40

Jacob Granat, cross.

Q You remember some talk in respect to the tenants not being given any more than monthly tenancies? A Yes, sir.

Q Did you agree that the tenants should not be given more than monthly tenancies? A No, sir; we did not agree to that.

10 Q What was said in respect to that? A I believe Mr. Adelman asked that we shouldn't give any more than monthly rents; that there should be monthly tenants.

Q Did you agree to it? A Yes.

Q Do you remember that there was a discussion with respect to the janitor not being discharged? A Yes, sir.

Q Did you agree to that? A Yes, sir.

20 Q Do you remember that there was a discussion with respect to the fixtures in the house being listed in full? A Yes. What fixtures?

Q Shades and so forth? A No, sir.

Q Any discussion with respect to that? A No discussion in respect to that.

Q Any discussion with respect to any awnings and screens? A That was a part of the agreement.

30 Q I mean talk about that? A There was no talk about anything except as to the agreement.

Q Was there any discussion about that or was there not? A There was not.

Q Was there any discussion with respect to the ice boxes and stoves? A That was Mr. Lane's suggestion.

Q My suggestion? A Yes.

40 Q With respect to ice-boxes and stoves? I didn't even know there were any ice-boxes and stoves in the building. What did I suggest? A You said this agreement isn't complete because

Jacob Granat, re-direct.

we can take out the ice-boxes, and those clothes line attachments and stoves.

Q You think that was my suggestion? A That was your suggestion.

Q My suggestion as to what should be done? A Your suggestion to make this agreement more complete by taking out these stoves and ice-boxes and clothes lines, and you said these do not go into the agreement, inspite of the fact that Mr. Adelman took me through the house and showed me all these things that belonged to the house. 10

Q What was that, in the nature of an argument? A No, it was in the nature of a suggestion that you made.

Q There wasn't any agreement as to whether they should be included or not? A No, sir; it was understood that they belonged to the house. 20

Q Was there any suggestion with respect to any furniture in the office? A No.

Q Some of the things that we suggested on that day you agreed to? A Yes, sir; and some of the things we didn't. That's right. There was only one thing we didn't agree to.

Q Did you ever offer to put up a real estate bond? A No, sir.

Q Ever talk about putting up a real estate bond? A No, sir. 30

Q No conversation with respect to that all? A No, no conversation.

Re-direct examination by Mr. Lichtenstein.

Q Mr. Granat, these leaseholds that you held in New York,—you took care of those properties yourself? A Yes, sir.

Q You and Mr. Lewine? A Yes, sir. 40

Jacob Granat, re-direct.

Q In other words, you attended to all of the repairs yourself, looked after the property, and took care of the property, did you? A Yes, sir.

Q Now, in these leases that you had, as I understand it there were termination clauses in them? A Yes, sir.

10 Q The owner could terminate it? A In the event of a sale.

Q As a matter of fact, the properties were sold in a very short time? A Sometimes in a short time and sometimes longer.

Q How long a time did you hold these houses? A Some a year, and some two years, and some less.

Q As a matter of fact, was there any profit in any of these houses? A There was.

20 Q Can you tell us, approximately, how much profit there was to you? A I can't tell you exactly.

Q Was that the way you were furnished a living, taking care of the properties and holding down the expenses as much as you could? A Yes, sir.

30 Q You were to keep the properties in repair, and do all the painting and repairing under the leases? A Yes, sir.

Q And they were steam heated? A They were steam heated.

Q You had to maintain the properties and furnish all the coal? A Everything.

Q Electric light in the hallways and elevator service? A That we have now.

Q I mean at that time? A At that time we did not have any elevator service.

40 Q I am speaking of these houses you had on leasehold? A There was no elevator service.

Jacob Granat, re-direct.

Q In other words, you were to take care of all the overhead charges? A All the maintaining expenses.

Q Now, you were asked whether there was or was not a profit, as you figured it, in the Adelman house, leaving them just as they were; did you at that time make a calculation of that? A We did. 10

Q And based upon the rentals as they existed? A Based upon the rentals as they were, as he gave them in the book; I figured there was a profit under those conditions at that time.

Q And under the conditions that existed at that time, and the expenses of maintaining the property? A Yes, sir.

Q And can you recall just about how much it was you figured you could make out of this property, taking care of it, at that time? A About \$4,000. 20

Q I show you a memorandum in pencil and ask you what this paper is. A This is my handwriting. I copied this from the books; Mr. Adelman Junior called them off.

Q Mr. Adelman Junior called what off? A The rentals and I took down the figures.

Q And this is a memorandum you made from his dictation? A From his dictation. 30

Q Was that on the day the agreement was signed? A That was March 19th.

Mr. Lichtenstein: I offer the paper in evidence.

(Admitted in evidence and marked Exhibit C. 3.)

Q Now, in the discussion as to the terms of the lease did you go over the details with Mr. 40

Jacob Granat, re-direct.

Adelman Senior before anything was written at all? A Everything was discussed—everything. There wasn't anything missing, and if there was Mr. Adelman Junior voluntarily put it into the agreement.

10 Q Was there at any time, during all of the hours that you were in Mr. Adelman's office any talk by him of a bond? A Not one word mentioned; wasn't a word mentioned at any time—never mentioned at any time.

Q Now, on the question of security you say that he wanted six months' security? A Yes, sir.

20 Q And how did it come that it was reduced to two months? A Well, after discussion we convinced him that we could get other deposits (properties) and we don't deposit any more than two months' security, and he finally agreed to two months.

Q The Court asked you whether you were represented by anybody; you were there all alone? A All alone.

Q You and your partner? A Yes, Mr. Lewine.

Q (By the Court.) Mr. Lewine is an officer, is he not? A Yes, sir; he is.

30 Q What? A President.

Q During the course of these negotiations was there anything said by Mr. Adelman Junior as to the terms and what should be contained in this paper that you finally signed? A Well, all that we agreed upon was embodied in this agreement.

40 Q Was there anything agreed upon between you that was not contained in this agreement that was finally reduced to writing? A There was nothing left.

Jacob Granat, re-direct.

Q And after it was prepared was it read over? A It was read over several times. Every clause was read over before it was type-written.

Q And were they discussed as you read them over? A They were discussed, and if Adelman Senior didn't like it we had to change it.

10

Q How often did you read this agreement? A There were different clauses that he told his father about; he would discuss it with his father and they would say, "We agree to this, and this," and if the father didn't like it it would have to be argued all over again.

Q Now, when it was finally reduced to writing by this young man was it then read over again? A It was read over again.

Q Was Mr. Silverfelt there, the real estate agent? A He was.

20

Q And he signed it as a witness at that time? A He did.

Q Was he there at the time this agreement was read over? A He was there all the time.

Q During the whole discussion? A All the time, from the time he introduced me until we went out.

Q Now, I notice that there is, in the handwriting of somebody, a memoranda, consisting of three sheets; do you know whose handwriting that is? A No, I don't know.

30

Q You don't know? A No, I don't.

Q There is a memoranda there and some initials on the margin of each page; do you know whose initials they are? A He put that on.

Q Who did? A Adelman Junior.

Q Put the initials on the page? A Yes.

Q Did you notice that the same initials appear opposite the words, "Consisting of three sheets?" A Yes.

40

Jacob Granat, re-direct.

Q Whose initials are they? A It is the same handwriting.

Q Then there is what we would term—not a rider but a piece of paper, which seems to be pasted on the side of the first sheet; it looks as if when the typewriting was done the piece of carbon did not cover the entire sheet— A This
10 was between the two sheets of paper—between the original and the copy.

Q It looks as though the carbon paper didn't extend far enough to make a perfect copy and was afterwards pasted on; who did that? A Mr. Adelman.

Q And then there appears on this piece of paper "This is a part of the agreement"; and then some initials, "S. L."? A Yes.

20 Q That is Mr. Lewine? A Yes.

Q And young Adelman? A Yes.

Q Did he write the words, "This is a part of the agreement" on there? A Yes.

Q And did he ask Mr. Lewine to initial it? A Yes, sir.

Mr. Lichtenstein: I call upon the other side to produce the original of this agree-
30 ment.

Mr. Lane: I will produce my copy of it.

Q (By the Court.) I understand the instrument was executed in duplicate? A Yes.

The Court: You want to have the other to offer it in evidence?

Mr. Lichtenstein: Yes, I would like to offer it in evidence. I want to show that
40 this is the fault of the typewriting machine.

Jacob Granat, re-direct.

(The copy is produced by Mr. Lane and is offered in evidence by Mr. Lichtenstein. It is then marked Exhibit C. 4.)

Mr. Lichtenstein: Mr. Lane will agree that the agreement, copy of which he produces, is a duplicate of the original, with the exception of the pencil markings on it. 10

Mr. Lane: The pencil markings are mine.

Q When you said that the company had no other assets than the leaseholds was that exactly what you meant? Did you have any money in bank? A Yes, we had money individually.

Q And did you have money on deposit under these leaseholds? A Yes, sir.

Q As security for the rent? A As security for the rent. 20

Q Now, after Mr. Lewine called you up or spoke with you and told you that he had been called up by somebody and that Mr. Adelman wanted a bond, what was it that he said to you? A After Mr. Lewine—

Q No, what did your partner say to you? A He told me, "I've got some news for you." I says, "What is it?" He says, "I have had a telephone communication from Adelman that they demanded a bond of \$75,000." I said, "That is certainly new"; and I said, "I don't see how they can demand a bond; it is not a part of our agreement; there wasn't a word mentioned about that." He says, "They have demanded it; otherwise they won't give the property." 30

Q What did you do when he told you that? A I called up Adelman Junior.

Q What did he say to you and what did you say to him over the telephone? A I asked 40

Jacob Granat, re-direct.

him what about it, a few days after this agreement was signed.

Q What did he say to you? Who was it that was demanding it? A His father.

Q What else did he say? A "Otherwise we couldn't give you the property unless you furnish us with it."

Q Did he say what he wanted a bond for \$75,000 for? A For three years' rentals.

Q What did you say to him? A I says, "We are not obliged to give you any such bond, and such a bond is not to be gotten." And he says he has got a friend in the National Surety Company in Jersey City who told him that he could get a bond. I says, "If you have a friend of yours that told you that you can go ahead."

Q You wanted the property, didn't you? A Yes.

Q After you told him that you were under no obligation to give him a bond he told you that he had talked to some friend of his? A He had already had a conversation with a friend of his.

Q Did he tell you who that friend of his was? A He didn't want to tell me, but he finally gave me the name of the telephone number, and I called up that party.

Q Why did you call up that party? A I wanted to satisfy Adelman, if he can get a bond for us let him go ahead and get it.

Q In other words, if he could get a bond--

Mr. Lane: Oh, Mr. Lichtenstein--

The Court: Yes, your question is rather leading.

Jacob Granat, re-direct.

A If he could get a bond let him go ahead and do it; if he could protect himself in any way he can to make it strong let him go ahead and do it, but we didn't have to do it.

Q Who was it you called up? A A party by the name of Gieger.

Q Was that the name of the man he told you was his friend? A Yes. 10

Q Connected with what company, if you know? A National Surety Company.

Q In Jersey City? A Jersey City.

Q And then you had the conversation you related this morning? A Yes.

Q And he said you would have to have \$100,000 assets in order to get a \$25,000 bond? A Yes.

Q Did he mention anything about a \$75,000 bond? A The man from the National Surety Company mentioned \$25,000. 20

Q Did he tell you that young Mr. Adelman had told him a \$25,000 bond? A That is what he told him.

Q (By the Court.) Did you mention \$75,000? A I didn't mention any amount.

Q You merely asked him about the conversation that he had had with Adelman? A With Adelman, yes. 30

Q And what did he say his conversation with Adelman was? A Adelman asked him if he should get a bond for him, and asked him to send the application to us and so he did send the application to us.

Q And when you had this conversation with this party at the surety company in Jersey City did he mention any other figure other than the \$25,000 bond? A He did not mention any other figure than the twenty-five. 40

Jacob Granat, re-direct.

Q Now, this bank book of yours—let me see if I can refresh your memory a little bit about this: There appear in this bank book two entries of \$3,625 each; you note that, do you? A Yes.

10 Q You were asked by Mr. Lane whether you didn't make a deposit for the purpose of drawing the check of \$3,625 and you said that you didn't think you did, the company had the money? A Yes.

Q You don't recall borrowing any money or putting any money into the bank for the purpose of drawing this check, do you? A Yes, we put it in.

20 Q I mean, did you put, any money in for the express purpose of drawing the check of \$3,625, or did you have the money in the bank? A We had that much money in the bank, but we wanted to leave a balance.

Q You had this check certified, didn't you? A Yes, sir.

Q And after you had the check certified you had it cashed, didn't you? A We re-deposited it.

30 Q Let me ask you this: You recall the day that you came over to Hoboken; did you have any cash with you? A Yes, sir.

Q How much cash did you have? A The same amount of money.

Q Where did you get that cash from? A In the bank.

Q How did you get that money from the bank? A On this check, I believe.

40 Q Let me see if that refreshes your memory in any way; the interview when you went to Mr. Lane's office on the 24th you had a check? A Yes, sir.

Jacob Granat, re-direct.

Q Is this the check of \$3,625, which is certified, that you had at that time? A This is the check.

Q And that is dated March 23d? A Yes, sir.

Mr. Lichtenstein: I offer this check of March 23, 1920, to the order of S. M. Adelman. 10

(Admitted in evidence and marked Exhibit C. 5.)

Q Now, when you drew this \$3,625 check and had it certified did you have on deposit \$3,625 and more? A We certainly had it, otherwise they wouldn't have certified it.

Q I know, but did you draw the money and deposit it in the bank for this purpose? A No, sir. 20

Q After a check is certified you know that the bank has charged that against your account? A Yes.

Q And in order to get credit again you would have to re-deposit it? A Yes.

Q Since it was made out to S. M. Adelman and not endorsed by S. M. Adelman but endorsed by the West Heights Realty Co. you can readily understand that you had to re-deposit it? A Yes, sir. 30

Q And of course you had to re-deposit it in the same bank? A Yes.

Q That is, the Irving National Bank? A Yes.

Q Now then, after you re-deposited this check, which appears to be on the 25th—

The Court: Did you say "re-deposited"?

Mr. Lichtenstein: I mean "deposited."

Jacob Granat, re-direct.

The Court: Payment can be stopped, I suppose?

Mr. Lichtenstein: One the maker of a check has it certified the bank charges his account with it, and in order to get credit he has got to deposit it.

10 The Court: It doesn't require the signature of the drawee, then?

Mr. Lichtenstein: No, sir.

The Court: I should think he would have brought back the original check which the bank certified.

Mr. Lichtenstein: That is not the banking custom. They re-deposit it exactly as so much cash.

20 Q Then after you re-deposited this check of \$3,625, do you recall, as you have already stated, that you came to Hoboken with some cash? A We drew some cash.

Q On another check for \$3,625? A Yes.

Q And cashed it? A Yes.

Q And brought the cash over to Hoboken? A Yes.

30 Q And then after you couldn't deliver it what did you do? A Re-deposited that money in the same bank again.

Q And that accounts for the two entries of \$3,625, does it not? A Yes, sir.

Q (By the Court.) Are there only two entries of \$3,625? A Yes, sir.

40 Mr. Lichtenstein: Yes, the deposit of the check and the deposit of the money which they had drawn, and that accounts for the two entries.

Jacob Granat, re-direct.

Q Now, after writing this letter and receiving no reply (I now refer to Exhibit C. 2) you have already told us that you went to Mr. Adelman's home and there again he demanded a bond, and you said you wouldn't give it to them, and you also said that you weren't obliged to give it to him at that time, you were still anxious to get the property, were you? A Yes, sir. 10

Q And was it then you suggested that you would try to do something, and suggested that we should get together? A Yes, sir; but not on the question of a bond.

Q And it was then that you went over to Mr. Dippel's office? A Yes, sir.

Q Mr. Dippel was then representing you? A Yes, sir.

Q (By the Court.) There is a deposit in this bank book, I notice, under date, I think, of March 23rd; the amount is \$2,130; do you know anything about that deposit? A I mentioned before that one of our leases was cancelled. I don't remember the date, but I know that is the deposit. It was cancelled on the 21st or 22nd. 20

Q And you think this was what you received on that cancellation? A Yes, sir.

Q Now, at Mr. Lane's office was there or was there not talk on the part of Mr. Lane that your contract was no good? A Mr. Lane said so. 30

Q And at that time Mr. Lane asked you whether there wasn't some talk about your raising the rents. Now, you have already told the Court here that he asked you on one of those occasions whether you would agree not to raise the inside rooms beyond \$13 and the outside rooms beyond \$14— A That was the conversation. 40

Jacob Granat, re-direct.

Q And when he suggested that what did you say? A We agreed to it.

Q Do you mean you agreed to do it? A We agreed to do it; we were willing to comply with his request.

10 Q Now, why did you agree to that when there was nothing in your contract requiring you to do it? A Well, because I figured \$13 per room would leave us a plenty of profit.

Q And that was his suggestion? A That was his suggestion.

Q And you were willing to accede to that demand of his? A Yes, sir.

20 Q Now, did he make any other demands at that time about monthly tenancies? A He made a demand that the tenants should be monthly tenants.

Q He was trying to get you to make certain concessions, wasn't he, at that time?

Mr. Lane: Well, now—

A He was trying to see whether we would object to something.

30 Q He wanted to see whether you were objecting to anything. At that time did Mr. Lane say anything as to whether they had the right to impose conditions upon you at that time to which you would have to agree? A Mr. Lane didn't say anything at that time.

40 Q (By the Court.) When you made these concessions, expressing your willingness to let the rent stand at \$13 for the inside rooms and \$14 for the outside rooms, and your willingness also to reinstate the janitor—when you made those concessions had Mr. Lane stated that the

Jacob Granat, re-direct.

agreement wasn't good? A He did not say it up to that time.

Q When did he say it? A When we couldn't come to any conclusion or any agreement; when we agreed to everything that they had asked us to and then Mr. Adelman changed his mind again, and Mr. Lane suggested that this agreement is not complete. I know Mr. Adelman must have told him about iceboxes and stoves, and clothes lines which are not attached to the building; that he could take it out if he wants to. 10

Q Who said Mr. Adelman could take out the iceboxes and stoves? A Mr. Lane said it.

Q Did he give any reason for that situation, why that could be done? A He gave no reason; he said he could take them out if he wants to, because it is not contained in the agreement. 20

Q What did you reply to that? A I replied, when Mr. Adelman, senior, took me through the different rooms and showed me the place he said, "This belongs to the house; this belongs to the house, too"; he showed me everything that belongs to the house. 20

Q Now, you said in answer to Mr. Lane's question that there was only one thing you didn't agree to; what was that thing? A That was a bond. We never heard about it. 30

By Mr. Lane.

Q You were represented in my office by counsel, weren't you? A Yes; Mr. Dippel was there representing us as counsel.

Q You remember there was considerable discussion between Mr. Dippel and myself as to the effect of this document? A Yes.

Q And among other things I said it wasn't 40

Jacob Granat, re-direct.

Q And when you went away from the office that day you were fully convinced in your own mind that Mr. Adelman was not going to make this lease? A I was under that impression.

Q There wasn't any doubt about it? A I believe there was.

10 Q No; there wasn't any doubt about it on the 25th, the next day? A I believe there was doubt about it on your part, because you said, "You will have to meet me in the Court of Chancery."

Q There was no doubt that you were not going to get that lease made on the 25th of March? A You said we would go to court.

20 Q You say that everything that was to go in this lease was agreed upon at the time this written instrument was signed? A Yes, sir.

Q There wasn't anything left to be discussed about anything? A No, sir.

30 Q Can you tell me why it was, then, that this clause was put in: Any further provisions, clauses, agreements to be made in addition to the above mentioned, and later to be agreed upon, shall be incorporated in addition to the provisions herein contained, in a lease to be made in the office of Gaede & Gaede. A When we were all through Mr. Adelman, junior, said, "Well, maybe we have left something out. Now, when we come to the final closing," he says, "if you will suggest something which will be agreeable to us and it is agreed upon we will enter it into this agreement; the same on the other hand, if they will suggest anything. Otherwise it stands as it is."

40 Q Did he say that maybe they had left something out? A No, sir.

Jacob Granat, re-direct.

Q You started off by telling us that Mr. Adelman stated "Maybe we have left something out." A Maybe, yes; but it has got to be agreed upon.

Q But he started his statement by saying, "Maybe we have left something out," did he? A Yes.

10

By Mr. Lichtenstein.

Q And then he followed it up by explaining to you what he meant, as you have said? A Yes. Then, if I may say one word in reference to the raising of the rents: The Adelmans were offering their services voluntarily to increase those rents for us if we wouldn't do it. He wanted his property to show a big rental.

Q Who was it that said that? A Both junior and senior; if we won't do it they will do it for us.

20

Q What were they going to do? A Send out notices and increase the rents; and he told us about the laws in New Jersey.

Q Who told you that? A Adelman, junior.

Q What sort of a notice did he say he was going to send out? A In fact, he told us that he notified the tenants long ago that he would raise their rents.

30

Q That he had already notified whom? A That he had already notified the tenants that he would increase the rents; and while we were there a tenant came in and signed up a lease for an apartment that was paying \$55 and they raised it to seventy.

Q You say while you were there one tenant of his came in? A Yes.

Q Did you hear the discussion between them?

A Yes; the lease was signed in our presence.

40

Jacob Granat, re-cross.

Q And the tenant was paying how much? A \$55, and this new tenant was to take the place June 1st at seventy. If that is not an unreasonable increase I would like to know what is.

By Mr. Lane.

10 Q You thought that was an unreasonable increase, didn't you? A I thought so.

Q At the time this lease was made it was contemplated or considered by both of you that the rents would be raised, wasn't it? A It was introduced by the other side.

Q I don't care who introduced it; isn't that a fact? A It would be foolish on our part to see how much profit we could make. That is common sense.

20 Q All right. It was understood that the rents were to be raised, wasn't it? A He asked us to raise the rents.

Q All right. You agreed to that, didn't you? A I didn't have to agree to that.

Q Did you understand that you were to raise the rents? A I did not make up my mind whether I would or not.

Q But Adelman told you that he wanted the rents raised; is that right? A Yes.

30 Q What did he tell you about the laws of the State of New Jersey? A They have laws in New Jersey—

Q He said that he didn't want to raise the rents, but you could do it, didn't he? A No, sir.

Q Nothing like that? A No, sir.

Q Where did this discussion take place? A In Mr. Adelman's office.

40 Q When? A During the time we were coming to an agreement.

Jacob Granat, re-cross.

Q How did it come about that you were discussing the laws of New Jersey as to the raising of rents? A We were all talking over the property and Adelman, junior, told us about summary proceedings, which I wasn't acquainted with.

Q How did that come up? A He told me how if you want to get a tenant out—to dispossess that tenant for non-payment, asking a tenant to vacate, how much time you have got to give him. 10

Q How did that discussion happen to arise? A There were various discussions about landlord and tenant.

Q Well, did it come about when you were discussing the raising of rents, and how you might raise the rents and get the tenants out? A No, sir. 20

Q Wasn't anything said about that? A No, sir.

Q And you didn't intend to raise the rents; is that right? A At that time we didn't make up our minds whether we would or not.

Q You have shown this statement of the receipts, or anticipated receipts, Exhibit C. 3; did you have a similar statement of expenses in operating this property? A Well, roughly, I have. 30

Q Have you got any statement? A No, sir.

Q Have you got your check book her covering the period of this bank book, produced by you? A No.

Q Is it in existence? A Certainly we have it.

Q It is in existence, so that you can produce it? A Why couldn't we, if it is necessary. 40

Jacob Granat, re-cross.

Q Can you produce it? A If counsel will say that we have to produce it—they want it—we will give it to you.

Q When did you stop this account in the Irving National? A The book shows.

Q Well, do you know when you stopped it?
10 A The book shows.

Q Do you know, as a matter of fact? A I say the book shows. If I look at it I will know.

Q (Counsel hands a book to the witness, and the witness examines it and replies): I think it was November 11.

Q What year? A 1919.

Q No, not 1919? A Yes.

Q 1920, isn't it? A No, sir.

Q (By the Court.) When do you say the ac-
20 count was closed? A It was closed about three months ago, when we transferred our account to a different bank. We closed the account in that bank when we opened our account in this bank.

Q When was that? A In the month of June we opened an account in another bank.

Q The last deposit in this book appears to be November 7, 1920. A The last deposit?

Q Yes. Now, where did you bank between
30 that date and June of this year? A Let me see that book again (counsel hands book to the witness and he continues): We kept this account in the same bank until the month of June of this year.

Q Where is your bank book for that period of time? A This is the bank book.

Q Did you make any deposit between November, 1920— A We did not, not under the cor-
40 poration's name.

Jacob Granat, re-cross.

Q Why not? A Our leaseholds—the property—was sold; it was cancelled.

Q Well, did your company go out of business? A We did not.

Q Did the company do any business between November, 1920, and June, 1921? A No.

Q Didn't? A No.

10

Q Well, for that period it was out of business? A It was not out of business. It was always ready, able, and willing to do business.

Q Well, for that period it didn't do any business? A No.

Q And its profits had been distributed? A No, sir.

Q How much money was in the bank? A I don't remember exactly how much it was—about \$5,000, I believe.

20

Q Have you any idea? A About \$5,000.

Q The bank account will show that, won't it? A Yes.

Q Now, in June, 1921, where did you open an account? A In the Colonial Bank.

Q Have you got that bank book here? A We have.

Q Will you produce it?

(Mr. Lichtenstein hands book to Mr. Lane.)

30

Q Is that the bank book you refer to? A Yes, sir.

Mr. Lane: I ask that it be marked for identification.

(Same is marked Exhibit D. 4 for identification.)

Q At that time, that is, in June, 1921, you took up the first purchase of properties? A Yes, sir.

40

Jacob Granat, re-cross.

Q What properties did you purchase? A Two big parcels.

Q Where? A One on the southeast corner of Broadway and 149th street, seven-story elevator building, at a rental of \$65,000; and 473 West 158th street, \$60,000.

10 Q Are you operating those two houses? A Yes, sir.

Q (By the Court.) As owner? A As owners. We have the deeds here to prove it.

Q How much did you invest in the two houses? A \$50,000.

Q Cash? A Cash.

Q And how did you get the money? A We had it.

Q The company had it? A The company did not have it.

20 Q Who put the money in? A We had it in our individual names.

Q Changing your plan of operation? A We each owned these buildings under a lease, and then we made up our mind to buy and we bought it, and then we took it into the corporation under the corporation's name.

30 Q These buildings are buildings which were owned by you individually? A Not owned; leaseholds.

Q Leased by you? A Leased by us. We had it for two years and then we bought it.

Q Are they the same buildings that were leased to the corporation? A No. They were leased in our individual names.

Q How many leases did you have in your individual names at the time you had these leases in your corporation name? A Five or six.

40 Q Entered into about the same time? A About that time.

Jacob Granat, re-cross.

Q Then you had the corporation purchase the property? A The corporation purchased it.

Q With your funds, contributed by you?

A Yes, sir.

By Mr. Lichtenstein.

Q You had assets of your own outside of the corporation assets at the time you entered into this agreement, had you not? A Yes, sir. 10

Q The old bank book shows that you stopped making deposits; was that at the time when your leaseholds had been terminated? A Yes.

Q And they were terminated because of the termination clauses which were contained in the leases in New York usually? A Yes.

Q And then when you found something that the company wanted, you then opened up a new bank account? A We were always willing to try to do business, but the real estate market quieted down for awhile and we did not do any business. 20

Q And then you opened this account of June 21 with \$10,741.80? A Yes.

Q And have been making deposits in it ever since that time? A Yes, sir.

30

By Mr. Lane.

Q Did the real estate market quiet down, or did the City of New York pass rent laws which interfered with your activity? A Well, I don't know; it is according to your opinion.

Q The rent laws of New York did interfere with this kind of business, didn't it? A Well, that is a matter of opinion. The conditions may have quieted it down or it may have been the rent laws. 40

Sol Lewine, direct.

SOL LEWINE, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Lichtenstein.

10 Q Mr. Lewine, were you present during the discussions that took place leading up to the execution of this lease between the West Heights Realty Company and Mr. Adelman? A Yes, sir.

The Court: Mr. Lichtenstein, let me ask: Why do you go into that?

Mr. Lichtenstein: I don't suppose we have to.

20 The Court: You may lay a foundation for cross examination.

Mr. Lane: I'm not objecting.

Mr. Lichtenstein: I will go into it anyhow, because he has a right to go into it, and I felt that we might as well have the whole case before your Honor. I was perfectly willing to let them go into it. I'm not going to take up very much time.

The Court: All right; proceed.

30 Q After the execution of this lease did you hear of any demands made by Mr. Adelman about a bond? A Yes, sir.

Q And who was it that first informed you that Mr. Adelman wanted a bond? A Mr. Harry Adelman rang me up on the telephone one morning at half-past seven in the morning.

40 Q How many days after the execution of this agreement? A About three or four days; I could not really remember exactly, but on a

Sol Lewine, direct.

Saturday or a Sunday morning he rang me up, and he says, "Sol"—he called me by my first name—"I am afraid the deal will fall apart." I says, "What's happened all of a sudden?" So he says, "Our lawyers advised my father to demand a bond." I says, "A bond? What for; we are giving you security." So he says, "Well, the security is not sufficient." I says, "I don't know anything about it, Harry; I don't think we will give you any bond. I feel sure we can't give you any bond." "Why?" "In the first place, we cannot give you any bond because no such bond can be obtained; and, in the second place, it is not a part of our agreement." He says, "I will get you a bond." I says, "Go ahead and do it; I will see about it. I will see my corporation; I'm not the only man here. We will speak of it to the people and see what we can do."

Q Now, at that time did you communicate your conversation to Mr. Granat? A I immediately called up Mr. Granat, and I told him the news, and he laughed.

Q All right. Now, then, when Adelman talked with you and told you that he had been advised to ask for a bond did he say why they wanted a bond? A No, he did not mention anything about why he wanted it; simply his lawyers advised him to have a bond of \$75,000.

Q Did he say what he wanted a \$75,000 bond for? A Well, I cannot remember.

Q Did he at that time say anything about having left it out of the contract, or that you had agreed upon a bond? A No.

Q Now, after that conversation did you see Mr. Adelman? A We saw Mr. Adelman the following week.

Sol Lewine, direct.

Q Was that after this letter, C. 2, was sent off? A Yes, sir.

Q And did you receive a reply to that letter?

A No.

Q And where did you see Mr. Adelman? A At his home.

10 Q And who was there at that time? A Our counsel, Mr. Dippel, Mr. Granat, Mr. Silverfelt and myself.

Q What did you say to Mr. Adelman at that time about your lease? A Well, he came in at that time, and Mr. Dippel, in fact, started it with Mr. Adelman. He says, "Mr. Adelman, we came over to get our lease." So he says, "You won't get your lease until I get what I want"; and Mr. Dippel says, "Why? We are ready to give you everything what you want," 20 and he took out the certified check and he says, "This is not enough; we want a bond of \$75,000 or else you won't get the property." Then we wasted a lot of time and argued, and he says, "You go over to our lawyer's office." I says, "Gaede & Gaede are not in town, but we will get Mr. Lane."

Q At the time he said he wouldn't give you a lease unless you gave a \$75,000 bond what did you say to him? A I told him it wasn't a part 30 of our agreement.

Q What did young Mr. Adelman say at that time, if anything? A He didn't say very much except when his father spoke he repeated what we said to his father, because he couldn't hear very well; so he repeated it to him in loud words.

Q Did Mr. Adelman himself make any suggestion at that time that you should give a bond 40 —I mean young Mr. Adelman, after his father

Sol Lewine, direct.

had said that you wouldn't get the property unless you gave a bond? A Not direct. I told Harry what I said a few minutes ago about not being able to get a bond for that amount and besides it wasn't in the agreement.

Q Did he at that time say that you had agreed, at the time the contract was signed, to get a bond? A No, sir. 10

Q Or anything like that? A No, sir; never mentioned.

Q Well, now, then, you did go to Mr. Lane's office; and at that time did you again ask him for your lease? A In fact after discussing that a little while I spoke to Mr. Lane and I says, "George, we came over to your office for advice in order to get a lease. He says, "He's the man; he's the boss." 20

Q (By the Court.) Who is George? A He called Mr. Lane "George." 20

Mr. Lichtenstein: Judge, he means.

Q And then what happened? A And then Mr. Adelman says again, "I want a bond, and then he came over and commenced to talk in loud words, and he said, "I will tell you what I will do"— 30

Q What did he say about a bond? A He wants a \$75,000 bond.

Q What did you say to him? A I says, "This is absolutely out of the way the way you are talking. Why do you demand a bond all of a sudden and didn't say anything about it then. If that is mentioned in the contract we will give it to you, but we cannot get any such bond issued on leaseholds." So he says, "Well, I want a bond; that's all"; and then he told us, "If you 40

Sol Lewine, direct.

will put in the lease that you won't raise the rents any higher than \$14 a room on the outside apartments and not over \$13 in the rear, then we will execute a lease without a bond." So we considered it and looked over the matter particularly and saw there was nothing binding on us, and I says, "All right, go ahead." And then young Mr. Adelman he says, "Pop, they're willing to put it into the lease; what do you say?" Then the old man says, "No, I want a bond; I want a bond."

10 Q Then what happened? What did you say when he changed his mind again and said, "I want a bond?" A I says, "There's no use talking; we won't give you a bond. We are willing to give you everything our contract calls for, but we will not give you anything else."

20 Q Was there a further discussion about some other details? A Mr. Lane says, "Do you know that your contract isn't completed?" I says, "So far as my knowledge goes it is completed"; and he asked me about the last clause that we should agreed upon if anything should occur. So I says, "The way Harry explained it to me there was absolutely nothing, because I asked Harry about that clause after the contract was read over before signing it, and Harry says, "That is simply to cover small things which probably I will suggest to you that we should agree upon, and if not it is to go this way, or anything you might suggest to me that will be agreeable to me that I am willing should go in; if not, all right; and then he said something about iceboxes."

30 Q Who says? A Mr. Merritt Lane. He says, that can be taken out; and I says, "You cannot take that out because that is a part of

40

Sol Lewine, direct.

the building; you could not rent any apartments in a high class apartment house without an icebox."

Q What then? A He says, according to this we can take them out"; and I says, "All right, if you want to take them out you will have to take them out."

Q At that time you had with you a certified check for \$3,625? A Yes, sir. 10

Q Did you offer to take a lease under the terms of your agreement? A Yes, sir.

Q What did Mr. Adelman say? A He wouldn't come to any terms unless we furnished a bond of \$75,000.

Q What did you do then? A We walked out.

Q When you walked out did Mr. Lane say anything as to where he was to meet you? A In the Court of Chancery. 20

Q After this check for \$3,625 was tendered do you recall the next time you were at my office and you went to Mr. Gaede's office, of the firm of Gaede & Gaede, Hoboken? A Yes.

Q At that time did you have cash with you? A I took legal tender money in gold backs and gold.

Q Where did you get the money from that you had there? A The cash. 30

Q Yes. A We deposited this check in the bank and then we drew a check for the cash.

Q And had the cash with you? A Yes.

Q And did you have this \$3,625 in money at that time? A Yes, sir.

Q You didn't deposit any moneys? A No, sir.

Q They never made any appointment with you as to where a lease would be signed? A 40

Sol Lewine, cross.

The first appointment was at Gaede & Gaede's office, and then to Merritt Lane's office.

Q Did they ever tell you where you could come to sign the lease? A No, sir; not at all.

Cross examination by Mr. Lane.

10 Q When you left my office I told you that we would not give you a lease and that if you wanted it you would have to make us give it to you in the Court of Chancery, didn't I? A Well, you didn't say it that way. We said we would go back and would meet you again, and you said, "In the Court of Chancery."

Q I told you that you wouldn't get any lease? A Yes, somebody said it, either you or Mr. Adelman.

20 Q Well, somebody said it? A Yes.

Q Nothing occurred to change your mind? A My mind wasn't changed at all; we were ready and willing.

Q You say at my office there was a discussion with respect to the amount of this bond; that it was always discussed as \$75,000? A Yes, sir.

30 Q Do you remember a suggestion made by somebody that a bond for \$25,000 would be sufficient—\$25,000 covering a year's rent, would be sufficient? A I never heard of such an amount.

Q There was no discussion about that at all? A There was no discussion about a \$75,000 bond and no less.

Q Nothing was said with respect to any other bond? A No, sir.

40 Q Do you remember whether there was a reason given why a bond should be given, although

Sol Lewine, cross.

you didn't deposit the rents? A I don't remember.

Q Do you remember it was said that a deposit for two months' rent was to be put up and applied to the last two months of the term? A Yes, I remember that.

Q And that that wasn't any security at all? 10
A It was security for two months' rent.

Q Do you remember whether that was said, that it wasn't any security for the return of the building in good condition? A No, sir.

Q There wasn't anything said as to why this \$75,000 bond should be required? A No, sir; absolutely not.

Q And you didn't think there was any reason why such a bond would be required? A I should say not.

Q This talk you had with Mr. Adelman a day 20
after the contract was signed, wasn't it, on the telephone? A No, sir.

Q Sure? A Positive.

Q How are you positive that it was not the day after? A I am most sure it was not the day after.

Q What makes you think it was not the day after? A Because I know it was the Saturday following. 30

Q Mr. Adelman called you up and spoke to you immediately about a \$75,000 bond, didn't he?

A It wasn't immediately; it was three or four days afterwards.

Q Did he tell you what that bond was for? A No; he said that his lawyer advised his father to demand a bond of \$75,000.

Q Did you ask what it was for? A I wouldn't ask him as it didn't interest me at all. 40

Sol Lewine, cross.

Q You were interested enough to tell your partner? A To tell him the news, certainly.

Q And your partner telephoned the bonding company? A The same day or the next day.

Q Did he tell you that he called up the bonding company? A He did.

10 Q But you weren't sufficiently interested to find out what the bond was for? A Absolutely not; and I still don't know what it was for.

Q You never tried to find out? A Well, I know why: Because they refused to give us a lease—

Q I'm talking about the reason they gave. A They didn't require any bond at all.

20 Q Nothing was said about it being as security for the return of the building in as good condition as when you got it? A No.

Q Don't you remember in my office when we were discussing the terms, that it was stated to you it was for the return of the building in as good condition as when you got it? A Yes.

Q Then why do you say that the reason wasn't discussed? A Possibly it was.

30 Q It was discussed as to why this bond was required, wasn't it? A Well, maybe it was.

Q And wasn't it discussed as to why this bond should be required when Mr. Adelman first telephoned to you? A No, sir.

Q You still say you didn't have interest enough to find out what the bond was for? A No.

Q So you didn't know why the bond was required until you came to my office? A Exactly.

40 Q Now, was there a discussion in my office with respect to the agreement that the old

Sol Lewine, cross.

tenants' rent should not be raised? A No, sir.

Q Nothing was said about that? A No, sir. There was something said about leases, and Mr. Adelman wants to have monthly tenants; and I says, "We can't do that. If a tenant comes into an apartment they must give a lease for a year at least." 10

Q Then you did not agree to restrict your leases to monthly tenancies? A We couldn't do it.

Q You didn't agree to do it? A No.

Q Although Adelman wanted you to? A Yes, he did.

Q And Adelman wanted the rents not over \$12 and \$13 for the inside apartments and \$14 for the corner apartments? A Yes, sir. 20

Q And you agreed to that? A Yes, sir.

Q And nothing whatever was said with respect to the disposing of the old tenants without consultation with him? A Not that I know of.

Q Anything said about the janitor? A Maybe; I don't remember.

Q Do you remember whether anything was said about the leases containing a cancellation clause? A Not that I remember. 30

Q It was inserted only in your New York leases? A Yes, and they have a lot of other clauses.

Q Corporation leases all contain that clause? A Yes.

Q And it was a usual clause to insert, wasn't it? A I wouldn't call it usual.

Q Nothing was said about that at the conference in my office? A No, sir. 40

Sol Lewine, re-direct.

Q Did you see Mr. Adelman during the time that this lease was being made, or being talked about, and memoranda made on a sheet of paper as to what was to be covered? A No, I didn't. He was there and did some talking, but I didn't talk with him specially.

10 Q Did you see him make a memorandum? A No, I did not.

Re-direct examination by Mr. Lichtenstein.

Q In your leasehold properties you take care of those properties yourself, don't you? A Yes, sir.

Q You have a lot of plumbing and painting and work of that kind which you have men to do? A Yes, by the week and day.

20 Q You don't go out and try to find people to do that? A No, sir; we are trying to make a profit ourselves.

Q (By the Court.) You don't pay your plumbers \$12 a day, then? A No.

By Mr. Lane: How do you have your plumbing done?

30 A I have a superintendent and he looks after three or four houses and I pay him extra, but the painting I get done by the day and supply the materials.

By Mr. Lichtenstein.

Q In other words, you hire a man to take care of your building and pay him so much per week? A Yes, and he looks them over from top to bottom.

40

Solomon Silverfelt, direct.

SOLOMON SILVERFELT, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Lichtenstein.

Q Mr. Silverfelt, you live in this county? A Yes.

Q Where? A Woodcliffe, N. J. 10

Q How long have you lived in this county?

A Oh, I am around the county about four years.

Q Where did you live before that? A Washington Heights, New York.

Q And you are in the real estate business, are you? A Yes, sir.

Q And do you know Mr. Adelman, senior, and Mr. Adelman, junior? A Yes, sir.

Q How long have you known them? A Well, I have known them by sight five or six years, and personally I have known them two or three years. 20

Q And do you know these buildings known as Gladden Hall, A, B and C, on the northwest corner of Liberty Place and Boulevard East?

A Yes, sir.

Q It is a large modern apartment house, is it not? A Yes.

Q Of the highest type that exists there in that neighborhood? A Yes, sir. 30

Q Mr. Lane hands me a photograph of the building. This is the building itself, is it not (exhibiting the photograph to the witness)? A Yes, that's the building; three different houses.

Q And they are located— A Corner of Liberty Place and Boulevard East.

Q Overlooking the Hudson River and New York? A On the northwest side of Liberty Place it is. 40

Solomon Silverfelt, direct.

Q But the front of the building is on the Hudson Boulevard and overlooks the river front without any obstruction? A Yes.

Q And these buildings are in that territory known as the Highwood Park section? A Yes.

Q And that is a private section? A Yes.

10 Q In fact, this is the only building in the whole section that is an apartment building? A Yes.

Q And this building is the only unrestricted building in that whole territory around there? A Yes.

Mr. Lichtenstein: I offer the photograph in evidence.

20 (The same is admitted and marked Exhibit C. 6.)

Q Did you arrange for the meeting of Mr. Adelman and the West Heights Realty Company? A Yes, sir.

Q And did you bring these parties together? A Yes, sir.

Q Whom did you talk with first? A In reference to this particular apartment building?

30 Q Yes. A Well, I had signed up the apartment from Mr. Adelman on a commission basis to lease or sell, on a 2½% basis. I had conversation several times with Mr. Granat. I have known Mr. Granat for about 10 or 11 years, and I know he is leasing property in New York, and I got him interested enough so that he came over to New Jersey. Well, I had the first conversation with Mr. Granat, and then I went over to Mr. Adelman and I had a little talk with him, and I said, "I think I can interest somebody in it; and he says, "I will be very glad to dispose

40

Solomon Silverfelt, direct.

of the property; my son is studying and I want him to study law, and I have a lot of property to build up." He had bought a lot of property on the Boulevard and he is looking to get all the money he can and wants to dispose of the property; it makes no difference whether he leases or sells it.

10

Q Now then, let us drop that. Do you recall bringing the parties together when they were negotiating this agreement which was afterwards signed? A Yes, I do.

Q Were you there at the time? A I was there all the time.

Q Now, after the agreement was signed did you see Mr. Adelman? A Well, we left there all together. We were there in the office of Mr. Adelman from about half past 12 until 9 o'clock. Mr. Granat was there, Mr. Adelman, Junior and Senior, and myself, and another man came in and went out—I think a man by the name of Cohen. I think he was there until about 4 o'clock, and he left before the agreement was closed. The agreement was closed about nine o'clock at night.

20

Q But he left about four in the afternoon? A About four or half past four. And Mr. Lewine got over there about 5 o'clock. We started to negotiate about half past 12.

30

Q (By the Court.) You began about half past 12, and did you negotiate continuously?

A Yes, except there was interruptions when people came in.

Q Until when? A The contract was signed about 9 o'clock.

Q Didn't stop for supper? A No, we did not.

40

Solomon Silverfelt, direct.

Q During the whole length of time of course people were coming in? A Yes, came in to sell bricks and came in to sell lumber; their plumber was in there; Mr. Cohen was in there, and we were interrupted, and Mr. Adelman didn't want the people to know what was going on, and we had to stop the negotiations while they were there.

10 Q But after business hours you sat down to discuss the lease? A Yes, sir.

Q And that was after Mr. Lewine came there? A Yes.

Q Now, after the agreement was signed did you see Mr. Adelman, Senior? A The same night?

Q No, afterwards—any time afterwards? A Oh yes, about two days later, or three days, I met Harry—

20 Q That is the young man? A Yes.

Q Where did you meet him? A Somewheres in West New York.

Q How long was that after the agreement was signed? A It must have been a day or two days after the agreement was signed.

Q Did he say anything to you? A Yes, he says: "Silverfelt, we want to have from the West Heights a bond for \$75,000." I says, "What do you want that bond for?" "Well, we were advised to do that, otherwise we are not secured enough. We want it for three years' security." I says, "You know your father only has six months' cash security, because he didn't ask for any security money at the time; he wanted to get cash; so how does it come after losing so much time in negotiating a deal and you finish it and you didn't mention one word. That is all that you did ask was six months and they promised three," and it was my own sug-

40

Solomon Silverfelt, direct.

gestion that it was three. They wanted to give only one month security, and I took the old gentleman aside and I says, "Mr. Adelman"—I took him out in the hall and nobody heard it—I says, "How would it be if you would take two months' security and be strict with them that they should pay on the 15th of every month." I suggested that to Mr. Adelman. I said, you always have security for a month and if they fail to pay you you have a month and half rent then"; and I suggested to the West Heights that they should promise instead of one month or three months they make it two months.

10

Q I don't want you to go into those details; I'm talking about the conversation you had with young Mr. Adelman, in which you were discussing with him this question of his demanding that a \$75,000 bond be furnished. A I told him distinctly he was wrong, because he had never asked for anything like that.

20

Q What did he say? A He says, "My father wants to have the bond."

Q Did he at that time say anything as to whether it was left out of any agreement, or anything like that, or make any statement to the effect that they forgot to put it in? A No, no, no; nothing of that kind.

30

Q (By the Court.) As a matter of fact, was anything said about the giving of a bond while you were present during the negotiations which resulted in the execution of the instrument at 9 o'clock at night? A Not one word about a bond was mentioned.

Q Now, after you saw young Adelman did you see him again? A Oh, I saw him occasion-

40

Solomon Silverfelt, direct.

ally all the time, you know; I met him very often; I even tried to sell the property after they tried to make a settlement out of court, because after we left Mr. Lewine's office Mr. Lewine said, "It is going to the Court of Chancery; it is a lawsuit." Of course, I didn't like that; I was looking for my commission, and I was trying every-
 10 thing in my power to get Mr. Harry Adelman and Mr. Granat to get away from the Court of Chancery. I was trying everything. Julius Kislak and I were working together to dispose of it several days. I know the reason why they asked for a bond. As a real estate man I would do the same thing or would try to do it—

Q Never mind about your reason for it or what you think was the reason for it. After you saw young Mr. Adelman did you speak with him?
 20 A Yes, sir; many, many a time.

Q I mean before going to Mr. Lane's office—before they went to Mr. Lane's office? A Before we went to Mr. Lane's office I think I spoke to the old man, too. When I went up there to Mr. Lane's office I went alone, because I thought it would be settled and the lease might be given; otherwise I would not have gone to Newark.

Q Before that time had you talked with old Mr. Adelman? A Yes.
 30

Q What did he say? A His lawyer advised him to take a bond and he wouldn't do otherwise.

Q Did he say how much of a bond he wanted? A \$75,000 bond to secure the rents for three years.

Q What did you say to him? A I told him, "You never asked that; we were there for hours and hours and you never mentioned anything about a bond."
 40

Solomon Silverfelt, direct.

Q (By the Court.) Did he say he wanted also the bond to cover the liability of the tenants and to surrender the premises at the end of the term in the same condition that they were received? A No, he didn't tell me that, not according to my memory. He told me that his lawyer advised him—I understand Gaede & Gaede were his lawyers at that time, and they advised him to take a bond. He didn't go into the details. What I was interested in was to see the West Heights get the lease and I wanted them to close the deal under the lease. That's all I was interested in. 10

Q Was any other amount mentioned but the \$75,000? A Not when I was present.

Q What did you say to the old gentleman when he said he wanted a \$75,000 bond? A I laughed and said he was wrong; I didn't see how he could demand that bond. 20

Q Did he explain to you how he was advised? A He told me his lawyer advised him to get a bond; that is the only reason he gave me.

Q Now, did you speak with him again before going to Mr. Lane's office? A I spoke to him many times, but I didn't charge my memory with it. 30

Q What were you talking about? A To stay away from court. He gave the lease in good faith and the people gave him a deposit of \$500, and that was all that was required of the people.

Q Were you at Mr. Lane's office? A Yes, I was.

Q With Mr. Dippel? A Yes; Mr. Dippel was there. 40

Solomon Silverfelt, direct.

Q Will you tell us what took place there.
A Well, we came over. I didn't pay much attention, because Mr. Dippel made a remark and I did not know what it was. It was to the effect that what they were doing was without prejudice, and Mr. Lane said, "yes, we won't repeat anything," and I didn't pay much attention
10 to the whole conversation. It was Mr. Dippel that said it.

Q So you didn't pay very much attention to what took place? A Not very much. I heard everything that was going on, but I didn't charge my memory with it.

Q After this conference at Mr. Lane's office did you try to induce Mr. Adelman to execute a lease? A Yes, many a time.

Q What did he say? A He says he wants a
20 \$75,000 bond; otherwise they wouldn't get the property.

(Recess until 2 o'clock.)

AFTERNOON SESSION.

Q Mr. Silverfelt, during the time you say
30 you were present at Mr. Adelman's office when the negotiations were going on? A Yes, sir.

Q And they were started at what time? A Started at about half-past twelve.

Q And who was present during the preliminary negotiations? A Mr. Adelman, Jr.; Mr. Adelman, Sr., and Mr. Granat, and a gentleman by the name of Cohen.

Q And when did Mr. Lewine come there? A
40 Mr. Lewine came there about five o'clock.

Solomon Silverfelt, cross.

Q And at the time that Mr. Lewine came there was Mr. Cohen still there or had he gone away? A Mr. Cohen left about half-past four; he wasn't there.

Q And who was there from that time on after Mr. Lewine came? A Mr. Lewine, Mr. Adelman, Jr. and Sr., and Mr. Granat, and myself. 10

Q And were you interrupted while there? A They bought bricks and all kinds of things, and when they came in we stopped and waited until they got through.

Cross examination by Mr. Lane.

Q You had an agreement with respect to your commission, didn't you? A Yes, sir. 20

Q I show you what purports to be a copy of such agreement and ask you whether it is a copy of your agreement? A I was entitled to \$1,856 and Mr. Harry Adelman wanted about \$750 off, and he says, "I will close that deal if you will allow \$300 to Harry." I was afraid the deal wouldn't go through, and I then promised and said this: I don't remember whether it was \$750 or \$900. I said, "Mr. Adelman, you lose \$300, the West Heights lose \$300 and I lose \$300 and we close the deal," and I think this is an exact copy that I gave to Mr. Lichtenstein. 30

Mr. Lane: I offer it, subject to correction.

(The same is marked Exhibit D. 5.)

A (Continuing.) I wouldn't say whether it is correct or not, but I remember that they shall give me a thousand dollars cash and \$400 when they would get \$189 every month from the rent. 40

Solomon Silverfelt, cross.

Mr. Lane: I merely offer it for the purpose of showing the interest of the witness.

Q You have started a suit against Mr. Adelman for commission, have you not? A Yes, I did.

10 Q And that suit is now pending and undetermined? A Yes, sir.

Q (By the Court.) Let me understand you, Mr. Silverfelt. This paper which has just been shown you; is it an original contract for commission or did you have an original contract? A I had an original contract and it was similar to this contract. It was a similar contract to this.

20 Q I only asked you if this is the original or a copy. A No, this is not the original. We started off at half-past twelve and were there until nine o'clock, and they were anxious to close the deal, and by nine o'clock I didn't know what to do, and so Mr. Harry Adelman wrote that out and so I took it; but I had a different contract.

30 Q In other words, you had an original contract which was signed and by which you were entitled— A To \$1,856.

Q And when the deal was put through they didn't want to give you that amount of money? A Yes, and Harry Adelman wrote out the agreement.

Q And this is a copy of that agreement? A I suppose so. I haven't got it here.

40 Q When did you first speak to the West Heights Realty Co. with respect to taking this lease? A Oh, I spoke to them several times.

Solomon Silverfelt, cross.

Q Well, when first—how long before the 29th of March? A Oh, the beginning of February.

Q How was the amount of the rental fixed? A I didn't have anything to do with the rental; Mr. Adelman showed the book and Mr. Granat said, "go ahead and give the rents that people are paying today." I sat down and he gave me a small piece of paper and I copied off the rents.

10

Q How was the amount of rent that the West Side Realty were to pay Adelman fixed? A I think it was \$24,750.

Q I know, but how did that come to be fixed at \$24,750? Why wasn't it \$30,000 or \$25,000? A First, Mr. Adelman asked \$25,000 or \$26,000; I don't remember which, and we compromised on \$24,750.

Q Were you present? A I was all the time present from half-past twelve until about nine o'clock the same evening.

20

Q Well, then, did they figure at that time how much the building was bringing in? A Yes.

Q Did they figure out how much was being spent to carry the building? A I think they figured it, but I don't remember the figures.

Q But they figured? A They figured; yes.

Q And then they finally fixed the rental \$24,750? A Not the rental, but that they should pay for the leasehold, if I'm not mistaken, thirty-seven or thirty-eight thousand dollars a year.

20

Q How did they figure their profit? A Thirty-seven or thirty-eight thousand dollars rental premiums.

Q But how did they figure they were going to get their profit? A Well, there was a surplus of about eleven or twelve thousand dollars more than they paid.

40

Solomon Silverfelt, cross.

Q Was that enough to carry the buildings? A I think it is, and there would be a profit to it to them, too.

10 Q Without raising the rents? A Regarding the raising the rents, Mr. Adelman didn't object to raising the rents at all, because while we were sitting in there, if I'm not mistaken, Snyder, the lawyer, lived in the apartment, and he notified them that he is going to move; I think it was Snyder, but I know it was one of the tenants, and he paid \$55 while he was there, and another party came in and Mr. Adelman rented it for \$70, and he said, "Look here, from \$55 you get \$70, and I have no objection if you rent it for more."

20 Q What did Mr. Granat say to that? A He was interested; he didn't say anything.

Q He didn't say anything; just kept still? A He said that he didn't have anything to do at that time with the property and he couldn't say.

Q Arrangements were being made to rent the property then? A The contract was not signed.

30 Q They were negotiating to induce Mr. Granat to see that he would make a profit? A He showed them that.

Q Because the rents could be raised? A He didn't say anything about raising the rents, but Mr. Adelman did not object. I don't remember that the subject came up, but he thought even if he did raise the rents of the property it would be worth so much more money in the market.

40 Q Did anyone tell Mr. Granat inasmuch as he was a resident of Hudson County he didn't dare raise the rents? A They did not.

Solomon Silverfelt, cross.

Q What did he say more than the fact that this might be raised from \$55 to \$75, this one case? A If I'm not mistaken, he wanted to limit them at that time to fourteen or fifteen dollars. I remember he spoke about it. Mr. Adelman said, "the rent is very low here and I will help you to raise even the rents of the tenants if you want to raise any rent." 10

Q What did he say, "I will help you to raise the rent?" A Yes.

Q How would he do that? A Well, he would see that the tenants shall pay it.

Q Did they say that they would limit the rents to fourteen, twelve and thirteen? A If I'm not mistaken, there was some talk about thirteen and fourteen dollars.

Q This was talked about at the time of this agreement of March 29th was made? A Yes, at that time. 20

Q But was there any agreement reached with respect to it on that night? A About the rental?

Q Yes. A No, I don't think so.

Q It was a part of the discussion, however, wasn't it? A Not much. Mr. Adelman didn't care whether they raised it or not. He left it entirely to them. He showed them the profit, so he couldn't discuss much about that because he was anxious to lease that property at that time. 30

Q Why was he anxious to lease it; did he say? A Yes, he did.

Q Why? A He wanted to get in as much cash as he can; he wanted to go ahead with the property and build there, and he said his son Harry was going to continue his studies, and he is only too glad that he will be relieved from collecting the rents, because his son wouldn't be able to attend to them. 40

Solomon Silverfelt, re-direct.

Q The only thing he would get would be to be relieved from collecting the rents of the property? A No; he had ground there on 17th and 18th street, and at the time the people came in with all kinds of brick and lumber and everything, and he wanted to be a little more free to attend to building.

10 Q No talk about a bond on March 9th? A All that Mr. Adelman wanted to get in as much cash as he could, but he didn't ask for it; he didn't mention about it.

Q Do you remember that Mr. Adelman, as the maters were being discussed, put something down on a piece of paper—that he made a memorandum? A Mr. Adelman had there some paper—large sheets—and first he marked down what to do, and he gave it to his father, and the father objected to a lot of things, and there was more than one sheet of paper, and he made corrections on them there and afterwards he wrote in on the typewriter, and he gave the West Heights everything, but you couldn't do anything with Mr. Adelman. But there was no little piece of paper like I saw here before.

20 Q You never saw a paper like this (exhibiting D. 3 for identification to the witness)? A No; they didn't have that piece of paper there.

Re-direct examination by Mr. Lichtenstein.

Q These papers that young Mr. Adelman wrote out and showed to his father and then his father made corrections in, were they typewritten? A Written out by hand. It was written out and showed to his father, and the father made a lot of objections, you know, and it must

40

Solomon Silverfelt, re-direct.

have been destroyed, and afterwards he wrote out a contract on the typewriter.

Q The father insisted upon a number of changes that, as you say, you were surprised they agreed to? A Yes, sir.

Q That is, the West Heights? A Yes.

10

Q But they gave in to everything? A Yes, afterwards they gave in.

Q You said something about thirteen or fourteen dollars; do you recall that that was at the time this agreement was signed at Mr. Lane's office? A I think that was in Mr. Lane's office. Mr. Adelman mentioned that he wouldn't let them do that, and the West Heights gave in, and I stood there when Mr. Granat and Mr. Lewine was saying that they could afford to make the agreement, because at the time when they were to take the lease the rent was only \$10 or \$11 a room, so that they saw the chance of an increase, and they gave in, and afterwards they didn't back out again.

20

Q Do you remember at Mr. Lane's office anything being said about some cash security being put up in addition to what was being put up? Do you remember any such conversation? A Yes, Mr. Adelman said, "To show you that I want to give you the lease, if you will give me \$10,000 cash—that I remember well—I will waive the bond." Now, if I'm not mistaken, Mr. Dippel was there as attorney for the West Heights, and they were negotiating, and they wanted to give \$8,000 to avoid a law suit, because Mr. Lane made remarks and said, "If necessary I will say that I can go in the Court of Chancery—

30

Mr. Lane: Who said that?

40

Solomon Silverfelt, re-cross.

A Mr. Lane; he can meet them all in the Court of Chancery.

Mr. Lane: I said that?

A Yes, in the Court of Chancery, and he will beat anybody.

10 Q Now, Mr. Silverfelt, this proposition that they would take some cash money instead of a bond—do you remember whether the West Heights people were willing then, in order to try to settle it, to make any proposition that they would give any further money? A I think that they wanted to give some more money, but I don't remember how much; but they wanted to give some more money to avoid a lawsuit.

20 Q But nothing came of it? A Nothing came of it, because at that time I know that I spoke to the West Heights. Mr. Dippel was their attorney, and Mr. Lane was on the side of Mr. Adelman, and they were afraid, you know, of lawyers, and they thought that before they would give their money to the lawyers they would give more money to Adelman. I understood any statement that was made there would not come up in court.

Q Never mind about that.

30 Mr. Lichtenstein: It was opened up and brought out by the other side.

Mr. Lane: No, you brought it out.

Mr. Lichtenstein: No; you brought it out on cross examination. I didn't know that any such arrangement was made. That's all.

Re-cross examination by Mr. Lane.

40 Q What was it I said? A You said, "then we will meet you in the Court of Chancery." I

John Edward Dippel, direct.

was laughing at the time and saying, "He can beat anybody."

Q You said that in a laughing sort of way?

A Well, you are a better attorney than John Dippel. You said, "I will meet you in the Court of Chancery, and I have other cases like that."

Q What I said was that you wouldn't get the lease, and if you wanted the lease you would have to sue in the Court of Chancery? A No, "We will meet in the Court of Chancery." Those are your words. 10

JOHN EDWARD DIPPEL, sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Lichtenstein. 20

Q You are a member of the Bar of this State?

A I am.

Q And did you, at the time of the execution of this agreement, represent the West Heights Company? A Yes.

Q And did you endeavor to get the Adelmans to sign the agreement in question? A Yes.

Q Did you, on any occasion after the execution of that agreement, go to see Mr. Adelman? 30

A I telephoned to Mr. Adelman's residence and inquired if they would allow us to come up to his home, to go over the matter with them and see if we could come to some settlement. There had been some controversy between them, and I went up there for the purpose of settling the argument, because both Adelmans are friends of mine and I thought I could settle the matter easily at their home. 40

John Edward Dippel, direct.

They said they would allow me to come up and they would wait for me, and I immediately went home and got my automobile and took Mr. Silverfelt and Mr. Lewine and Mr. Granat in my automobile up to the apartment where the Adelmans lived, and then we immediately repaired to the
10 parlor and began to go over the situation; and the question of a bond arose, and Mr. Granat said it was impossible to get a bond for security on a leasehold.

Q Who was it that suggested the bond? A Mr. Adelman was the one that talked about the bond.

Q What did he say? A He said, since entering into this contract that it dawned on him that the property might be damaged and that
20 these people might take a whole lot of profit out of the property, and that he would be the loser in the end, and he wanted the bond as security for the rent and to secure him against a possible breakdown of the boiler and the disappearance of some iceboxes, and so forth.

Q And did he say how much of a bond he wanted? A Yes, sir; he said he wanted a bond for the total of the three years, \$75,000.

Q What did these men that were with you,
30 your clients, say when he said that? A They wouldn't consider the proposition at all. They said that was not any part of their agreement, in the first place; and, in the second place, that no surety company would give such a bond; that they never heard of anything like that; that they were willing to give an additional sum in cash above the \$4,000 that they had agreed to in the original agreement.

Q Was that after there had been considerable
40 discussion at the house? A Yes.

John Edward Dippel, direct.

Q Now, was there any arrangement arrived at? A Why, the arrangement we arrived at was this, that they would not do anything until they consulted with Merritt Lane. Adelman Junior at that time was in Mr. Lane's office, and we agreed then to go to Mr. Lane's office in Newark.

Q And did you go there? A We went there. 10

Q Whom did you take along with you? A Mr. Granat, Mr. Lewine, and Mr. Silverfelt, and myself.

Q And whom did you meet there? A I met Mr. Adelman Senior and Junior, and Mr. Lane.

Q Did you then have any discussion with these gentlemen? A We did. At the outset I told Merritt Lane that any remarks that were made there were to be made without prejudice and not used in court in the event that we had to go to court, and that our object in coming out there was to compromise this case, if possible. 20

Q Now, I didn't know of this confidential relation at all that I have started in. I don't think I asked any questions as to the conversation; I think your Honor stopped me at the time and said it wasn't necessary to go into the details at Mr. Lane's office. Mr. Lane did examine at length on what took place at his office, so I assumed that the relationship was not confidential. 30

Mr. Lane: There was no confidential relationship.

Mr. Lichtenstein: I assumed that Mr. Lane had the same understanding that this gentleman did.

The Court: Let us see what the fact is:

Q (By the Court.) Mr. Dippel, when you made that remark, to the effect that 40

John Edward Dippel, direct.

10 what was said was said without prejudice, was anything said on the other side that they would assent to it? A Why yes; they assented to that. The reason I said that was, I realized that Merritt Lane was as smart as or a slicker lawyer than myself and Harry Adelman dwelt so much on the fact that Merritt Lane was a bright star and the rest of the bar was of minor consideration; that Merritt Lane could turn the world upside down. And that was one of the reasons why I said that before I would enter into any negotiations I wanted it understood that what we said there would be without prejudice to any action we might thereafter take.

20 Q Now, after you said that what was said on the other side? A He said, "Yes, nothing will be used; whatever is said here will be without prejudice."

30 Q (By Mr. Lane.) Was the offer that you made also without prejudice? A That was the last thing that we did after negotiations were broken off: I then made my tender to you, which you refused, and made the tender back to us, which we refused. You refused our tender of the certified check.

The Court: Well, accepting this statement of course the testimony will be excluded. No objection has been made and the matter was gone into without objection.

40 Mr. Lichtenstein: I didn't know that I went into the details of what took place in his office. I don't know that any harm could come of it, anyhow.

John Edward Dippel, direct.

Mr. Lane: I haven't any recollection of the precise conversation, but I know there was something said during the course of the conversation to the effect that what was said was said without prejudice.

Mr. Lichtenstein: Since there is some evidence I don't believe any harm can come from it. 10

The Court: Well, if no objection is made I shall not exclude the testimony.

Mr. Lichtenstein: Since there is so much evidence in I don't know that it would be of any avail to strike it out. I am willing to leave it to the other side as to whether it shall be considered privileged or not.

Mr. Lane: I am not raising any objection.

The Court: Well, proceed, then. 20

Q Mr. Dippel, after being in Mr. Lane's office and going away did you make any other attempt to get these parties together? A No; there wasn't any use of trying to get them together. Their mind was made up that they were going into the Court of Chancery and they were going to beat us; and so I suggested to the West Heights Realty Company that Mr. Granat and Mr. Lewine had better get some attorney in the case that was stronger than myself, and then names were suggested. Judge Carey's name was suggested; Alexander Simpson's was suggested, and your name was suggested and it was left to me to decide, and I said I would rather have Julius Lichtenstein, because he is the equal of Merritt Lane. (Counsel here smile audibly.) Coming home from Newark I went direct to your home, and there is where we met you. We had to wait for about two hours until you came home. 30 40

John Edward Dippel, cross.

Q Well, never mind that. Did you see Mr. Adelman or Adelman Junior after that? A Yes, I saw them often.

10 Q Did you speak to them about getting them to consent? A Yes, I talked to them in a casual way, and Harry was always trying to pump me, to find out what we were doing. The only information that I gave him was that we were going to beat him whether he had Merritt Lane with him or not.

Q Did you ever speak with him with a view of having him go on with the contract and executing the lease? A I told him that the West Heights were willing to go on, but it was useless, as it seemed they had made up their minds that the matter was going into the Court of Chancery, and there was no hope of getting together.

20 Q During the course of these various conversations that you had with Mr. Adelman Junior and Senior did they ever say to you that there was an agreement on the part of the West Heights to give a bond of \$75,000 that they had left out of the contract, or any language like that? A I never heard anything in regard to leaving it out of the contract. That was an after consideration, the \$75,000 bond.

30 *Cross examination by Mr. Lane.*

Q You remember meeting Mr. Adelman about the middle of April and his asking you what you would do about it? A I met Mr. Adelman so often that I don't know where.

40 Q In front of the bank in West New York, and that Mr. Adelman asked you what you were going to do about the case? A Not once; a dozen times—a dozen times they tried to pump me in order to try to find out what I was doing.

John Edward Dippel, cross.

Q All during the month of April? A I wouldn't say "all during the month of April"; but at different times for a period of six months.

Q Do you remember telling them that you would have to sue in the Circuit Court for damages? A Well, I knew better than that.

Q Did you tell them that? A I did not— 10
absolutely not.

Q You didn't suggest at all that you were going to sue in the Circuit Court for damages? A No; we were not after damages; we were after the lease.

Q It didn't make much difference to you whether you got it by way of damages or any other way? A Well, we figured that the lease was more valuable to us than damages.

Q Do you remember, in this same conversation, that you told Mr. Adelman that he was good for any judgment, or words to that effect; that his father was good for any judgment you might get against him? A Why, I remember words somewhat to that effect, yes; that they were both responsible. 20

Q This conversation which you had up at Adelman's house before you came to my office was also without prejudice wasn't it? A No, there wasn't anything said there about prejudice. 30

Q Are you sure that Mr. Adelman didn't in that case say that whatever was said would be entirely without prejudice? A I believe there was something of that kind said, yes. Yes, I think there was.

Q (By the Court.) When was that? A At the meeting up at Mr. Adelman's home, when we tried to compromise the thing. 40

John Edward Dippel, re-direct.

Q That was when Mr. Adelman was present—the younger Mr. Adelman and the elder Mr. Adelman—and Mr. Lewine and Granat—the same people who were in my office? A Exactly.

Q So that everything that was said in that conference was supposed to be without prejudice?
 10 A Yes. I also said that I didn't want to take any advantage of them, because they were not represented by counsel there, and that, I think, was the reason for thinking that whatever was said without prejudice on either side.

Q And you also told them whatever was said there would or would not, one or the other I don't know which, be brought out in court, didn't you? A Words to that effect.

Q You were quite sure in your own mind, and so advised your clients, that when you left
 20 my office on the afternoon of the 24th, the West Heights wouldn't get any lease? A I was satisfied from conversations that had taken place that they wouldn't get any lease.

Q And that you would have to sue in the Court of Chancery? A That we would have to "meet you in the Court of Chancery." That's what you said.

30 *Re-direct examination* by Mr. Lichtenstein.

Q At that time that you were testifying here a little while ago of the conversation that took place in Mr. Adelman's house, did you recall that you had had any such understanding as was brought out on your direct examination? A At the time I said that I didn't think about it.

40 Mr. Lichtenstein: Then I think it should be stricken out.

John Edward Dippel, re-direct.

Mr. Lane: No, it is all in on both sides.

Mr. Lichtenstein: Mr. Dippel says he didn't recall it until his memory was refreshed by Mr. Lane. I don't want to put Mr. Dippel in the position—

The Court: Mr. Dippel has made all the personal explanation necessary with refer- 10
ence to that matter. It was brought out by Mr. Lane's question, but the testimony was taken without objection. I will entertain a motion to strike it out if you deem it worth while.

Mr. Lane: I prefer to have it in. My only purpose in asking Mr. Dippel with refer-
ence to that was to remove any inference there might be that I was bringing into the case deliberately something which was con- 20
sidered to be without prejudice.

The Court: I really think all this talk between the parties after the refusal to give the lease unless a bond was given has no bearing on the case. If counsel can show me that I am mistaken I will change my mind. Propositions were made back and forth for a settlement to avoid a lawsuit. If they stated a fact, of course that is evidence 30
against the party making the statement; but the only fact I know of that has been brought out is that the complainant wanted to get a lease and he didn't want to have a lawsuit, and the question is how far they could go; and they didn't succeed, and that is the end of it. I don't know as that has any bearing on the case.

Solomon Silverfelt, direct.

SOLOMON SILVERFELT, recalled on behalf of the complainant, testified as follows:

Direct examination by Mr. Lichtenstein.

10 Q Mr. Silverfelt, you were shown a paper by Mr. Lane, which has been marked for identification, and asked by him whether it was a copy of an agreement that you had with Mr. Adelman on the day that the agreement in question, the subject matter of the suit, was signed; I show you a paper dated March 9, 1920, and ask you if that is the original document you received on that day? A Yes.

The Court: Let it be marked.

(The same is marked Exhibit C. 7.)

20 Q I show you another document, which doesn't seem to bear date, and signed by Harry Adelman and his father, and ask you whether that was the original document that you received before you negotiated for this lease. A Yes, sir.

Mr. Lichtenstein: I offer it in evidence.

(Admitted and marked Exhibit C. 8.)

30 The Court: What is the date of it?

Mr. Lichtenstein: It isn't dated.

The Witness: This agreement is good without end. It shall be good for all the time until the property is either leased or sold.

Mr. Lichtenstein: The original contract reads:

40 I hereby designate Mr. Silverfelt as an agent and broker to sell or lease for me or procure a purchaser for my premises

A. Harry Adelman, direct.

known as Gladdon Hall, Weehawken, N. J., and in the event that he sells or leases the the same or procures a purchaser therefor, I agree to pay him, in consideration of his services, two and one-half percent commission on lease or purchase price upon the execution of the contract of sale or lease. This authorization as an agent is not to entitle Mr. Silverfelt to commission if the property is ever sold by another broker. 10

It is understood that any sale of said premises at any time, to any person to whom the same shall first be offered by Mr. Silverfelt, shall entitle him to the commission herein mentioned.

S. M. Adelman,
A. Harry Adelman. 20

Mr. Lichtenstein: That is all. That is our case. 20

COMPLAINANT RESTS.

A. HARRY ADELMAN sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Lane. 30

Q Where do you live? A Now, 833 Boulevard East, East Weehawken.

Q Are you a member of the New Jersey Bar? A I am—since December, 1920.

Q Were you present at my office on the 24th day of March, I think it is, at which there was a conference of the interested parties in this matter? A I was. 40

A. Harry Adelman, direct.

10 Q What was the statement made in my office, and by whom was it made, with respect to the Court of Chancery? A Upon the refusal of the parties to make the lease, Mr. Lane explained that the only way they could get a lease was by an action for specific performance in the Court of Chancery. There was no statement made that he would meet them in the Court of Chancery.

Q Was there any statement made of that kind or effect? A No, sir.

Q When did you first know that there was any negotiation with respect to the lease of this property? A On March the 9th.

20 Q Where? A I was out attending to some matter of business connected with a new building which we were constructing across the street from this property and I met my father with Mr. Granat and Mr. Silverfelt, and there my father introduced me, first, to Mr. Granat; and he told me that they had been negotiating for a lease of the building.

30 Q What then took place; what happened? A My father told me, in the presence of Mr. Granat and Mr. Cohen practically all of the terms they had agreed upon. The first thing that was discussed and which was told me was the question of a bond.

Q (By the Court.) When was this? A On March the 9th. It was about three or four o'clock in the afternoon or 3:30.

40 Q Go ahead; what was said with respect to the bond? A My father insisted entirely and told me over and over again, and it was discussed again in my presence, that a bond was to be given for the return of the property in as good condition as it was when the lessees got it.

A. Harry Adelman, direct.

Q What was the final arrangement with respect to that? A He went from the building to our office, which was—

Q (Interrupting.) This conversation you are now talking about took place in the building? A In the new building; and, so far as I know, it was absolutely and definitely settled at that point that a bond was to be given. We went from there to the office— 10

Q (By the Court.) Was the amount named? A The amount was not named at that time.

We went from there to the office, which was in the basement of Gladdon Hall; and I sat down at the desk there and I jotted down, without asking all of the parties if these arrangements were made; I jotted on a piece of paper a memorandum of every point that was agreed upon, and I believe at one instance somebody asked me for my fountain pen and I loaned it to him, and I borrowed Mr. Granat's pen to continue writing that memorandum. I then sat down at the typewriter and wrote while they were discussing—Mr. Silverfelt and my father and Mr. Granat were discussing the further terms to be included in this contract and to be included in a lease which was to be made at a later date. This contract was to be given only as a receipt for the deposit which Mr. Lewine tendered at that time, which was a check for \$500. 20 30

Q You say this was to be given only as a receipt for the deposit; what was said which indicated that? A First, I was to write out an ordinary receipt, because I had to go to the class 40

A. Harry Adelman, direct.

that evening in a law school; and then I thought it would be well, so far as we were concerned, to include almost everything in that receipt, and I went to work and drew it as a regular form of contract instead of saying "Received from so and so the sum of \$500 as a deposit" or words to that effect.

10 Q Now when was the matter of the bond again taken up during the course of the conversation? A Right there and then in the place when we were discussing it. At that time I put it down in my memorandum, and I wanted to know what kind of a bond it was to be. My father then turned to Mr. Granat and he asked Mr. Granat what kind of a bond it was going to be and they said "A real estate bond"; and my father said he desired that the bond be a lien
20 upon that real estate, and Mr. Granat thought for a second and then he said they couldn't give a real estate bond which would be a lien upon real estate, but that they would give a surety company bond. And I asked if they had a company and they said no particular company, and I told them I knew of a company which would make the bond.

30 Q (By the Court.) Was the amount mentioned? A It was not.

Q What next? A I began to draw the agreement on the typewriter. I write with only two fingers and have to search for the characters before touching them. Mr. Lewine and my father and Mr. Silverfelt stood over in one end of the room and I sat down to write the contract or the receipt. It was intended to be a receipt. And Mr. Granat sat alongside of me on
40 a bench and he kept continually talking to me,

A. Harry Adelman, direct.

and at times pick up this memoranda and look at it, and then he would talk to me again, and that is why it took me so long to write the contract. It took me about two and one-half hours to actually typewrite it, only three pages.

Q How was the matter of the bond left? A It was left to be determined finally at the time the lease was to be made in Gaede's office, as to the details of it. 10

Q How was it that the matter in respect to this bond was left? A What was said that caused it to be left for settlement at the time the lease was to be made? A The fact that it had not been determined what company would go on the bond.

Q Never mind what wasn't determined; what was said? A They said that they had doubts as to whether or not they could get a surety company to go on that bond, and I told them that I thought I could get a company, and that I would send a man to them, and that the amount of it was to be left open until the time of the lease, because we had figured out exactly what property was to be covered and the value of it. 20

Q Was there anything said with respect to any additional terms being inserted in the lease other than those referred to in this contract of March 9th? A Yes, sir. 30

Q What? A The fact that no tenants would be dispossessed without our consent, and the rent was to be fixed at a certain amount; that if they ever did increase the rent it was not to be any more than \$12 for the rear apartments and \$13 for the front apartments.

Q Why weren't those to be put in the agreement? A Because they were to be left open for consideration at Mr. Gaede's office, and ow- 40

A. Harry Adelman, direct.

ing to the further fact that I was at that time attending law school and I wanted to get through with it in order to get at my class in the university.

10 Q Was there anything said as to the clause which is inserted in this agreement, "Any further provisions, clauses and agreement to be made in addition to the above mentioned," and so forth? A That was why that clause was put in there. I inserted that clause because we did not have time to insert everything that was to go into the contract.

Q What was said about it? A Nothing, as far as I remember.

20 Q Did you just insert the clause and they sign it without any explanation at all? A They asked me about it later, just before it was signed, and I told them that was to take care of all items which we were talking about at the time, which were the question of the bond, the question of tenancy, and the question of the janitor, the use of the building, any cancellation clause, or anything else that might be discussed between us and insisted upon upon our part.

30 Q Was there any amount of bond referred to at this particular talk? A I don't recall; I don't think so.

Q When was the next time that you had any conversation with any of the West Heights Realty Company? A After that day, you mean?

40 Q Yes. The next morning. It was arranged that night when the contract was executed, or before the contract was executed, that I was to send them the name of the company to which I referred, or send one of the men. The next morning I telephoned to Mr. Lewine that I was going to send over to him the man who was go-

A. Harry Adelman, direct.

ing to talk to him about the bond. I then got in touch with the bonding company, and I asked them to call up Mr. Lewine and talk over the question of a bond.

Q Did you tell Lewine over the telephone that day that you had come to the conclusion that you wanted a bond? A No. 10

Q And that you had been advised by your lawyers that you ought to get a bond? A No, sir.

Q That although you knew it wasn't in the contract, nevertheless you wanted a bond? A No, sir.

Q (By the Court.) Did you say to him, "Well, I fear the deal will fall apart?" A No, sir. 20

Q Or anything of that kind? A No, sir.

Q Did he say, "This is news," or words to that effect? A No, sir.

Q What did he say? A Send them over and we will talk to them.

Q Did he say, "This is not included in the contract, but I will do the best I can," or words to that effect? A No, sir. 30

Q When next did you have any talk with anyone representing the realty company? A The next time that we had a talk was, I believe, Mr. Silverfelt came to us and told us that they couldn't get the bond and that we ought to try to make some other arrangement about it, and that he was going to get these parties here and talk the matter over.

Q When was that? A That was two or three days later. 40

A. Harry Adelman, direct.

Q What happened as the result of that talk?

A Mr. Dippel was retained, I believe, and came to our house. In the meantime I believe I had called up this Mr. Gegan, to whom I referred him as the person in the bonding company, and I asked him about the bond, and he told me that they were not financially responsible.

10

Q Never mind that. Did you talk to Mr. Granat at all on the bond question? A No.

Q Did you know that Mr. Granat had telephoned to the surety company? A Yes, I knew that.

Q Through whom? A Through Mr. Gegan.

Q In any other way? A No, sir.

Q And the next was the visit of Silverfeld?

A Yes.

20

Q What happened next? A Silverfeld told me at that time that Mr. Granat had taken the matter up with the insurance company and they couldn't give the bond because they can't make a statement sufficient to warrant a surety company in making such a bond; because if they made such a statement to the insurance company there would be some question raised about the income tax report filed by the company.

30

Q That is what Silverfeld told you? A That's what Silverfeld told me.

Q What was the result of your talk? A Why, the result of that talk with Silverfeld was that Mr. Dippel was retained, I believe, by the parties on the other side, and Mr. Dippel telephoned to the house, and I believe I answered the 'phone, and he told me he would like to take up the matter; that he had been retained in the case, and he wanted to see if they couldn't settle it and find out what was the trouble, or words to that effect.

40

A. Harry Adelman, direct.

Q What happened then? A I invited Mr. Dippel to come up to the house, and he did come, with his clients. Mr. father and I and all the parties went into the parlor, and Mr. Dippel wanted to know why we refused to sign the lease—why we refused to enter into negotiations with them without a bond.

Q Yes; what else? A And when he began to talk, the arrangement was then made—I don't know at whose suggestion, whether his or mine—that whatever was said there should be without prejudice; and Mr. Dippel then went into the question covering almost every point in the contract, and said that the deposit which had been given for the rent was sufficient security, and there was nothing mentioned in the contract and, therefore, they would not give any such bond; that they were responsible enough, I believe he said.

Q What else was said? A I told him—or my father told him—I don't recall which of us spoke, but there was something said by one of us that the property would not be turned over to them without any bond; that it was the first thing that was discussed between us and it was the thing that was holding everything up; that if they had delivered such a bond to us and these other clauses were written into the lease the lease would be closed.

Q Well, what did you say to the suggestion made by Mr. Dippel that no provisions for this bond was in the contract, if you said anything? A I told him that it was intended to be, and if it was not in the contract it was by mistake left out; that there was an agreement and everything was definitely closed and agreed upon, and that this receipt made in the form of a contract

A. Harry Adelman, direct.

was simply a binder until the making of the lease.

Q Was there anything said in your talk with Mr. Lewine as to the question of the bond? A That night they argued about the bond.

10 Q Was there anything said up to that time in respect to the amount of the bond? A No, sir.

Q Go ahead; what was said on that night? A On that night my father told them that they would have to put up a bond for \$75,000, more or less, depending upon the amount which they could get, and he insisted upon it before making the lease. And they then said they couldn't get such a bond; and there's where the matter ended.

20 Q (By the Court.) Was it stated what the bond was to be given to secure? A Yes, the bond was to be given to secure the return of the property in the condition in which it was given to them, and the return of all the appertenances to the property, such as stoves, iceboxes, awnings and everything in the same shape it was turned over to them.

30 Q Was it to be given also to secure the rent? A There was no mention made for the security of the rent.

Q The object of the bond was to secure the delivery back of all the appurtenances in good condition? A Yes.

40 Q Did it occur to you that \$75,000 was a very large bond to give for that purpose? A Why, at that time I thought about it, and when I realized the cost of replacing the steam plant—the hot water plant in that house cost us forty or fifty thousand dollars;

A. Harry Adelman, direct.

that the stoves, if they were moved from the property or destroyed, and the awnings and everything would cost another thirty-five or forty thousand dollars, and it was to be given more for the return of the house in the condition in which it was given to them.

Q What was the price at which the property was for sale? A The property was offered for sale at different prices, but at different times. At that time I believe it was \$225,000 or \$235,000; I'm not quite sure. Different brokers had different prices on it. 10

Q Did you ever lease property before of this character? A No, sir.

Q You always managed your own property? A Yes, sir. 20

Q So this was not a usual thing for you to do? A No.

Q How did this conference at your house end? A It ended with the parties going away and we would hear further from them again.

Q What next happened? A We received a registered letter from somebody in New York.

Q The letter which is in evidence? A Yes, the letter which is in evidence, on the stationery of the West Heights and on the envelope there is the name of Quisha. 30

Q What then happened? A We then, I think, took the matter up with Mr. Lane.

Q Never mind what you took up with me, but what happened next after that? A They arranged for a conference in your office.

Q When was that conference held? A On the 24th or 25th. 40

A. Harry Adelman, direct.

Q Was that conference arranged for at the time they were up to your house with Mr. Dippel, or not? A I don't remember.

Q Who were present at my office? A Mr. Silverfelt, Mr. Dippel, Mr. Lewine and Mr. Granat, and my father and myself.

10 Q Do you remember what was said in respect to any conversation being without prejudice? A I think when they first came Mr. Dippel said, "Whatever is going to be said at this conference is without prejudice to either party."

Q What was the general nature of the discussion? A The general nature of the discussion was the complete revisionary terms of the contract and the terms that were to go into the lease, and the question of the bond. That was the primary and most important question at that meeting, and we insisted upon having a bond even though it was not mentioned in the contract. We insisted upon having such a bond, otherwise we wouldn't lease it.

20 Q Was there anything said at that conference with respect to the limitation of the raising of the rent? A Yes, they agreed that the rents should not be increased to more than \$12 for the rear and \$13 for the front apartments for each room; and there were one or two apartments which they thought, if they became vacant, they might get \$14 for, situated on the corner.

30 Q Was there any agreement with respect to old tenants not to be raised? A Yes.

Q What was that? A The old tenants would not be increased to more than \$12 or \$13.

Q Was there anything said about the old tenants being dispossessed? A None of the tenants in the building were to be dispossessed without our consent.

40

A. Harry Adelman, direct.

Q Was there anything said with respect to the awnings and screens? A The question was raised about the awnings and screens, and they said, "the contract provides for that."

Q Was there anything said with reference to the use of the furniture in the building and the use of the office by you? A Yes, they said we might make use of the office at any time. 10

Q Was there anything said with respect to the janitor? A They were not to discharge the janitor in charge of the building.

Q Was that agreed to? A It was.

Q Was there anything said with respect to the lease containing a cancellation clause? A We discussed that, and it was left open for the lease. There wasn't much pressure laid on that at all. 20

Q At any rate, whatever was said about that did not result in any agreement? A No.

Q Was there anything else said at that conference that you recollect with respect to the terms of the agreement? A The question was raised about the iceboxes and the stoves, and so forth, and we contended right along that we were entitled to a bond, as agreed upon.

Q It is said that I used the term "iceboxes" and "stoves." I haven't any recollection of it. Do you recollect what that was about? A No, I don't. 30

Q Did I say that the agreement was incomplete and that, as a matter of fact, according to the agreement as it was written, you might remove the iceboxes and stoves if you were only depending upon the written agreement at that time. Did I say something of that kind? A Yes, sir. 40

A. Harry Adelman, direct.

Q (By the Court.) Mr. Lane, I understand, said that the agreement was incomplete? A Yes.

Q Did he say it couldn't be enforced? A He didn't think so. He told me that.

10 Q Well, did he say so at that time? A He said so at that time; yes, sir.

Q I said that in my opinion that agreement could not be enforced and if they wanted their lease they would have to sue in the Court of Chancery? A Yes.

Q (By the Court.) When was that said? A Before they went away, during the course of the conversation.

20 Q It was said when it was clear that there couldn't be any agreement between the parties, was it not? A Yes.

Q Was there any hope held out after that of any subsequent meeting? A In case they might secure the bond.

Q Unless they secured this bond, and so forth? A No.

30 Q Was there any talk at that time about their suing at law for damages? A Not at that time.

40 Q When did you next hear anything from them at all? A Sometime around the 10th of June we were served with a complaint. Prior to that time, however, I met Mr. Dippel, whom I knew to be the only counsel in the case besides Mr. Lane. I met Mr. Dippel in front of the bank, and on this particular occasion I asked him what the West Heights were going to do, and he said they were going to sue at law and get dam-

A. Harry Adelman, direct.

ages, and whatever he recovered we were good for, or words to that effect.

Q Do you remember when that was? A About the 15th of April—latter part of April.

Q After that statement from Mr. Dippel had you any idea that they intended to insist upon the specific performance of this contract? A 10
No, sir. I knew they were going to sue, but I didn't know whether they were going to sue at law or in the Court of Chancery.

Q (By the Court.) But you heard Mr. Lane say that they would have to get the lease in the Court of Chancery? A Yes, if they got the lease.

Q But nothing was said about the specific performance of the contract? A No. 20

Q Was there anything said at that time about any alternate right that they might have? A No. I think you told Mr. Dippel that he knew the law as well as you did and if they expected to get the lease they would have to sue for specific performance in the Court of Chancery.

Q Although it is not important in this case, I am still curious to know: Did you, as a matter of fact, use the language with respect to me that Mr. Dippel says you did? A In regard 30
to what?

Q Did you use the language with respect to me that Mr. Dippel says you did, at some conference you had with him, before you came to my office? A No; I don't recall it being used, but if it were used it probably was intended to be said in a jocular manner.

Q It wasn't used when I was around? A No; oh my God, no. Another thing, the state- 40

A. Harry Adelman, direct.

ment was made that I was with you at that time. I wasn't connected with your office sometime in July; and that was after the suit had started.

Q And at the time you were not connected with my office? A No, sir. I know that to be a fact.

10 Q How many apartments are there in this building? A Sixty-four.

Q Since the first of April have you continued to operate this building? A Yes, sir.

Q And have collected the rents? A Yes.

Q Ran the building? A Yes, sir.

Q And on rentals which were fixed or which were being collected at the time this contract was made,—was there any profit in it?

20 Mr. Lichtenstein: I object to that as being a conclusion of the witness. If the Court concludes that we are entitled to specific performance—

The Court: What is the purpose of this, Mr. Lane?

Mr. Lane: Merely to show the intent was to raise the rents, that's all. I want to show that on the rent as then existing it was a losing contract on the part of the lessee.

30 The Court: Well, I hardly see that any foundation as yet is laid for any such inquiry.

Q I show you a paper writing, marked Exhibit D. 3 for identification, and ask you if that is the agreement, or one of them, you made at the time, to which you have referred? A Yes.

40 (Mr. Lane offers the paper in evidence and it is admitted as Exhibit D. 3.)

A. Harry Adelman, cross.

Cross examination by Mr. Lichtenstein.

Q Mr. Adelman, on March 9, 1920, you were attending what university? A New York University Law School.

Q How long had you been attending there?
A I was in my senior year.

Q You had spent three years there? A Yes, except the time I was in the service. 10

Q You were graduated in the month of June following the making of this contract? That is, you had two more months to complete your course? A Yes, sir.

Q And at that time were you connected with any law office? A No, sir.

Q And you were in charge of these buildings, collecting the rents? A Yes, sir.

Q Your father is a builder and contractor? A Builder. 20

Q And has been the owner of a great deal of real estate for a number of years? A Yes.

Q In fact, he built these buildings? A Yes.

Q Your father had purchased a large tract of land to the north of this property just before that? A Yes.

Q And you were at that time excavating, ready to build? A I think we had completed the excavation. 30

Q And your father was devoting his time to this new enterprise? A Part of it.

Q And that was a very large enterprise, wasn't it? A Yes.

Q A larger structure than this? A There were a number of structures, each one of which would have been about as large.

Q And how many were you building? A We weren't building any yet. 40

A. Harry Adelman, cross.

Q You contemplated building how many? A Three of them. In other words, the three structures would be about three times as large as this.

Q Where were you at the time when you were approached and told that your father was making some arrangement for a lease of the property?

10 A I came into the same room where they were talking, in the new building.

Q That is, in this very building? A No, sir, a little house across the street.

Q A private house which you afterwards occupied with your parents? A Yes, sir.

Q And there were there whom? A Mr. Silverfelt, Mr. Granat, Mr. Cohen, and my father.

Q Your father then suggested what to you?

20 A My father told me Mr. Silverfelt had introduced Mr. Granat to him and he had contemplated making a lease for the building.

Q And then, as I understood you, you said that the very first thing your father said to you was that there was to be a bond? A Yes.

Q That was, in fact, the very first thing? A I asked him—

30 Q (Interrupting the witness.) Just answer that first. A I couldn't say whether it was the very first thing; I believe the first thing was to introduce me to Mr. Granat.

Q I thought you said on your direct examination, "The first thing he told me was about the bond?" A The first thing of importance, yes.

Q As a matter of fact, at that time there was nothing said about the lease? A No, the rental wasn't fixed.

40 Q Nothing had been done? A When I came in everything had been agreed upon except the rental.

A. Harry Adelman, cross.

Q All the terms excepting the rental? A All the terms excepting the rental and a few minor things like the awnings and screens.

Q How did you know everything had been agreed upon excepting the rental? A He told me.

Q Who told you? A My father, in the presence of Mr. Silverfelt, and Mr. Granat, and Mr. Cohen. 10

Q (By the Court.) Did you write out the terms of the lease and show them to your father? A They were working at the time in the next room and the noise was rather loud. They were hammering, I believe, in the next room; and I told him the best place to go would be in the office across the street, and we went there. 20

Q Well, did you show your father in writing the different propositions during the negotiations? A No, sir; the points I marked down when I got them and then I wrote the agreement on the typewriter.

Q Prior to your undertaking the typewriting did you jot down the propositions and submit them to your father on the paper? A No; he told me the points and I put them on the paper, and I think on one point only I questioned him. 30

Q Well, what were the points that he told you? A About taking a bond to cover the building until it was returned; that the lease was to commence on April 1, 1920—

Q Perhaps you don't understand me: I want to know whether you were present when the different propositions were dis- 40

A. Harry Adelman, cross.

cussed back and forth between your father and the others? A Later, in the office; yes.

Q And did you take down these propositions and show them to your father?

A I took them down as they were discussed.

Q And did you show them to your father?

10 A No; I didn't show them to him.

Q Did you read them to him? A Not at that time.

Q When did you? A They went into the contract, and when the contract was signed he asked me if everything was there, and I told him "yes."

The Court: Proceed.

Q In the little building, the private house that
20 you first entered, when your father told you that all the terms had been agreed upon excepting the rental, you say that Mr. Cohen was there at that time? A Yes.

Q Don't you know that he didn't come in until after you were in the other building—in the Glad-don Hall building? A He went with us from that small building to the office.

Q From the small building to the office? A Yes.

30 Q Are you certain of that, Mr. Adelman?
A Absolutely.

Q Now, while you were in the little building did you make memoranda then of what they had agreed upon? A No, not in the little building.

Q Did they tell you what they had agreed upon? A Yes.

Q In the little building? A Yes.

40 Q What was it they told you? A It was my father that told me.

A. Harry Adelman, cross.

Q What did he say to you? A He said he had proposed letting the building to them, beginning April 1st; that they were to give a bond to secure him for the return of the building in the condition it was; that the other terms of the agreement, such as the rentals to be fixed, were to be discussed when Mr. Lewine came over later. 10

Q Anything else? A And Mr. Granat, I remember, wanted me to take him through the building.

Q What was it they agreed upon? A Agreed to lease this building for a period of three years, beginning April 1st.

Q So you have told us everything your father said had been agreed upon? A As I recollect.

Q First, there was to be a lease for three years from April 1st; that no rent had been agreed upon— A No. 20

Q And that there was to be a bond to secure the proper return of the building at the end of the term; that is all they told you, and that is what you considered to be all the terms which had been agreed upon between the parties before you got there? A Yes.

Q Now, then, you adjourned to your office in the large building? A Yes.

Q And there you had a desk and a typewriter and other office equipment? A Yes. 30

Q And that is the office that you occupied in attending to these buildings in the collection of the rents and keeping your books, and so forth? A Yes.

Q And you had a typewriter there? A Yes.

Q And that was the typewriting machine you had in connection with the building? A Yes.

Q How long had you been using that typewriter? A I had only purchased it two months 40

A. Harry Adelman, cross.

before that, and it was there only about two months.

Q What make of machine was it? A L. C. Smith.

Q You had become rather an adept in the use of that typewriter in the two months you had had it? A Oh, no; I had a typewriter before that, but it had been stolen.

Q For how long a period had you been writing on the typewriting machine? A That's something I couldn't say.

Q Well, for years? A About two years, and I would use a typewriter possibly once a month.

Q I notice that this contract, as written out by you on the typewriting machine, appears to have the punctuation as a typist would write it, with proper spacing and so forth. A Yes.

Q Where did you learn to punctuate in that manner, and to space as a regular typist would? A You learn that by constant practice, and in about a year and half or 2 years I had been using the typewriter from time to time. You get so you can do it.

Q The only difference between your typewriting and that of the professional typist was that you picked out the letters with two fingers, as is done in the old school? A Yes. I don't know about the old school.

Q In other words, you didn't have the "touch system" down? A I didn't have the touch system, nor did I have speed.

Q Now, were you used to writing out agreements? A I was used to writing out some agreements.

Q What kind of agreements were you used to writing out? A Building contracts.

A. Harry Adelman, cross.

Q You attended to all those building contracts for your father? A Yes, most of them I had dictated.

Q And were you in the habit of preparing leases? A Yes, just those printed leases.

Q You were familiar with that form of lease? A Yes. 10

Q (By the Court.) Had you drawn leases? A Well, we used a regular printed form and it is only necessary to fill in the blanks.

Q Had you done that? A Yes.

Q And left in blank matters that might be agreed upon? A Yes.

Q And you had prepared scores of leases in connection with the renting of your father's apartments? A Not scores; 25 or 30 leases all together. 20

Q In that one building? A Yes.

Q How about the other building? A We had no leases on other buildings except stores, and they were prepared by an attorney for the lessee.

Q When you got over to your office then you heard a discussion between the parties as to the terms? A Yes. 30

Q And that discussion took place on account of your father not having been able to hear very well; he would put propositions to you and you would submit them to the parties? A Sometimes; not all the time.

Q But usually the reply would come through you to your father? A Not necessarily.

Q But, as a rule you would submit them? A Only on rare occasions would I take replies and 40

A. Harry Adelman, cross.

submit them to my father; and those occasions were only lawyers or people whom my father doesn't like to shout to him.

Q And during the course of this conference and these negotiations you were acting for and representing your father? A Yes.

10 Q In these negotiations? A Yes.

Q And your father is a man who is rather—I won't say stubborn but I would say very headstrong, isn't he, on matters of business? A No.

Q I don't use it disparagingly; you understand what I mean. He is a man that knows his own mind and insists upon what he wants, and he gets what he wants? A Not necessarily.

Q Well, it is rather hard to convince him, is it not? A It is hard to convince him if he doesn't believe it is right.

20 Q I understand that. Personally, you haven't very much influence over him when it comes to a matter of business? A Well, I do.

Q And in the preparation of this agreement you were going to see that your father was fully protected? A As well as I possibly could.

Q And you knew that these other men were not represented there by any counsel? A Yes.

30 Q Now you say this paper was only to be given as a receipt for the deposit? A Yes, I say that this instrument was contemplated to be a receipt.

Q I understand that, but you say, as I understand it, "At first I was only to give a receipt"? A Yes.

Q And you also said, that despite the fact that you were only to give a receipt you suggested that it would be better to include everything in the receipt—all the terms, didn't you? A I made up my mind—I didn't say anything

40

A. Harry Adelman, cross.

publicly or openly; I made up my mind that the best thing would be to mention, as nearly as possible, everything that was to be inserted in a lease.

Q But I made notes when you were testifying, and unless I am incorrect in making my notes you said, in reply to a question of Mr. Lane that it was you that suggested that it would be better to include everything in this receipt and that you would draw up the contract? A Yes. 10

Q Now, then, as a matter of fact, did not this gentleman here, Mr. Granat, after you had been going over the details of this contract say to you that it was taking a long time and that they were willing to take a receipt just for their deposit? A No, sir.

Q And didn't you then say, "No, everything has got to go down into this agreement and nothing is to be left undone"? A No, sir. 20

Q Didn't you say that that was the only way that you would sign any agreement? A No, sir.

Q And didn't you say that you would not give a mere receipt for the money, even though they said that was all that was necessary? A No, sir; no such statement was made.

Q Now, then, if they didn't suggest that and is, as you say, that you said "I was only to give a receipt," why was it that you sat down and prepared this elaborate agreement, which took hours in the making? A Because I wanted to get everything down as nearly as possible that was to go into that agreement, and anything which was omitted then was to go into the lease that was to be made later. 30

Q Won't you please answer my question: Why was it that you sat down and prepared 40

A. Harry Adelman, cross.

this elaborate agreement if you were told that all you would need to prepare was a mere receipt for the deposit? A Because I have answered your question.

Q Who was it that told you that you were to prepare a mere receipt for the \$500? A I believe my father said, "Give them a receipt for it."

Q And that wasn't satisfactory to you? A No.

Q You wanted to disregard what he said and incorporate in the mechanism of the receipt, as you call it, everything that you considered essential and everything that would go into the lease as personally prepared? A Yes.

Q In fact, you said at that time that you would not give them a receipt, but you would prepare a memoranda of agreement so that there would be no question about it afterwards? A No, sir.

Q Isn't that what you said? A No, sir.

Q Now, what time was it that you got over into your father's office? A A few minutes after I reached there.

Q That was around 12 o'clock? A Oh, heavens, no! Between 3 and 4 o'clock.

Q Wasn't it about quarter after 12? A No.

Q After you got in there did you ask them again what the terms were that this lease was to be prepared upon? A No.

Q Did you know? A I knew what had been told me over in the building there, and I knew what ought to go into an instrument of that kind.

Q How did you know what ought to go into an instrument of that kind? A From the dis-

A. Harry Adelman, cross.

cussion of it, as to how the property was to be turned over to them.

Q You have only told us of two things—the term when the agreement was to begin and when it was to end, and also to get the bond for the proper return of the property. A Yes, and then I asked, when I was typewriting, where the lease was to executed, and they said wherever it would be signed, and I then said at Gaede's office. 10

Q Gaede & Gaede were your father's attorneys for a good many years? A Yes.

Q You have been out there with your father any number of times? A Yes.

Q Then when you got over to the office all you did was to sit down to the typewriter and start writing this agreement? A No, I didn't do that. They were talking about how the building was constructed, and who the said sub-contractor was, and that was discussed, and Mr. Granat wanted to see the building, and Mr. Silverfelt went to the telephone and telephoned for Mr. Lewine. 20

Q Well, had you done anything—made any memoranda—before Mr. Lewine came there? A I made the memoranda, yes. 30

Q What memoranda did you make? A The memoranda on this paper.

Q What paper? A This little paper.

Q This little piece of paper, Exhibit D. 3? A Yes.

Q Was that the only memorandum that you made? A Yes.

Q Wasn't there some other memorandum that you made? A That's all. 40

A. Harry Adelman, cross.

Q And you made that when you got over to the office from conversations that you had with your father over at your own house? A Yes.

Q And that memorandum contains all the information that you had received from your father? A Not all of it; no.

10 Q Well, did you make a memorandum of the other information that you received? A I didn't make a memorandum of anything only what my father had told me.

Q I know, but where did you make a memorandum of all the things that were told you that were to go into the lease? A I wasn't making a memorandum of all the things that were to go into the lease.

20 Q Where did you make a memorandum of when the lease began? A That I knew. This memorandum was made as a reminder of some of the important things.

Q Wasn't it important for you to know when the contract was to begin and end? A I knew that.

Q You knew it from what your father said to you? A Yes.

30 Q And you didn't make mention of that on this memorandum? A No.

Q You made no mention of anything about taxes on this memorandum? A Not on the memorandum.

Q Well, did your father tell you anything about the taxes on the house? A No.

Q You didn't mention that before? A Not before, no.

40 Q Your father didn't mention anything about the rental? A That was to be fixed when Mr. Lewine came.

A. Harry Adelman, cross.

Q You didn't mention anything about water, coal and gas, or electricity, did you? A Yes, I did.

Q In this memorandum? A No.

Q You didn't mention anything about interior and exterior repairs, did you? A Not on the memorandum.

Q You didn't mention anything about city and State violations against the building and how that should be overcome? A No.

Q Did they tell you of those things in the house? A No, but I put them in.

Q You put in about the violations and about the coal, water and electric adjustments— A And the repairs that were to be made.

Q In other words, all the things contained in the complete agreement which was signed, and those which were not shown on this paper D. 3 were your own suggestions? A Coal, water, gas and janitor service, and repairs are mentioned here.

Q Just answer my question, please, Mr. Adelman. In other words, all the provisions contained in this complete agreement which are not shown on this memoranda which you hold in your hand, were provisions inserted at your suggestion, were they? A Except the interest, taxes and insurance clause; all the others were.

Q When you got over to the office you had another long session, did you, discussing the terms of the agreement? A The further terms of the agreement, yes.

Q Well, all the terms we have? A No, not necessarily not all the terms. It was agreed from the very beginning what was to go into the agreement, and we continued over in the office on the terms, as I indicated before, and these

10

20

30

40

A. Harry Adelman, cross.

further arrangements that were to go in. The big question over in the office was on the rent.

Q The only question discussed over in the office was the rent? A Not the only one.

Q What other question was there over in the office? A If you will let me see the contract—

10 Q Can't you testify from memory? A No.

Q You have read this contract over a number of times? A No, not since that time.

Q Well, was the subject of a bond discussed over in the office? A No, it had been definitely settled when we arrived there and it was being talked about when I came into the office or into the place.

Q You didn't hear that discussed, but your father told you? A My father was telling me. Mr. Granat was walking alongside of me and
20 my father and he was telling me the terms that had been discussed.

Q But your father told you in the building where you agreed upon the bond, and those were the only things that they had talked about to you? A Yes, until we went over into the office.

Q (By the Court.) On this memorandum, Exhibit D. 3, Mr. Adelman, I observe at the
30 bottom, "These bonds to be given by second party to cover full amount of lease." What did you mean by that? A I intended by that—my intention was to put into the contract that the building was to be—that the return of the property was to be guaranteed during the full term of the lease; that is, if any boilers were out of order they were to be repaired and the building was to be returned to us during the entire term of the lease.

40

A. Harry Adelman, cross.

Q Doesn't it mean the amount of money due on the lease? You say here, "Bond to be given by second party to cover full amount of lease in ad. to security"; what does that mean? A The security was given to cover the amount of rent and the bond was to be given for the return of the property. 10

Q I am dealing with your phraseology here. You say here: Bond to be given by second party to cover full amount of lease in ad. to security— A That is what I intended.

Q A sum of money equal to two months rent was to be provided as security for the rent? A Yes.

Q Was the bond in addition to that as security for the full amount of the lease? A No, sir. 20

Q You talked about your father demanding a \$75,000 bond, and the Vice-Chancellor asked you whether there wasn't talk that your father wanted it to secure the entire amount of the lease, and you said "no"; don't you realize, Mr. Adelman, that the total rent of those premises for the three years is \$74,250, and that that was the reason why your father was demanding a bond for \$75,000 to cover the three years' rent? A It might be that the three years' rent totals that amount, but that wasn't the reason the bond was fixed at that sum. 30

Q You think that is a mere coincidence, do you? A Yes.

Q And not that your father, as an after-thought and for the purpose of avoiding the making of that lease, was going to insist upon 40

A. Harry Adelman, cross.

a big bond which they couldn't give? A Oh, no. In the beginning there was no mention at all made of the amount of the bond to be given.

Q Now, after you got into your office and made this little memorandum, Exhibit D. 3, do you mean to say that you then sat down to prepare the agreement with this little memorandum in front of you? A Alongside of me.

Q And it was this little memorandum that you say you were disturbed about because Mr. Granat kept laying it down and picking it up? A No, he was talking to me and fingering other papers there in addition to that.

Q (By the Court.) No; the question is, did he take up this paper? A Yes.

20 Q And he was picking up this little piece of paper and laying it down all the time and that made you take two hours and a half to prepare this agreement? A That and his conversation.

Q What was he conversing with you about? A He was talking to me about his family affairs and also about the affairs of the company.

30 Q So that what you mean to tell us is: Here you were; you had been negotiating all the afternoon and it took you until 9 o'clock at night to complete it; you were in a hurry to get away to your class and you allowed this man to keep on talking about his private and family affairs? A Yes; he told me he wanted to get home to his family, as they were waiting for him at dinner or supper.

40 Q Then it wasn't that he was talking and discussing private affairs with you, but he was trying to urge you to get done with the agreement? A He wasn't discussing all the way

A. Harry Adelman, cross.

through his family affairs; he made two or three remarks there that he wanted to hurry it up and get through.

Q You didn't hurry at all, did you? A As best as I could.

Q It took you two and one-half hours to type this little agreement? A Yes.

Q You don't mean to say that it took you two and one-half hours to typewrite this two and one-half page agreement, do you? A Three page agreement.

Q No, two and one-quarter pages, you mean? A Yes, about. If I might remark, it was through Mr. Granat that I put that in there (witness indicating on paper). I forgot to take it out.

Q Now, let's see this contract. One of the provisions of this lease—or the lease is to contain, among its provisions, the following: First, there is therein an agreement on the part of your father that he is to paint the front fire-escapes and replace the stone caps, and rough terra cotta on the parapet walls on the roof, also to repair the hall linecrusts where the same is loose, and replace such marble treads as are loose? A Yes.

Q Who told you all about that? A That was told me. I think that they came through the building after it was determined that they were going to lease the building, and while they were waiting for Mr. Lewine to come over Mr. Granat went through the building.

Q That was one of the terms that was agreed upon after you had seen your father in the old house? A Yes.

Q Now, let's take the next paragraph:

The party of the second part is to keep the buildings in good repair and the party of the

10

20

30

40

A. Harry Adelman, cross.

first part shall judge whether the buildings are in good repair, and if he finds the same are not in satisfactory repair he shall notify the party of the second part who shall repair the same within one month from receipt of such notice from the party of the first part.

10 You recall that? A Yes.

Q That was an important provision in your mind? A Yes.

Q A very important provision? A Yes.

Q That was discussed, wasn't it, in your office? A That was discussed, I believe, before we reached there.

Q But the phraseology is yours? A Yes

Q And you were going to make this agreement very, very strong in favor of your father?

20 A As to repairs.

Q As a matter of fact, you were going to make all these terms very strong, so that your father could take advantage of the least breach?

A Yes.

Q And you, therefore, inserted this provision that the repairs shall be made in such a manner that if your father found that they were not satisfactory he should notify the other side that they must make those repairs within one month?

30 A Yes.

Q And then you inserted this provision?

Should the party of the second part refuse or neglect to make such repairs to the satisfaction of the party of the first part, then such lease is to be forfeited and the party of the first part shall enter into the premises for his own possession free of the right of the party of the second part.

40 A Yes.

A. Harry Adelman, cross.

Q You had been studying the law of contracts at school and you knew that line of cases which deals with the question of work being done or things being done to the satisfaction of the party, hadn't you? A Yes.

Q And you knew what that meant? A Yes.

Q And what it meant under the laws of the different states of the Union? A Yes. 10

Q And you knew what it meant under the laws of New Jersey? A I don't know as I did.

Q You knew that general principle of the law with reference to a party inserting in a contract the provision that certain things should be done to the satisfaction of that party? A Yes.

Q And that is the reason you inserted this in the contract, wasn't it? A Yes.

Q And you wanted it distinctly understood, for the benefit of your father, that if your father went through that building and found that work had not been done to his satisfaction that you could give notice to these people that they should go on and do the work and if they did not do so within one month you could break the lease instantly? A Yes. 20

Q Now, while you were writing that clause if there had been anything said by your father or by you about a bond don't you think it would have occurred to you to include right then and there that they should give a bond for the performance of that covenant? A That's a question that I couldn't answer, whether it would have occurred to me. 30

Q Well, doesn't it occur to you now that that might be a proper place to put it in? A Not necessarily.

Q Doesn't it occur to you that the provision which I have just read to you would seem to 40

A. Harry Adelman, cross.

negative any such statement as you make, namely, that they were to give a bond for a large sum of money, you having in mind the fact that they might break forty or fifty thousand dollars' worth of steam-heating in the building and take out all the stoves and things of that kind? A Yes, but I don't think that any such provision
10 would negative the bond.

Q Well, didn't you have in mind that you were trying to protect your father so that there couldn't be any injury to the property without your knowing it and having it remedied instantly, under the penalty of a forfeiture of the lease? A Well, that's what we tried to do.

Q And you tried to do it in this paragraph irrespective of any bond, didn't you? A In
20 that paragraph; yes.

Q Now, when was it that the amount of the rent was agreed upon? A That was after Mr. Lewine came. He came there, to the best of my recollection, about six o'clock.

Q Then you inserted another provision:

The party of the second part is to keep the building on the interior and exterior of the said building in repair satisfactory to
30 the party of the first part, and his judgment shall be binding.

A Yes.

Q You again had in mind that line of cases that I referred to? A No, I didn't have anything in mind except that three had been talk about general repairs and I wanted it specifically stated that this referred to interior and exterior
40 parts of the building.

A. Harry Adelman, cross.

Q But the last words: "And his judgment shall be binding," in other words you wanted this contract to be so strong that the judgment of your father was to be absolutely conclusive as to whether they made repairs? A Yes.

Q And to take it out of the power of these people to be the judges at all; that was your intention? A That was my intention, and for this purpose: That the decorations, painting the wall and paper in the halls are of very good material and quality and it would be very likely, unless we had some such provision in the lease, that they might re-decorate some of the apartments and install cheaper material. 10

Q That was for your protection, as you concluded? A Yes, should be.

The Court: The hour is reached for adjournment. How much more cross examination will there be? 20

Mr. Lichtenstein: I should say a half an hour or twenty minutes.

The Court: Well, we might as well pause here, then. Now, as to continuing the case; how much more do you think, Mr. Lane, you will have?

Mr. Lane: I have two witnesses and one of the witnesses will be very difficult to examine, Mr. Adelman, Senior. 30

The Court: What do you think about proceeding tomorrow?

Mr. Lichtenstein: If your Honor desires I would like to do so.

The Court: What do you say, Mr. Lane?

Mr. Lane: I have another hearing tomorrow and I do not like to go on on Friday. 40

A. Harry Adelman, cross.

The Court: Here in Chancery?

Mr. Lane: Here in Chancery.

10 The Court: I think counsel will have to go on tomorrow. I will set it for quarter past 10 at the Chancery Chambers at Paterson. I shall not be able to give it more than a half a day.

CHANCERY CHAMBERS, PATERSON.

Friday, September 30, 1921, 10:15 A. M.

Counsel present as before.

20 The Court: I am sorry to have to suggest to counsel who are before me this morning that you ought not to lose much time. This case was not set for two days; it was set originally for a motion day on the representation that it would be disposed of after motions. And now it has taken a whole day, and I now find I have an engagement and it will not be possible for me to stay after one o'clock.

30 Mr. Lane: I disclaim the responsibility of representing it could be tried after the motions.

The Court: Why was it set down for a motion day originally, Mr. Lichtenstein?

Mr. Lichtenstein: You mean the very first time?

The Court: Yes.

40 Mr. Lichtenstein: When Mr. Lane came before your Honor it was stated that it

A. Harry Adelman, cross.

would take a long time; that's the reason why it went off, because we couldn't get through in a short time.

The Court: Somebody represented originally that it could be tried on a motion day. I'm not sure but what the representation was correct and made in good faith. Well, you may proceed. 10

A. HARRY ADELMAN, resuming the stand testified as follows:

Cross examination by Mr. Lichtenstein (continued).

The Court: I will say here, gentlemen, I can't see that it makes a particle of difference what these men said after the deal was fairly developed; no doubt about it a day or two after this agreement was signed. Mr. Adelman, Junior, representing his father, contemplated a statement of witnesses on the other side. The deal was off; his father had to have a bond. Of course, what was said without prejudice was an attempt to settle and would have been excluded upon objection, but no objection was made. Of course, the statements of the parties after the suit was brought are entirely competent; and, therefore, out of this mass of talk between the parties in an effort to settle the statements made are evidentiary, but nothing else seems to be of consequence whatever. The complainants didn't want to have a lawsuit; they wanted to get the lease and 20
30
40

A. Harry Adelman, cross.

10 they were willing to make concessions. On the other hand, the defendant was calling upon them for a bond and he was going to have it, and they tried back and forth to adjust the matter. I don't see that those two concessions that were made amount to anything; it only shows that the parties wanted to settle, and it seems to me we have taken a great deal of testimony that will not be helpful.

20 Mr. Lichtenstein: The only reason why I thought it might be helpful and was evidentiary—and I think possibly Mr. Lane had the same idea—was that it might have the effect of indicating what the real intention of the parties was at the time this contract was signed, as to whether there was any such arrangement as the defendant contends for, namely, that we were to give a bond, and that it was left out by inadvertence or what not.

30 The Court: Well, possibly. I have heard nothing, and I have followed the testimony very closely, and apart from any statements of fact that may have been made I haven't seen any concessions on either side; they were simply trying to settle. The defendant wouldn't carry out this agreement without a bond and the other side claims that no bond was to be given.

40 Mr. Lichtenstein: Their claim is that there was an agreement to execute this bond and that by inadvertence on the part of this young man in eliminating it from the agreement it ought to be in there. Now, we deny that that was our intention, and not only do we deny it by the statements

A. Harry Adelman, cross.

of the witnesses who were present but by their subsequent conversations—not in the endeavor to settle but the conversations they had after the breach of the agreement.

The Court: Well, proceed.

Q Mr. Adelman, I notice that in this agreement you have four separate and distinct paragraphs all of which directly or indirectly relate to the obligation to make repairs to this building and to keep it in repair. A Yes.

10

Q And still after writing these four paragraphs, all of which relate to the making of repairs and to keeping it in repair and turning it over at the end of the term in the same condition as when delivered to them, you still say you forgot to put in this other clause about the bond? A Yes, sir.

20

Q (By the Court.) Do you say that you put that requirement in? A The requirement was left out by mistake.

Q Well, you overlooked it? A I overlooked it; yes.

Q On another occasion you said, as I recall it, not that you overlooked it but that it was left out to be determined; do you say that there was something more to be determined? A Oh, yes; other arrangements.

30

Q No; I mean about the bond? A No, sir.

Q Didn't you testify, in effect, that the bond was finally left out, or left so as to arrange the details of the bond which were to be agreed upon at Mr. Gaede's office? A The details of the

40

A. Harry Adelman, cross.

bonds? If I did testify to that I meant "a bonding company," as I know and as everybody else who has ever had any questions of bonds arising knows, that a bonding or surety company will absolutely, under no circumstances, place any kind of a bond without seeing the lease and knowing what they are bonding.

10 Q Were those details mentioned? A The details to go into the lease.

Q What had the terms of the lease to do with the question of these people giving you a bond? You say they agreed to give you a bond? A Yes, sir; to return the building to us—

Q Why didn't you incorporate in this agreement when you prepared it, a provision that they had agreed to give you a bond in the sum of \$50,000 or \$75,000, for the purpose of providing against the very contingency that you wanted to provide against? A Because it was overlooked.

Q Then it wasn't because the details were to be left until the lease was prepared? A No.

Q And it wasn't because you couldn't provide about the bond until the lease was prepared, so that the surety company could tell what they were going to bond for? A No.

30 Q (By the Court.) Did you look through your memorandum to see whether you had put everything in your lease? A Unfortunately, I didn't.

Q The memorandum was before you? A It was alongside of me, but I didn't look at it when I finished the paper. You see, this is the situation: From the time we walked into the office we were interrupted occasionally by people coming in and out.

40

A. Harry Adelman, cross.

It took me two and one-half hours from the time I actually began the contract until I finished it, with interruptions; of course, people coming in—a plumber or somebody else came in and asked a question and that interrupted me during the time. Now, when I continued the typewriting this memorandum was alongside me. Now and then a question or discussion would arise about the terms and I would hear my father talking with Mr. Lewine over in the other room about something and I would butt in and say something and then go back and type-write again; and Mr. Granat was sitting alongside me, and we would take up the discussion therefrom. 10

Q You say that you came over into the office after four o'clock? A Yes. 20

Q These people say you came over into your office a little after 12 o'clock. A I don't know what they know.

Q You didn't get through with this business until nine o'clock? A No.

Q So that if it took you two hours and a half to do the typewriting you began at six o'clock? A I did not start the typewriting at all until Mr. Lewine came in, because there was no sense typewriting that contract until the rental was fixed and the other terms agreed upon. 30

Q Mr. Lewine didn't get there until four or five o'clock? A Until after six.

Q Then I am right in saying you didn't start typewriting until after six o'clock? A Yes. Merchants were coming in there and there 40

A. Harry Adelman, cross.

were other interruptions by tenants and by plumbers.

Q Isn't it a fact that after six o'clock you weren't interrupted at all, but you continued your negotiations, trying to arrive at the terms of the lease, and it was long afterwards that you started to typewrite this agreement? A No, it wasn't.

Q You did start typewriting it around seven or eight o'clock, didn't you? A Yes, sir.

Q It was about eight o'clock? A No, it wasn't about eight o'clock; it was about 6:30, as I testified.

Q Hadn't you written out the individual clauses first on a sheet of paper and read them to your father? A Oh, no.

Q Didn't you discuss them with your father? A We talked about it.

Q It was necessary for you to discuss it with him to get his assent? A Not necessarily. I knew what he wanted.

Q Didn't you discuss every single provision with your father and get his O. K. before you started in to write the agreement out at all? A I talked to him and he told me what to put in there; that's all.

Q Didn't you have to get his consent? Didn't you have to read over the phraseology to him? A No.

Q So you desire to tell us that this whole agreement that you prepared was written by you directly on the typewriter without recourse to the provisions having been first been prepared in the form in which they appear here? A Yes, so far as that memorandum is concerned. That really accounts for the number of times repairs are listed there.

A. Harry Adelman, cross.

Q You think that is the reason why the repairs are listed there so often? A Yes, repetition.

Q Don't you know that they are not really repetition; they're separate and distinct clauses, well thought out, and have a bearing on the subject of repairs? A Not necessarily.

10

Q Now, you remember after writing out this agreement of reading it over, don't you? A I believe I did.

Q Well, don't you know you did, Mr. Adelman? A I don't know exactly.

Q Don't you remember reading it all over and explaining every single paragraph to your father? A No.

Q Don't you remember explaining the paragraphs to these men in making the contract, who didn't understand some of your phraseology? A No, I do not remember that.

20

Q You do remember—you said yesterday, I believe in answer to the Court—that these men did ask you what this clause meant about further provisions being inserted in the contract? A Yes.

Q Then they did speak to you— A They spoke to me about that; they read it over.

Q Didn't you read it over? A I read it as I typewrote it; that's all.

30

Q Didn't you read it over after you got through typewriting it? A I can't remember.

Q Did you read it over to your father? A I didn't read it over to my father, but I may have read it for the correction of any mistakes I possibly made there.

Q Why you did read it over as is apparent; you even initialed every individual page, didn't you? A Oh, yes.

40

A. Harry Adelman, cross.

Q So that there wouldn't be any question about anybody slipping in a page? A Absolutely.

Q It was a precaution that you were dealing with? A Yes.

10 Q You didn't want anything to happen to this agreement so that anybody could substitute a page? A No.

Q And, therefore, you initialed each page? A Yes.

Q And you were also careful enough at the end of the whole agreement to put the words in "Consisting of three sheets"? A Yes; but I believe that was put in there after the signing of the contract.

20 Q But why did you take all these precautions? A In business matters it was usual for me to take such precautions.

Q The fact is that you were unusually particular about the terms of this agreement? A Not necessarily; no.

Q You read it over for typographical errors? A Yes.

Q And for grammatical errors? A Not grammatical errors.

30 Q Well, typographical errors? A Yes.

Q And, therefore, had to read over every word? A No; I simply glanced over the paper, as everybody does in detecting typographical errors.

Q Do you mean to tell us that you read it over or didn't? A I may have read it over simply for the purpose of discovering any typographical errors.

40 Q And you didn't read it over to your father? A No.

A. Harry Adelman, cross.

Q And you didn't read it over to these gentlemen? A No, sir; they read it themselves.

Q (By the Court.) Do I understand, Mr. Adelman, that you wrote this agreement with a series of interruptions? A Yes, sir. 10

Q And when you finished it you are not sure whether you read it over or not? A No, sir; and I'll tell you why: We had been very busy all day and were both tired, and I believe everybody was tired.

Q You have answered the question. You are not sure whether you did read it over or not? No, I can't take an oath on it, sir.

Q Well, I suppose it occurred to you that these men were there without counsel and they ought to be made to understand what they were signing? A I didn't appear as of counsel, either. I simply went into the thing as a representative of my father. We have always taken the attitude what is my father's is mine, and vice versa. 20

Q Mr. Adelman, isn't it a fact that you were reading over this contract to these people and they were strenuously objecting to some of these very drastic provisions about forfeiture? A No, sir. 30

Q And didn't you explain, if they were honest and were going to do the right thing that it wouldn't harm them at all? A No, sir.

Q When you inserted these clauses? A No, sir; the question of forfeiture was discussed at the time the rent was to be fixed. 40

A. Harry Adelman, cross.

Q I mean these other forfeiture clauses—drastic provisions—that your father was to be the sole judge as to whether the property was repaired or not? A No, sir; no, sir.

10 Q (By the Court.) Was there anything said between you and the other parties about that provision that the father was to be the sole judge? A No, sir; there wasn't a word mentioned about it at all.

Q Didn't this gentleman (pointing to Mr. Lewine) say to you when the contract was being read over that these provisions giving your father control of the situation and making your father the sole judge, that that was rather severe and there ought to be something in to give them some protection? A No, sir.

Q But you do recall one provision that they did talk about and wanted to have you explain it, and that is this provision which is at the end, or practically at the end of the contract, with reference to any further provisions being put in? A Yes.

Q You explained that to them, didn't you? A Yes.

30 Q And how did you explain that to them? A I believe I explained it to them that it was to take care of such provisions against the dispossession of tenants and the discharging of the janitor, and such provisions.

Q What did you mean by that; that you would have the right to insert those things in the contract? A Yes, sir.

Q Without their consent? A Yes.

40 Q You told them that? A Yes, sir.

A. Harry Adelman, by the Court.

Q In other words, you reserved the right to put anything in this contract that you might without their consent? A Anything within reason.

Q Anything you thought was reasonable? A Yes.

Q You told them that, in spite of the fact that you took all the pains to cover everything. A The contract wasn't prepared to cover everything and was not intended to cover everything. 10

Q (By the Court.) Did you formulate these forfeiture clauses? A Yes, sir.

Q Was there anything said about that?

A No, sir.

Q That came out of your head? A Yes, sir. 20

Q And you put it in the contract? A Yes, sir.

Q And then you say after you had finished the contract you handed it to Mr. Lewine? A Yes, sir. I think two copies were drawn.

Q And they read it? A Yes, sir.

Q Nothing was said about anything in it? A No, excepting the clause— (Witness pauses.) 30

Q In regard to the additional matter? A Yes.

Q You are sure of that? A Yes, sir; I'm quite positive.

Q Then the first time that they knew of this forfeiture clause was when they read it?

A I presume so. 40

A. Harry Adelman, by the Court.

Q You don't know that that was communicated to them in any other way excepting by their perusal of the paper? A No.

10 Q I will ask you this, Mr. Adelman; I want to understand a little more definitely about when this contract was drawn. The parties were in negotiation, off and on, from the middle of the day until 9 o'clock at night? A Yes; about that time.

Q And you began the typewriting about when? A About 6:30—6 to 6:30.

Q And it took an hour and a half to typewrite it? A No, about two and a half hours.

20 Q And when you began to typewrite it everything had been agreed upon, had it, excepting those matters which you had inserted out of your own head? A Yes.

Q But the leading matters had been negotiated? A Yes, the most important matters.

30 Q Well, what matters did you add out of your head besides the forfeiture clause? A If you will let me see the contract I will tell you. (The contract is handed to the witness.) Satisfactory repairs; month's notice to repair; that we can enter into the premises upon forfeiture free of the rights of the party of the second part, and that an entry by the party of the party of the first part or his representative shall not be trespass; the party of the second part is to keep the building on the interior and exterior of the said building in repair satisfactory to the party of the first part and his judgment shall be binding; to keep the

40

A. Harry Adelman, by the Court.

buildings in accordance with the city, county and state laws and any violation of these laws shall be turned over to them for remedying; and forfeiture in case of failure to remedy all violations; to pay interest on the mortgages on the premises and also pay taxes up to \$5,000, and to pay other insurance; and the party of the second part shall return to the party of the first part the above-mentioned plot, apartment, and house in the very same condition as it is now of the date of the lease. And the rest of it I did not formulate. "And the party of the second part is to return to the party of the first part the above-mentioned plot, apartment, and house in the very same condition and repair as it is now of the date of lease, and the party of the first part shall be the judge"—that is really a repetition of the paragraph at the end of the first page. The description of where the awnings are, on the east, west, and south sides of the building and that they are to be repaired; they are to be put in good repair; and the description of the forfeiture after failure to pay on the 16th—which is, of course, one day's grace—the rent that is to become due.

Q What is that clause? Just read it.

A (Reading from paper):

Failure of the party of the second part to pay the agreed rental to the party of the first part on the 15th day of the month and an allowance of one day's grace to the 16th shall constitute a forfeiture of the rights of the party of the

A. Harry Adelman, by the Court.

second part and the party of the first part shall take possession of the premises free of any rights of the party of the second part.

10 All doubtful covenants and agreements herein contained, together with all doubtful clauses shall be construed in favor of the party of the first part.

That was mine. All water, gas, and electricity to be adjusted.

And the party of the second part shall pay for all coal in the cellar as of April 1, 1920, at the price he paid.

20 Meaning the price we paid for it, whatever was in the cellars.

Any further provisions, clauses, agreements to be made in addition to the above mentioned and later on to be agreed upon, shall be incorporated in addition to the provisions herein contained, in a lease to be made in the office of Gaede & Gaede, 91 Washington Street, Hoboken, N. J. not later than March 25th, 1920.

30 With the exception of the date, I put that clause in there out of my own thought. And the next clause that:

40 All provisions herein contained shall be binding upon the successors of the party of the second part and heirs, executors of the party of the first part. This agreement and the lease to be made later shall not be assignable, nor sublet or underlet without the express written permission of the party of the first part.

A. Harry Adelman, by the Court.

And the next clause I put in here:

The party of the second part, to insure faithful performance of all the covenants to be contained in the lease, shall deposit with the party of the first part the sum of \$4,125 from which is to be deducted the consideration of this agreement, \$500. 10
 And the said security shall be held by the party of the first part to insure faithful performance of the party of the second part during the full term of the lease. And the party of the second part shall apply the last two months' rent as the return of the said security.

The rest of the clause was my verbiage and was put in by me:

The party of the second part, to insure faithful performance of all the covenants to be contained in the lease shall deposit with the party of the first part the sum of \$4,125, from which is to be deducted the consideration of this agreement, \$500. 20

Q Did you put that in or had they been negotiating the amount of money? A The amount of money had to be negotiated. It says here: 30

And the said security shall be held by the party of the first part to insure faithful performance of the party of the second part during the full term of the lease. And the party of the second part shall apply the last two months' rent as the return of the said security.

A. Harry Adelman, by the Court.

Q Was that negotiated? A The return of it was negotiated; the interest was negotiated, too.

The deposit is to draw interest at six per cent. during the term it is held, payable semi-annually.

10

Q Now, all those matters, I understand, that you have enumerated as having been put in by you were not negotiated but were inserted in the lease by yourself, acting on behalf of your father, in his interest, and they were communicated to the other side by your handing the lease to them to read? A I don't recall whether I told them or not. Mr. Granat, who was sitting alongside of me, was going to put them in, but—

20

Q You said a little while ago that you put them in and handed it to them to read. A I don't recall whether it was explained when I was typewriting it, but Mr. Granat was sitting alongside of me. I am under the impression somebody was told that it was going in.

30

Q I am not asking you for your impression. I understood you to say awhile ago, in answer to the question that I put to you, that various things you put in the instrument of your own mind. A Yes.

Q And you did not say anything to anybody? A Yes.

Q This you had a right to do on behalf of your father? A Yes.

40

Q And that you handed the paper to Mr. Granat or Mr. Lewine, and they had an opportunity to read it, but there was no talk at all over any of those matters which you

A. Harry Adelman, cross.

had put in, excepting in regard to the provision for the insertion of any agreements which might have been omitted? A Yes.

Q Is that right? A Yes.

Cross examination, resumed.

Q In other words, they raised no objection to any terms that you saw fit to write out without discussion with them? A Yes. 10

Q And you only made an original and a duplicate, didn't you? A That's all.

Q So that you had one copy for yourself and the other one you handed to these two men? A Yes.

Q How did both of them read it, together? A Yes, together.

Q They just looked at it together? A There were two desks in the room, and they went over to the other side of the room and read it there. 20

Q And no discussion on it? A I don't know.

Q I mean no discussion with you and your father? A Not to my remembrance, no.

Q In other words, after you wrote it out—this completed document—just as it was signed there wasn't a "t" crossed, was there, in this agreement excepting as to the clause as to any further agreement? A (The witness does not answer.) 30

Q After the agreement was prepared you wrote it out complete, didn't you, just as it exists here today? A Yes, sir.

Q And do you mean to say after you had completed that whole agreement and handed it to these people there wasn't a single change made in the agreement? A No. 40

A. Harry Adelman, cross.

Q Although you put in all these clauses, as you have said, and there was no discussion on them? A No.

The Court: You needn't argue it now, Mr. Lichtenstein.

10 Q Do you remember a discussion when you were preparing the clause with reference to the payment of the rent on the 15th of the month? A Yes. There was quite an argument about the rent.

Q That you remember now, do you? A Yes. Pardon me, I wanted to convey the impression that everything that went into that agreement with the exception of the two months' rent. When we reached the question of the rent we
20 left that until later.

Q I mean, when you were writing out this provision for the payment of the rent on the 15th of the month, do you recall that you insisted, and your father insisted, that it should be paid on the 15th of the month and no day's grace? A Yes.

Q And don't you remember that one of these gentlemen said that the 15th might fall on a Sunday, and for that reason there should be a
30 provision allowing one day's grace? A I don't remember any discussion about that.

Q But you did concede one day's grace? A Yes.

Q Didn't that discussion take place while you were preparing the form of that clause? A No, sir.

Q In your explanation to these gentlemen what was meant by this clause with reference to future agreements as you have it, will you tell

A. Harry Adelman, cross.

me why you inserted in the clause "later to be agreed upon" and not language to the effect that you would have the right to insert any clause that you wanted? A I don't know why I put that in.

Q Didn't you put it in there advisedly? Didn't you put it in there because you wanted it understood that no clauses were to go into this agreement unless they were mutually agreed upon? A No, sir; that was not the intention. 10

Q In the last clause of the agreement you provide for the faithful performance of all the covenants in the agreements and that this deposit was for that purpose; you didn't intend that to be so? A No, sir.

Q You intended the \$4,125 and the \$500 to be security for the rent only and not for the faithful performance of all the covenants? A Just a minute, please; get this right. This \$4,125 was to cover the lease and was to be mentioned in the lease, and was to cover everything that was to go in the lease. 20

Q And it was not to be given for the faithful performance of all the covenants contained in the lease? A Yes; everything that was to go into that lease.

Q And it was not to be given as security for the rent only? A For the rent, too. 30

Q Didn't it occur to you when you were writing that clause and writing in the deposit for the faithful performance of all the covenants in the lease that there was something else agreed upon—the giving of a bond for the faithful performance? A No; it didn't occur to me at that time.

Q I presume that when you say you overlooked this provision about the bond on this 40

A. Harry Adelman, by the Court.

little memorandum it escaped your attention as you were reading it; is that what you mean?

A I don't know how it escaped my attention, Mr. Lichtenstein.

10 Q Turn over the sheet and you will see failure to pay the rent on the day agreed upon shall constitute forfeiture. A Yes.

Q And underneath that the word "security"? A Yes.

Q When you came to that word "security," even if you missed it in the first page didn't it occur to your mind that there was something else you had omitted? A No, sir; because if it had it would have gone in.

20 Q And this memo, D. 3, was the only memo made throughout the hours of discussion and the typewriting of this paper concerning the provisions of the agreement? A Yes, sir.

Q And that was all you had to guide you excepting what was told you? A Yes, sir.

Examination by the Court.

Q When did you begin to make entries on that paper? A I commenced as soon as I got to the office.

30 Q And when was the last entry made? A I think the last entry was made at the time it was agreed upon that they were to have one day's grace.

Q Before you began to typewrite it? A Yes. Pardon me; you said, "Before I began to typewrite it"? No; while I was typewriting it, it was discussed and I reached over and put it down. That is, while we were going ahead with the agreement.

40 Q How far had you gotten in the making of that memorandum when you began to typewrite it? A We had gotten down as far as "the

A. Harry Adelman, by the Court.

building was to be returned in the same condition."

Q I am not asking you about the agreement; I am asking you about the memorandum. I understood you to say that that memorandum was not completed in its present form before you began to typewrite the agreement. A It was. This whole side was covered and then I turned it over. 10

Q Were the entries on the back made before or after you began to typewrite? A After.

Q Did this piece of paper lie on the desk before you during the whole time? A Right beside me.

Q I don't mean when you were typewriting it, but before? A No.

Q Where was it? A Just lying on the desk. 20

Q And I understand from time to time you made the entries? A No, the entires were made completely as soon as I had arranged that the building was to be leased, and then the question about the payment of rent was left open and the amount of security was left open.

Q And then you wrote the entries on the face of this paper where it is all covered with writing—you wrote this concurrently all the way down?

A Yes. 30

Q All at once? A I believe so.

Q I call your attention to the fact that the different items are separated by lines drawn, and that the last entry which is in relation to the bond to be given by second party to cover full amount of lease in addition to security, was not completed; what was the reason of that? A I couldn't tell you.

Q You will observe that all the entries above that were completed? A Presumably. 40

A. Harry Adelman, cross.

Q And is it not plain that your last entry was not completed at all? A Judging from that.

Q Do you still think those entries were made concurrently, all together, one after another? A Yes.

10 *Cross examination by Mr. Lichtenstein, resumed.*

Q The writing with reference to the bond is very much darker than the rest of the writing; you recognize that, don't you? A There is one point that I want to bring out in connection with that: I borrowed Mr. Granat's fountain pen for some writing during the course of the negotiations—during the course of making either this memorandum or something.

20 Q By that you desire us to understand that possibly it was the use of Mr. Granat's fountain pen that caused this change of color of the ink? A Yes. I couldn't say whether it was the use of another pen or not.

Q Does that not recall to your mind the fact that if you made this entry at the bottom it was made at a different time and not all at once? A No; that was made all at once.

30 Q In other words, you think the pen broke when you got to that? A I don't remember what it was.

Q The pen that you had been using in making the first three entries became disabled? A No; I don't say it was the pen; I say it was very likely that it would be.

40 Q Mr. Adelman, when did you first learn that this clause had been eliminated from the contract? A When they told me that they didn't have to give a bond.

A. Harry Adelman, cross.

Q And that was at your house when Mr. Dippel was there? A I think it was Mr. Silverfelt who told me about it first.

Q (By the Court.) Didn't Mr. Lewine tell you when you telephoned to him? A No.

Q Sure? A Quite sure.

Q What did he say when you telephoned?

A The arrangement was that I was to send up my friend who was acquainted with the bonding company and his bonding company would probably go on the bond. The next morning I called him up and told him I was sending him there that day, because I thought it would be some time before they could show the company whether they could get the bond.

10

20

Q Mr. Adelman, you said a little while ago the reason why you couldn't prepare the provisions with reference to the bond and left that open was because the lease hadn't been prepared, and the bonding company would want to know about the lease? A Yes.

Q And now you say you were sending the bonding company man to these people before the lease was even prepared? A Yes; they would certainly have to find out whether they were responsible enough to get the lease before they would go into the question of looking that up.

30

Q How much of a bond did you tell the bonding company you wanted? A I made no specific amount. I told these people to go over and find out about the bond.

Q Let me see if I can refresh your memory by something you said yesterday: Isn't it a fact that you didn't know of your failure to in-

40

A. Harry Adelman, cross.

sert this clause as you say until Mr. Dippel was at your house on the night mentioned? A I said it was Mr. Dippel or it might have been Mr. Silverfelt. Now that my memory is refreshed, I think we met Mr. Silverfelt about it and he took them to Mr. Dippel. How they came to go to Mr. Dippel I don't know, but Mr. Dippel
10 called me up.

Q Do you recall yesterday you said when Mr. Dippel was at your house you said he asked you why it was that you didn't want to execute the lease and why you were asking for the bond, and you said that you told him that it was in the agreement? A Yes.

Q And if it was not in the agreement you left it out by mistake? A Yes.

20 Q That was the first time that you knew it wasn't in the agreement? A That was the first time it was called severely to my attention.

Q What do you mean by that? A When they came to the house.

Q Do you mean to say that you didn't realize it wasn't in the agreement up to that time and they were the first ones to call your attention to the fact? A Except I said Mr. Silverfelt told me. I couldn't say about that
30 because I'm not definitely clear on that point.

Q Well, Mr. Dippel came to your house about how many days after this agreement was signed?

A I think three days.

Q Three days afterwards? A Or two days.

Q And during those three days you didn't know that you had neglected to put this clause in there? A No.

Q You got a check, didn't you? A Yes.

40 Q You never deposited that \$500 check? A No.

A. Harry Adelman, cross.

Q You had that in your possession three days and didn't deposit it; don't you know that you didn't deposit it because you were going to insist upon the bond? A No. It is our custom sometimes to have checks in the house for a week before we deposit them.

Q And that is how you explain the non-depositing of that check? A Yes. I have checks in my pocket now that haven't been deposited for close to a week. 10

Q (By the Court.) I didn't quite understand you, Mr. Adelman. When do you say you first learned, or were informed, that the provisions of the bond were not in the contract? A I believe it was Mr. Silverfelt that told me. I don't know, your Honor, to be very frank about it. I can't tell you whether it was Mr. Dippel or Mr. Silverfelt that first told me that. 20

Q How long after the execution of the paper was it? A I think I met Mr. Silverfelt two days later, and Mr. Dippel called up on the 3rd day that this contract was signed.

Q Did you tell Mr. Silverfelt that he was mistaken; that there was a provision in the contract for a bond? A Yes. 30

Q You told him that? A Yes.

Q What did he say? A He said he thought there wasn't. I told him I would look it up and find out about it; that's all.

Q And where was this? A I met him in the street; I can't recall just where.

Q Then did you go and look it up immediately? A No, I didn't. 40

A. Harry Adelman, cross.

Q Why not? A Unfortunately, it slipped my mind; I never thought of it.

Q Then that was the first time you learned that the provision was not in the contract? A I believe it was.

10 Q Well, have you any doubt about that? A Yes, I have, your Honor, because I don't recall now whether it was the same day or whether I saw Mr. Silverfelt before or after Mr. Dippel.

Q But I understood you to say that you told Mr. Silverfelt that it was in the agreement. A I had conversations with him, your Honor, a good many times after that. We met in the street quite often.

20 Q No, Mr. Adelman, I am talking about this particular conversation in which he said there was no such provision in the contract, and you told him there was. A Yes, I told him that.

Q And you thought there was? A I thought there was.

Q And wasn't that the first notice you had that anybody claimed it wasn't in the contract? A Yes.

30 Q Sure of that? A Yes.

Q And, thereupon, do I understand you to say, you forgot to look at the contract? A No, I don't say that I forgot, but I didn't, for some reason or other, look at the contract.

Q How long after that was it you looked at the contract? A I believe it was the next morning.

40 Q Was that before or after Mr. Dippel came there? A That was the same day that Mr. Dippel came.

A. Harry Adelman, cross.

Q That is, in the morning before Mr. Dippel came? A Yes, I think so.

Q Then when Mr. Dippel asked you why it was that you insisted upon a bond why didn't you tell him if it was not in the contract it ought to be in the contract, or language to that effect? A Why didn't I say that?

10

Q Yes. A Because I had already looked at it.

Q Why didn't you say, "If it isn't in the contract it ought to be"? A Because it had been overlooked.

Q But when he was there talking to you and trying to persuade you and your father to execute this lease, and he was asking you why it was that you refused to execute the lease, why didn't you tell him that by inadvertence you had left this clause out of the contract, when you already knew it was not in the contract? A He was told that it ought to be in there.

20

Q You didn't tell him it was left out by inadvertence? A No.

Q You didn't tell him it was what was agreed on? A Oh, yes.

Q But you didn't tell him that you left it out by mistake? A I told him it ought to have been put in there.

30

Q But you didn't tell him it was left out by mistake? A I don't now recall whether I did or not.

Q (By the Court.) Are you sure you told him that it had been agreed upon? A Oh, yes; that was the gist of the conversation about the bond.

Q Isn't it a fact that Mr. Silverfelt met you a long time after Mr. Dippel saw you and said

40

A. *Harry Adelman, cross.*

to you, "Harry, why do you allow your father to raise a fuss about the \$75,000 bond?" Do you remember that? A No, sir.

Q And do you remember his saying to you also, "Harry, you know no such thing was thought of at the time the agreement was made"? A He never made that statement.

Q Isn't it a fact that he told you that in your own house and on the street at least five or six times? A He never told me that there was no bond agreed upon at any time at all.

Q And didn't you say you couldn't help it; your father wanted a bond? A No, sir. I know Mr. Silverfelt did come to the house and talk with my mother, and said I ought to use some influence to get my father down on the bond.

Q Now, when did you take this contract to Mr. Gaede's office in Hoboken? A When did I take it?

Q Yes. A I never took it to Mr. Gaede's office.

Q You went down to Mr. Gaede's office? A I told him about it.

Q When was it that you did that? A I don't recall.

Q How many days after it was signed? A Possibly the third day. I called him up and told him about it; I don't remember when it was.

Q Well, it was before Mr. Dippel was there? A That I couldn't say, Mr. Lichtenstein.

Q Well, you remember talking with Mr. Gaede; he was a sort of confidential adviser of your father? A Yes.

Q Your father had been in the habit of borrowing large sums of money from Mr. Coward

A. Harry Adelman, cross.

on his property and Mr. Gaede represented the Coward people? A Yes.

Q Do you remember talking with Mr. Gaede about this contract? A We told him that we had made a contract to make a lease in his office and we would be out there two or three weeks later.

Q And you didn't send the lease to him? A No, sir; he never saw the contract. 10

Q Did you discuss with him the question of a bond? A I told him that the property was rented for a period of three years for a certain sum of money and that a bond was to be given for the return of the property, and he said to me, "Mr. Adelman, I have no time to take it up because I am very busy with some other matter." I believe he said he was busy with the Lukenbach matter. 20

Q You talked with him over the telephone without having sent him a copy of the contract, and you merely told him two or three weeks afterwards he was to prepare a lease; that an agreement had been prepared between your father and these people and that the agreement provided for a lease for three years at a rental of \$24,000 for that period; is that all you told him? A And about the bond. 30

Q Will you please tell us why you didn't tell him, too, about the further provisions of the lease? A Because I had to make an appointment to come down and see him. He wanted to know why I wanted to see him.

Q What was the necessity of your merely telling him of this one instance, \$24,000 a year and three years, without the other details? A There was no necessity of telling him anything excepting to write a lease. 40

A. Harry Adelman, cross.

Q Isn't it a fact that right then and there you discussed with Mr. Gaede and Mr. Gaede discussed with you the advisability of these people giving you a bond to cover any deterioration of the property? A No, sir.

10 Q Isn't that the reason why you talked with him about the term of the lease and the rental?

A No, sir.

Q You never sent this agreement to Mr. Gaede at all? A No, sir; he never saw it. He told me immediately that he had no time around that date to attend to any of those matters.

Q And then you went to consult Mr. Lane? A We had to get somebody else.

Q To prepare a written lease? A Yes.

20 Q That is what you went to him for, to prepare a lease? A We went to Mr. Lane after Mr. Dippel was retained, and we told him the whole story about it then.

Q When was it that you looked at this agreement to find out that this clause had been eliminated? A I beg pardon?

Q When did you actually look at this agreement and find out definitely that you had omitted this clause? A When Mr. Dippel came up.

30 Q And he came up— A The morning before we went to Mr. Lane.

Q Didn't you telephone to Mr. Lane while Mr. Dippel was right there in your house? A That I don't remember.

Q Well, don't you remember that? A Maybe I did.

Q Well, hadn't you hired Mr. Lane before that? A I believe I made an appointment with Mr. Lane over the telephone.

A. Harry Adelman, cross.

Q Certainly you did. Hadn't you consulted with him about this agreement before Mr. Dippel came there? A No, I don't think so.

Q How did you come to call up Mr. Lane if you didn't have any appointment with him at all? A I don't know; I called him up—

Q I would like to have your explanation how it was that you called up Mr. Lane while Mr. Dippel was there if you had had no conference with him about this agreement? A It was necessary to call up Mr. Lane in order to make an appointment with him. 10

Q This was in the afternoon? A Late in the afternoon.

Q Had you seen Mr. Lane before this telephone conversation that you had with him? A No, sir.

Q Never had? A No, sir. 20

Q (By the Court.) In regard to this matter? A In regard to any matter.

Q So that you didn't really know him at all? A No, sir.

Q What did you call him up about? A I told him we had something we wanted to take up for us.

Q It wasn't for the purpose of preparing a lease, was it? A No; I didn't tell him anything on the telephone excepting to make an appointment. 30

Q It was merely because Mr. Gaede said he was too busy to prepare a lease that you went to Mr. Lane? A It was.

Q Then it was for the purpose of preparing the lease that you went to Mr. Lane? A In the meantime Mr. Dippel had telephoned and we then made an appointment. 40

A. Harry Adelman, cross.

Q Now, when you got to Mr. Lane's office will you say that there was any statement made by you at any time throughout the course of these entire negotiations at his office, to the effect that you had by inadvertence left this clause out of the agreement? A Yes. I believe after I had explained the entire matter to Mr. Lane that was the thing I told him about.

10 Q When you got to the office that afternoon that was the first time you had seen Mr. Lane, was it? A I don't remember that.

Q Why, you know you had been there before, don't you? A Absolutely not.

Q Don't you know Mr. Lane knew all about your contract? A Now, get this straight, Mr. Lichtenstein; at the time we went to the office with Mr. Dippel, it was far later than that— that is, the going there with Mr. Dippel was later than the first talk that I had with Mr. Lane.

20 Q Now, at that time you say, "I believe," or "I think"; I ask you now do you know whether or not you made a definite statement that this clause was left out by inadvertence? A Absolutely, I did.

Q Why, wasn't it the very next day after Mr. Dippel was at your house that you went to Mr. Lane's office? A That I know isn't so.

30 Q What? A I know that isn't so.

Q Can you account for your keeping this little memorandum all this time? A Why, yes; I can account for it. Most of this stuff is just left lying on the desk, where I mark it and leave it. We don't throw anything in the waste-basket until it is thoroughly looked over.

Q You are very careful about thoroughly looking it over before you throw things away?

40 A Yes. I have an accumulation on my desk

A. Harry Adelman, re-direct.

now that extends over a month, and nothing is thrown away.

Q Until you carefully examine everything and your envelopes have nothing on them that might be of use to you? A Yes; because I occasionally make memorandum on envelopes and scraps of paper, and I don't like to lose them until I have looked them over. 10

Re-direct examination by Mr. Lane.

Q Mr. Adelman, at the time you were at my office had you any connection with my office at all? A No, sir.

Q Do you remember whether you had more than one appointment with me before you came with Mr. Dippel? A That I couldn't say. Yes, I can. We had a trespass action tried by, I think, Mr. Lane, in reference to some other property, where the so-called rent investigator was trying to make some trouble for us. That was handled by Mr. Lane. That was the first time. 20

Q Was that before or after Mr. Dippel came? A Oh, before.

Q Sure of that? A I think so. How long before I couldn't say.

Q That was a case in which all your tenants were on a rent strike, wasn't it? A Yes. 30

Q And you had to dispossess, practically of every tenant in the house? A Not everybody. We dispossessed in one house five, and I don't remember the other.

Q You did talk with Mr. Granat at my office as to the reason why you wanted the bond? A Yes.

Q Did you talk to him with respect to the reason why you wanted the bond at the time of 40

A. Harry Adelman, re-direct.

the conference on March 9th as a result of signing this agreement? A Yes.

Q What did you say? A That we wanted the property to be returned to us in the same condition in which they got it.

10 Q Was there any discussion at my office with respect to the rental situation? A Yes.

Q What was that? A That we contended that they had agreed that the rentals were not to be more than \$12 and \$13 a room; and they said they would agree to that.

Q Was there anything said as to why it would not be advisable to raise the rents higher? A Yes.

20 Q What? A We were afraid that our taxes would be tremendously increased and we would meet with disfavor on account of a great deal of publicity, and the building would run down and we wouldn't know what kind of people would get into the place.

30 Q At that time what was the rental situation in Hudson County? A Very critical, and the newspapers were printing editorials and advertising meetings, and having meetings in Jersey City and West New York, Weehawken and elsewhere, in which some of these rent adjusters were advising people to go on a strike and not pay rent, and if the renter was dispossessed and thrown on the street the landlord could be arrested for it.

Q Do you remember about that time the question being raised by the press that taxes would be raised? A Yes.

Q And in what town was that? A Weehawken.

40 Q Do you remember any particular threats being made by the municipality of Weehawken?

A. Harry Adelman, re-cross.

A Not by the municipality of Weehawken but by one of the councilmen in the town.

Q Do you remember at that time that Mr. James Gannon, a Commissioner of Jersey City, in charge of the Board of Revenue and Finance, was on the front page of the papers almost every night? A Yes, and he spoke at the Weehawken school about that time, advising people to go on a strike. 10

Q And was there a threat of increased taxes with increased rents? A Oh, yes.

Q Increase in taxes or assessments? A Increase in taxes was the way he said it.

Q And do you remember about that same time there was passed an ordinance in Jersey City, requiring landlords to register with the Commissioner of Revenue and Finance? A In Jersey City, yes. 20

Q Was there at that time any agitation with respect to the rental by landlords of property through middlemen? A Great deal of it. They said that was how the rents were increased; that landlords were selling property by merely making a conveyance of record in order to boost the value of the property, and in that way they could get higher rent by claiming that their return was insufficient; that the amount which they had to pay for the property was proportionately more than the investment was paying and, therefore, the percentage of return ought to be greater. At the same time, or shortly thereafter, they passed in Weehawken one of these heating ordinances and it is still in effect. 30

Re-cross examination by Mr. Lichtenstein.

Q Young man, don't you know that all these agitations took place a long time after the enter- 40

A. Harry Adelman, re-cross.

ing into the agreement with these people? A
No, sir.

Q Don't you know that you inserted an ad. in
the newspaper that you were not going to be
dictated to by the legislature, and if they passed
any such laws you would stop building? A No,
10 sir; we had no such ad.

Q Wasn't there an announcement to that
effect, that you would stop building if the legis-
lature tried to interfere with your raising the
rents? A No, sir; not rents.

Q You were raising your rents? A No,
sir.

Q Do you mean to say in this house the
rent was not increased? A Not as to some
apartments.

20 Q You didn't want these people to raise the
rents but you went right ahead and raised them?
A In some instances.

Q The rents at the time you rented these
properties were how much? A \$10 and \$11.

Q How much was the gross total? A I
couldn't tell you.

30 Q I served notice on you to produce your
rental books, showing the rentals at the time
that you made this agreement and the rentals at
the present time. A Yes, and I can show them.

Q Now, tell us how much the rentals were at
the time this agreement was signed. A If you
will let me see that sheet. I have made a copy
on a sheet of paper for the purpose of expediting
the looking it up and saving time. (The wit-
ness leaves the stand and gets a paper, and
returns.)

40 Q What were your gross rentals in March,
1920, of this property? A On March—

A. Harry Adelman, re-cross.

Q On March 1st, say just before the 1st? A I have it as of March 1st. I can get it for you in a moment.

Q What have you got there? A I have from April down.

Q Were the rents the same as they were in March? A Yes. 10

Q Weren't they increased some? A The way I have my rents, Mr. Lichtenstein—

Q Just answer that. A I can't tell you that.

Q Were the rents increased between the first of March and the first of April? A No.

Q How much were the rentals that you gave these people as being the rentals of this property? A They copied it from the book.

Q And you read it off? A Yes.

Q How much was the total rentals at that time? A I cannot tell you. 20

Q Wasn't it \$37,000 a year? A I don't know. I don't know whether I can figure it out that way as of that month. I can give you the rents that we collected.

Q I am asking you for the actual amount of gross rentals of the property, not the amount that you collected. That is what I want to know, the gross rentals of the property. A If you take that month of April and multiply it by 12 you would have \$33,920 gross, if you collected that money. 30

Q How much are the gross rentals today for that property? A In the month of April, 1921, I collected 2,831 odd dollars.

Q I don't want any particular month; I want to know what your gross rentals were, not what you collected. A I'm going to tell you.

Q I want to know what your list calls for as being the gross rentals of every apartment, 40

A. Harry Adelman, re-cross.

whether you collected them or not. A I can give them by apartments, Mr. Lichtenstein.

10 Q (By the Court.) Can't you tell us what the gross rentals charged amount to to April 1st of this year? A No, sir; I didn't figure it that way.

Q You have it for one month, haven't you? A Yes, which was collected.

Q Haven't you got the amount charged? A The amount charged and the amount collected are two different things. If we charge \$50 for an apartment and the tenant doesn't pay it, we don't collect that amount.

20 Q I understand that, but the question is as to the amount of rentals you have fixed on your apartments. Now, what is the total amount of rentals you fixed in April? A I haven't figured that out.

Q I served notice on you to produce? A Yes.

Q And asked you to give the gross rentals and the amount you collected? A Yes.

Q And you haven't prepared any such statement? A I have the book here.

30 Q Can't you tell us how much the gross rentals of this property was at the time you contracted to lease this property? A Just a minute; I can add it up and multiply it by 12; I can get it that way.

Q Haven't you any book which shows the gross rents of the property? A No, we don't keep our books that way.

40 Q Is the book you have in your hand the book from which you dictated to Mr. Granat the rentals of this property when he wrote it down on this paper (Exhibit C. 3)? A Yes.

A. Harry Adelman, re-cross.

Q The same book, is it, that you had at that time? A Yes, sir.

Q Young man, you had charge of these things; isn't there anything in your books showing the totals, so that we won't want any time?

A No, only this and the one memorandum I have.

Q Now, will you tell us, without your going into the details, whether you did increase the rents after you made the agreement with these men? A Yes, we did.

Q How many times have you increased the rent? A Once.

Q When did you increase the rent? A I sent out notices the first of June, to the effect that the rent would be increased.

Q So that you didn't want these people to increase the rent, but you did it? A We had to.

Q (By the Court.) Have any rents been raised since? A No, sir; except on vacant apartments.

Q Every time an apartment became vacant you jacked it up again? A Yes. I don't know about the word "jacked."

Q Well, I mean you raised the rent? A Yes.

Q (By the Court.) Do I understand that all apartments from March, 1920, previous to this agreement, were rented at \$10 and \$11 a room? A Yes.

Q All? A Yes.

Q And what are they rented for now? A We have a method by which the old tenants pay the rental agreed. For instance,

A. *Harry Adelman, re-cross.*

10 we have an old tenant that pays in the front of the building \$13 a room, and we have rented an apartment on one of the upper floors, in the very same location where the people have vacated, at \$13 a room. On another floor on the corner where the people vacated we get \$14 for.

Q What is the maximum rental for any room in that building today? A There is one apartment where we had a little office next, five-room apartment and we made it into 6 rooms, but we had to spend \$250 for alterations of the apartment, and we are getting \$16 a room.

20 Q You are getting \$16 a room merely because you took away a part of your office and made an extra room out of it? A Yes.

Q That was because you didn't want your office in the building any more? A Yes.

Q So that because you didn't want your office in the building any more you turned it into an extra room and you are getting \$16 a room for it now? A Yes. That is the only apartment.

30 Q (By the Court.) What is the average increase per room throughout the building today, in your judgment. Give us an approximation. A The average rent throughout the building today is about \$12.75.

Q Why, young man, haven't you increased the rents in this building since the day you rented this house to those people over \$10,000 a year? A No, sir.

Q Well, how close to \$10,000 is it? A I couldn't tell you; I didn't figure it that way.

40 Q You don't know how much your increase is? A Mr. Lichtenstein, we have taken the

A. Harry Adelman, re-cross.

actual amount of money which we collected in March, and I can show you the actual amount of money which we have collected in August of this year.

Q I don't ask you that; I want you to tell us what the gross rental and charges on that property was on the 1st of March of last year and what it is today. A I can't tell you without you let me figure it out. 10

Q That is what I am asking you to do. A But you stopped me.

Q I gave you notice last June to produce the gross rentals. A You say "gross rentals." I figure it that the gross rentals are the amount of money that we collect.

The Court: I understand Mr. Adelman has produced the books upon your call. He isn't bound to make statements. You can have an expert here to examine the books and make any statement from them you wish. 20

Q Well, can you tell us without going to the trouble of going over these books? Is it over \$5,000 a year that the rentals were more than you rented this property to these people? A No, sir. 30

Q Why don't you remember trying to sell this property after making this agreement, and representing to Mr. Kislak that the rents of that property were more than \$44,000 a year, and that was the latter part of last year? A I don't remember the amount I told Mr. Kislak. No, I think it was \$42,000.

Q And that was last year, wasn't it? A Yes. You know how those figures are reached, I presume, don't you? The amount of the rent 40

A. Harry Adelman, re-cross.

which the property is listed at is added up and then multiplied by 12. That has no bearing whatever upon the rent which is actually collected.

10 Q What do you rent the corner apartment for, the six-room apartment? A The one I just spoke of to you was on a lease for two years and the first year was \$84 and the second year \$90.

Q How much a room? A Six in eighty-four—over \$14.

Q How much did you rent the other corner apartment for, the six-room apartment? A \$14; \$84.

20 Q How much for the other corner apartment? A \$78, and is now renting for \$80, the tenant having vacated.

Q So that every time a tenant vacates you raise the amount of rent? A Yes.

Q And that had been your uniform practice ever since you made this agreement with these people? A Yes.

Q (By the Court.) How many rooms are there in the building altogether? A About 293 or 294.

30

Examination by Mr. Lane.

Q Can you give us the gross rentals from the first of April until the first of this September? A From the first of April until August.

Q By gross rentals I mean the gross rents collected. A The gross rental collected beginning April 1, 1920, and ending August 31, 1921, is \$57,822.95.

40

Q What is the expense of operation?

A. Harry Adelman, re-cross.

Mr. Lichtenstein: I object to that, if the Court please. We are not taking an accounting now. I merely wanted to get at the gross rentals because they brought out the fact that we were trying to profiteer and we were trying to raise the rentals, and they were holding themselves up as being lily white. It is inconsistent with their statement that they didn't desire us to increase the rents, even to the old tenants. 10

The Court: Well, that matter was gone into. I don't see myself that it has much if any bearing on this case. If you show that the rent increased it is proper to show that the expenses increased. That I suppose is the object of this question. He asks, first, what the total expense was, and then he will probably follow that up by showing that the expenses were increased. I don't see what it has to do with this case. What we are dealing with is this instrument. But if counsel think it worth while you may proceed. 20

A The expense was \$25,694.27.

Q So that the net return from April 1st to September 1st was how much? A \$32,128.68. 30

Q For 17 months? A Yes.

By Mr. Lichtenstein.

Q Just a question regarding a date: When Mr. Dippel was at your house and you say it was a long time afterwards that you had the conference at Mr. Lane's office, don't you know that it was on the 24th of March that Mr. Dippel came to your house and it was on the 23rd of 40

Samuel M. Adelman, direct.

March that Mr. Dippel came to your office and tendered a certified check? A No, sir. He came and tendered the certified check at our house.

10 Q You are right about that. Isn't it a fact that the day before you were at Mr. Lane's office it was on the 23rd of March that Mr. Dippel had tendered it at your house? A No.

SAMUEL M. ADELMAN, sworn in his own behalf, testified as follows:

Direct examination by Mr. Lane.

20 Q Mr. Adelman, you are the owner of this property in question? A Yes, sir.

Q And do you remember the first time you had any talk with Mr. Granat and Mr. Lewine? A Yes, sir.

Q Where? A It was in the new building that I was building—the house that I was building, right across from the building which is in question.

Q Who introduced you? A Mr. Silverfelt.

30 Q Were the terms of the bargain discussed? A Yes, sir.

Q What, if anything, was said with reference to a bond? A Well, if you will allow me, I will exactly state how it started and how it came out.

40 Q All right; that will be shorter. A Mr. Silverfelt came in with a man whom I afterwards learned was Mr. Granat. I didn't know him at that time. Mr. Silverfelt introduced me, and Mr. Granat asked me if I would lease the building known as Haddon Hall, A. B. and C.

Samuel M. Adelman, direct.

I thought it over for awhile and said, "Yes, I will." Mr. Granat, at the time he was introduced to me, told me that he represented the West Heights Realty Corporation in New York, and that corporation wanted to lease that building. I turned to Mr. Granat and asked him for what length of time he would lease it, and he said, "From three to five years." I then asked him how would they lease it, on regular lease or otherwise. What I mean by "regular lease" is that I shall maintain the building and furnish everything with the exception of the electricity inside, or otherwise, like furnishing steam and water and so on, which I term "maintaining the building." 10

Mr. Granat said that they would maintain the building. 20

I said then, "What do you mean by maintaining?" 20

"Well," he said, "we would heat it, would pay for the coal, we would pay for the water, pay for electricity and janitor services—in fact, anything that is necessary to maintain the building." 30

I said, "Do I understand that you would do the repairing also and turn over the building to me in the same condition in which you are taking it, at the expiration of the lease?" 30

And he said "Yes." "In fact, I would like to have the building," he says.

I says, "Mr. Granat, my time is very limited. Before we take up the matter and waste time I would like to know whether you will excuse me; I don't know anything about your company. Now in this building there are very costly fixtures, that is, electrical fixtures, and there are very costly fixtures in the vestibules, very costly 40

Samuel M. Adelman, direct.

showers in the bath-rooms, gas engines, refrigerators, clothes dryers, and three separate appliances for the steam heating as well as three separate appliances for hot water. Now, as I said, I don't know much about your company. How would you secure me and guarantee that at the end of the lease it would be in the same condition—turn it over to me as it was before when they are taking it.”

10

Mr. Silverfelt jumped in and said, “Why, we would give you security.”

I waived Mr. Silverfelt away and I says, “Mr. Granat, would you give security?”

He says, “Yes, we will give you security.”

I says, “What kind of security?”

He says, “Real estate security.”

And I says, “On improved real estate or unimproved?”

20

He says, “Improved real estate.” That means buildings.

I said, “It would have to be a lien on the building.” Then he thought for awhile and he says, “How would a bond from a bonding company do?”

I said, “Yes, a bond from a bonding company would do.”

“Well,” he says, “we will give you a bond from a reliable bonding company.”

30

I says, “For how much?”

He says, “Well, I don't know; of course we have got to discuss that and look through the building.” And then he went through that building right across the street and I showed it to them. They went, first, to the cellar and I showed them the heating plants, that is, the steam and hot water plants, and I showed them a few apartments, one apartment occupied by a

40

Samuel M. Adelman, direct.

man by the name of Cole. We all went through there—Mr. Silverfelt, Mr. Granat, a Mr. Cohen, and myself, and I then said to him, “I will introduce you to my janitor and he will take you through the building.” I called my janitor up at that time and I told him in regard to a few apartments which we went in and we wanted to go in other apartments but the people weren’t there, and so I asked the janitor to take these people through and the janitor did take them and I went back to that building where I was with my wife. It took quite a while, and when they came back Mr. Granat made some remarks and says, “There’s some treads of the steps loose.” You know what I mean by treads. Well, they were loose, and there were some cracks in the halls above the lintels, and some coping on the roof which is loose, and he thinks the fire-escapes have to be repainted. I says, what is necessary in fixing the cracks and the other things he mentioned we will do before the building is turned over.

Then I said to him, “now that you are satisfied as to what the apartments are, if you want to rent it how many months’ rent would you give me in advance?” I says, “on a regular lease the party generally pays four of five months in advance and that is to be held until the end of the lease—until the end of the term of the lease—and then it is applied to the last few months of the lease or for less time.” I says, “this hasn’t got anything to do with the giving of a bond. This is to be a regular lease,” I said. You will know what I mean by a regular lease—

Q Never mind; go ahead and tell us what you said.

Samuel M. Adelman, direct.

“Well,” he said, “how many months would you want?”

I mentioned, I think, five or six months in advance. And then we kept on talking, and Mr. Silverfelt said, “Why do you want so much in advance?”

10 I says, “Look here”—we didn’t discuss the whole matter, such as how much the rent is to be, and then we discussed the matter and I told them after they wanted me to take less than six months that I would not take less than five months.

20 Then the next question came up, as to how much this building brought in, and at that time I didn’t know, inasmuch as my son kept the books and was doing the collecting of the rent and is running it, and I didn’t know without making a mis-statement; I would have to go and consult the books, but I told them my son could tell them better than I could.

30 Then it came to the question of how much the rent was. I thought it was about \$10 or \$11 a room, but I told them whether it was that way or not I wasn’t positive. But that is what I mentioned. Then he wanted to know how much the rent was by the year. Of course I told him the same thing, that I couldn’t exactly say how much the rent will be by the year, because I don’t know what it brings in exactly; I would have to figure it out, what it covers, my expenses, my interest and taxes and so on, and I would see what it brings.

40 So we settled the question that it should be disclosed and left until we had discussed about whether they wanted it for three or five years. We agreed on a three-year lease. I says also, “I will not go into the negotiations unless you

Samuel M. Adelman, direct.

will agree distinctly to give a bond. They asked me again how much of a bond I would want, and I said, "We will have to discuss that and see, and take a memorandum of the property—how much is there, all the furniture and taking into consideration the plants.

Now, the reason why I was taking into consideration the steam plant was this: The fact is, that sometimes one is neglected; sometimes they haven't got coal enough; a building has got to have coal enough, and when it is very cold and there isn't enough coal it is liable to freeze and the whole plant will be ruined in a building of that kind, which cost \$250,000 and it would do more than \$100,000 damage, because it would burst all the pipes and ruin the building from top to bottom. So I said, "That will have to be taken into consideration, both plants." 10

"Well," they said, "certainly"; in fact, it was at that time agreed as to that. And then I says, "Now, if I am going to give you the building I want you to tell me this: Before I will let it it must be agreed that you will have 100 tons of coal always in reserve; that is the way to do it"; and I think I had that much coal in the cellar. 20

Q Where were you when you had this talk?
A All this talk was in the building. That talk was going on all the time in the office. 30

Q (By the Court.) When? What date?

A It was in the building where we were.

Q Yes, but what was the date; what month, March? A It was in March—the 9th of March.

Q The same day you made the agreement? A The same day that I made the agreement. That was about the time when Mr. Granat was in there. 40

Samuel M. Adelman, direct.

Q Did you finally go over to the office? A Yes, there was so much discussion, and in the meantime my son came in. They were discussing it until practically until 4 o'clock that day.

10 Q Did you go over to the office finally? A My son came in the building to use the 'phone, and I explained it to him what it was they proposed to do. I introduced to him Mr. Granat, and he already knew Mr. Silverfelt.

Q What time was that? A That was the 9th of March.

Q What hour? A Well, I think it was about four o'clock.

20 Q Well, when did your son start to typewrite this agreement? A My son started to typewrite that agreement after he came in and finished it about 8 o'clock or so. It was to be threshed out, and when he started to typewrite it he had to go and show the books and figure out what the rent was which the tenants were paying. They wanted to know how much it brings by the year and so on, and of course I took my son and the others up into the office and left them there, with Mr. Granat and Mr. Cohen, and Mr. Silverfelt.

30 Q When your son was there did you say anything to him about a bond? A Yes, sir, I told him those conditions which had been agreed upon; that they had agreed first that they wanted it for three years, and that they were going to give a bond; that they were going to maintain the buildings. I told my son these conditions and I told him he should show them through the books and find out what the rents were to be collected.

40 Q (By the Court.) Well, what was the amount of the bond mentioned? Was that

Samuel M. Adelman, direct.

mentioned? A Well, not the amount of the bond at that time.

Q Wasn't the amount of the bond ever definitely fixed? A The amount of the bond wasn't suggested at that time; it was to be threshed out. That night it was suggested how much the bond would be— 10

Q Were any figures mentioned at all as to the amount of the bond? A No, sir, I don't think there were any figures mentioned at that time; it was only mentioned several times that they would have to give a bond in consideration of the possible injury to the plants.

Q (By the Court.) Did you read the contract after it had been typewritten? A No, sir. 20

Q You didn't read it? A I didn't read it. In fact, I didn't recognize that to be a contract.

Q The question is, not whether you recognized it as a contract, but I asked you did you read it? A No, sir.

Q Did you sign that paper without first reading it? A Without reading it.

Q Did anybody read it to you? A No, my son handed me that paper and told me it was all right. I did read the memorandum; he showed me the memorandum of what he was going to put in; in fact, it was very late and I was very busy and I had not had my supper, and I signed the paper without reading it. 30

Q Does your son do all of your business for you of this kind, that is, as to the drawing of 40

Samuel M. Adelman, cross.

agreements and so forth? A You mean my law business?

Q I mean does he attend to matters of this kind? A Yes, he generally does all of this business.

Q And you ask him if it is all right, don't
10 you? A I ask him if it is all right, and he says, "Papa, sign this, it is all right," and I do sign it. I sign a great many papers that way because he looks it over and I have confidence in him.

Q When did you first know that the West
Heights people would not give a bond? A I
think it was a few days later; my son called
my attention to it. He told me that he had called
up the bonding company and told them to call
those people up. Well, anyway, the next thing
20 I knew my son told me that they had refused; in
fact, the bonding company refused to give a bond
because they were not financially strong enough.

Cross examination by Mr. Lichtenstein.

Q A bond for how much, Mr. Adelman, did
your son say the bonding company would not
give? A He didn't say anything about that to
me.

30 Q You didn't tell your son how much the bond
was to be? A Not at that time.

Q You never told your son how much the
bond was to be before he went to the bonding
company, did you? A No.

Q You just sent him to the bonding com-
pany to find out whether they would give the
bond? A Yes.

Q Without mentioning any amount? A I
don't think I did mention any amount. That was
40 to be arrived at.

Samuel M. Adelman, cross.

Q (By the Court.) Was the amount of the bond ever stated at any time? A I had told my son that the amount of the bond was to be \$75,000.

Q When did you tell your son that? A I told my son the next day.

Q The next day after the contract was signed? A The next day after the contract was signed. 10

Q Do you know whether the amount of the bond you wanted, \$75,000, was ever stated to the other side—the company? A A No, I don't think it was stated at that time.

Q At any time? A Oh, it was stated afterwards, yes.

Q Do you yourself know that it was stated? A I know that my son stated it. 20

Q How do you know? A Well, I am hard of hearing, and of course I have got to talk.

Q You don't know when, if ever, the amount of the bond was stated to the other side? A I know very well it was stated; it was stated, your Honor, between that time and the discussion between them, and the discussion when we had the conference in Mr. Lane's office. 30

Q When you had the conference in Mr. Lane's office was the amount of the bond, for \$75,000, talked about? A It was talked about, so I heard later. I did not hear what was talked about; in fact, I did not hear the conversation. I can only hear very close, so I didn't hear the conversation.

Samuel M. Adelman, cross.

Q Mr. Adelman, you said here just before the Court asked you the question, that the amount of the bond was not fixed; that it was to be left until later when the lease was to be prepared at Mr. Gaede's office; that is right, isn't it? A That was to be discussed first.

10 Q Just answer that, Mr. Adelman. Was that the understanding then? A The understanding was that it was not to be discussed then. The understanding was that we were to have a conference and decide as to these points.

Q Your understanding, as you give it now, was that you were to have a conference with these people before the lease was signed at Mr. Gaede's office and then you were to discuss the terms of the bond; is that what you mean? A I really understood it was to be that way
20 before we went to Mr. Gaede's office.

Q I would like to have you tell us what you understood. A I really cannot say whether I understood that there should be a conference before we went to Mr. Gaede's office, but what I understood was this, that all these points and a good many other points should be threshed out before we were to go and sign, and have it on a memorandum what was going into that lease.
30

Q Who told you that? A Well, I, in fact, told them that it should be threshed out.

Q That is what you agreed upon? A Excuse me a minute, I am talking now. That was the time when it was suggested, when my son was typewriting it. I had been talking to Mr. Lewine at the other end of the office, and we practically agreed upon that.

Q And what did you agree upon? A We agreed that it should be that they would have
40 100 tons of coal in the cellar—

Samuel M. Adelman, cross.

Q I am not talking about coal now, but about the bond. A That we should figure out and take notice of all the terms; that is, we should figure it out and then come to an agreement about the terms.

Q When were you to talk about that bond; that is what I want to know? A As soon as we would hear from the bonding company that they would give the bond, and we were to take up the matter and get the figures and then I would demand from the bonding company so much of a bond and see how much the bonding company would give. 10

Q (By the Court.) One moment: You say when this talk took place on March 9th in your office, when the contract was signed, you had a talk with Mr. Lewine? A Yes. 20

Q Was it then you spoke about the bond? A Yes, we discussed the bond together.

Q Now then, was there anything said during that day about a bond except what you said to Mr. Lewine and what he said to you? A There wasn't anything said, your Honor.

Q Was there any other talk about a bond? A Yes, it was talked again. 30

Q With whom? A My son told me that the bonding company called him up.

Q That day? A No.

Q I am talking about that day. When you signed the paper was there any talk that you heard about a bond excepting the talk you had with Mr. Lewine? A Yes, I spoke to Mr. Lewine that day and I spoke to Mr. Granat agreed with me in that building, not in the office—agreed on a bond. We agreed on a bond. 40

Samuel M. Adelman, cross.

Q Who were there when you had that talk with Mr. Granat in the building about the bond? A I was there.

Q Who else? A Well, Mr. Silverfelt was there.

10 Q Who else? A Mr. Cohen was there, and they heard it.

Q Now, the next time there was any talk about the bond was in your office on the same day with Mr. Lewine? A Yes.

Q Did anybody hear the talk between you and Mr. Lewine? A I don't know that anybody heard it, because we had been talking confidential in the place so that it wouldn't interfere with my son's typewriting.

20 Q Mr. Lewine had to talk very loud, did he not? A Yes.

Q Just as counsel have been talking to you here? A Yes, but they were closer to me and didn't have to talk so loud.

Q You had no appliance to help you hear? A No.

Q Didn't Mr. Lewine have to talk in a very loud tone of voice? A Not very loud.

30 Q Who were standing by when you were talking about the bond? A Well, Mr. Silverfelt was there, and Mr. Granat was there, but Mr. Cohen wasn't there.

Q How far away were they from you when you were talking? A Well, I should say 10 feet away.

The Court: Proceed.

40 Q When did you first speak with Mr. Granat in your little building that you are building? That was about 12 o'clock, wasn't it? A No, no, with Mr. Lewine.

Samuel M. Adelman, cross.

Q I don't mean Mr. Lewine; I mean Mr. Granat. A I think it was later than 12 o'clock.

Q Let me see if I can refresh your recollection: Isn't it a fact that Mr. Silverfelt and Mr. Granat first met you in the office and took you from the office over to the little house? A No, sir.

Q Where your son was? A Where my son was? 10

Q Your son was in the little house? I mean at the time your son introduced you to Mr. Granat. A No, sir.

Q And didn't you go from your office over to see your son in the little house? A My son wasn't there at that time.

Q Let me make another attempt to refresh your recollection: You were building this little house for yourself? A Yes. 20

Q And you had an open fireplace? A We had the fireplace built.

Q Wasn't your son laying out the fireplace at the noon hour so that the workmen when they came back at one o'clock would know what kind of a fireplace he wanted? A No, sir, not at that time, not when Mr. Silverfelt introduced me to Mr. Granat.

Q And isn't it a fact that you took your son from that place where he was trying to lay out the fireplace and bring him to your office? A No, sir. 30

Q You had no discussion in this little house at all? A We had some discussion in the little house and we came to the big building.

Q So that, as I understand it, in the little house you practically settled everything you

Samuel M. Adelman, cross.

had to settle excepting the amount of the rent?

A We settled four points, or mentioned four points; and the first point was this, that it should be a lease for five years.

10 Q You mean three years? A Three years, yes. The second point we settled was about the bond, and I want you to distinctly understand that that was settled then.

Q Was that the most important thing in your mind? A That was settled before we went to show them the building.

Q In other words, you said your time was too valuable to talk about it at all until they would agree to give you a bond? A Yes.

20 Q Now, when you got to the office about what time was it? A When we got to the office I think it was about four o'clock.

Q And your son came into the little building while you were there? A We were still there when my son came in and I introduced him to Mr. Granat, and then we walked—

Q Just answer my questions and we will get along faster. It was about four o'clock, you say? A Yes.

Q Then did you sit down and tell your son what happened? A No.

30 Q You didn't tell him? A I told him, but we didn't sit down.

Q Did you tell him what had happened? A I told him.

Q What did you do when you told him what had happened? A I told him to go to the office and show Mr. Granat how much the rent was. I couldn't tell Mr. Granat how much it was.

40 Q What did you tell your son? A I told my son that the first point is settled about the

Samuel M. Adelman, cross.

lease being for three years, and that they should give a bond, the amount of which should be fixed thereafter.

Q Anything else? A It was also agreed in the little house that they should give me a sufficient amount of rent. I think it was agreed then for about two months' rent in advance.

10

Q Isn't it a fact that you agreed upon 2 months' rent in your office after a long discussion? A No, no; it was agreed that they should give me two months' rent at that time, and then we had it over again.

Q Your son wasn't there when that was agreed upon? A He wasn't there when we agreed upon the three points.

Q After your son got there and you had told him what happened and what was agreed upon did he start writing this memorandum? A No, I told my son to go and show them, and while we were going through the building I then told him to go and show them the books.

20

Q After you son showed him and you did all these things and got together in your office, you and your son; and Mr. Silverfelt and Mr. Granat, what did you talk about? A Mr. Lewine wasn't there.

30

Q I know, but what did you talk about outside of Mr. Lewine? A Outside of this business? I can't remember.

Q I mean before Mr. Lewine came; what did you and Mr. Silverfelt and Mr. Granat and your son talk about in your office? A Why, I wasn't in the office when my son showed him the books.

Q You weren't in the office talking about the details of the lease? A No; when he showed

40

Samuel M. Adelman, cross.

him the amount of the rent and how much per room and so on I wasn't in the office.

Q So that there was no discussion in your office about any of the terms of the lease? A I don't know what they discussed there when I wasn't in the office.

10 Q I mean when you were in the office. A When I was in the office Mr. Lewine called up Mr. Granat on the telephone.

Q When Mr. Lewine came was there any discussion about the terms of the lease other than the rent? A At that time Mr. Granat told him what was settled.

Q Did you discuss any of the terms of the lease other than the amount of rent that they were paying? A We didn't discuss anything. 20 In the course of the conversation we discussed it generally and started it over again, and there was one thing Mr. Granat told Mr. Lewine that had been settled; he said "This is the point that is settled."

Q And Mr. Granat told Mr. Lewine what? A That he agreed to take the building on a three-year lease; that he should maintain the house and do all the repairs, and that he agreed upon a bond and this bond should be agreed 30 upon before they take the property.

Q And you heard all that discussion there, did you? A I was standing right there and I heard what Mr. Granat told him; and then it was discussed and it was settled to give so much rent. I don't remember whether it was discussed how much.

Q After you got through with all your discussion you say it was about 8 o'clock that your son sat down to the typewriter and began to 40 write the agreement? A I'm not going to say

Samuel M. Adelman, cross.

about that exactly; it may have been past 8 or before 8; I don't know.

Q When you were discussing all these terms was anybody making any memorandums? A After the discussion was over, discussing the terms, my son made a little memorandum and showed it to me.

10

Q That is this little memorandum, Exhibit D. 3, this little paper (handing paper to the witness). Is that the paper? A I want to look through it first. I don't know whether this was the paper or not. (The witness continues to read it.)

Q Now you have been reading it for some time; can't you tell us at the present time whether this is the paper? A Well, I know my son's handwriting very well, but at the same time I want to know—

20

Q What are you looking for in that paper? A To see whether that was the memorandum which my son made.

Q You have read enough of it to tell whether it is or not. A I think this is the paper, yes.

Q You think it is? A Yes, this is the paper memorandum.

Q Now, what makes you sure that this paper is the paper that your son handed to you to read? A He showed me practically the conditions which were to be put in the agreement.

30

Q What is there on that paper that convinces you that that was the paper which your son handed to you? A Failure to pay rent and to give security.

Q Is that what convinces you that that is a memorandum of what was to go into the lease?

A I think that is the memorandum he showed me and asked me about, but it was agreed that

40

Samuel M. Adelman, cross.

we should discuss certain points. Yes, I think that's the memorandum.

Q What was there in the memorandum that you are looking for? A I am not looking for anything; I am looking to see if this is the memorandum.

10 Q What is there in that memorandum that you remember differently from that that was in there? A This memorandum was that the lease should be for three years, and that they should do the maintaining—

Q What else? A That they should give a bond.

Q Anything else? A That they should pay a certain amount of rent in advance.

20 Q Yes; anything else? A That I think was the main points.

Q Do you remember whether the memorandum stated how much rent they were to give you in advance? A Well, I think at that time they agreed that they should give me two months' rent.

30 Q When your son handed you the memorandum was there anything as to the amount of money they were to give you in advance? A No, I don't think so.

Q What did your son give you this piece of paper for? A He didn't give me the piece of paper and I didn't read the memorandum; he read the memorandum for me and showed me the memorandum and told me the contents.

Q First you said he gave it to you and you read it. and now you say he showed it to you and he read it to you. A He took that piece of paper and read it to me.

40 Q You didn't read it? A No, I didn't.

Samuel M. Adelman, cross.

Q So, therefore, you don't know whether this is the memorandum or not, excepting from the fact that he read it to you? A I think this is the memorandum.

Q You think it is the memorandum because you remember what he told you? A I remember what he told me there.

10

Q (By the Court.) How did he come to read that memorandum to you; did you ask him to read it? A He simply come up to me and read me the memorandum, to see whether that was the agreement and would be satisfactory and he should put up a binder. I want your Honor to understand this: That has been spoken of as a contract. I understood it then and I understand it now that it was only a binder. I have made many, many contracts and also signed many leases. I understood distinctly that this was at that time a binder.

20

Q Will you look at this contract, Exhibit C. 4, and read the first eight lines. Read it aloud. A (Witness reading):

Agreement made on this 9th day of March, 1919, between S. M. Adelman, of the Township of Weehawken, County of Hudson, and State of New Jersey, party of the first part, and West Heights Realty Corporation, of the City and State of New York, having its principal office at 441 West 51st Street, Borough of Manhattan, party of the second part.

30

Q Now, do I understand you to say that that you regarded as a mere binder? A Well, I understood it that way.

40

Samuel M. Adelman, cross.

Q Have you not made a large number of contracts just in that form? A No, never.

10 Q Isn't that the way regular contracts begin? A Well, I understood it, as I said before, and I understand it now, that this was practically a binder.

Q Yes, you told us what you understood, but I call your attention to the paper; isn't that the form in which you have signed a great many contracts of all kinds? A All I can explain is—

Q No, no; isn't that the form that is used, to your knowledge, in contracts? A To my knowledge it was, but according to my understanding it was not a contract.

20 Q No, I am asking you about the form; don't you recognize what you have read as the way solemn contracts are begun? A Well, I can explain—

Q No, no; isn't that the way contracts, to your knowledge, usually begin? A Well, I really don't know. My understanding of it was that it was merely an agreement.

30 Q Merely an agreement? A Yes, merely an agreement, to make a regular binding contract. That was my understanding of what it was.

Q Now, let me understand you: You say this was an agreement to make a binding contract; was that binding contract to be the lease? A No; this was merely a binder to make a lease.

40 Q A contract to make a lease? A A contract to make a lease. That is what I understood as a binder.

Samuel M. Adelman, cross.

Q You know what a binder is, too, don't you? You have had lots of binders on your property, haven't you, on insurance? A Binders on insurance? I don't know what that is.

Q You know when you buy property you instantly have an insurance company place a binder on it; you know that, don't you? A No; not instantly. 10

Q Where do you get the word "binder"? A Well, I get the word "binder" in this way: When I buy a piece of property of you I get a binder that the property is to be conveyed to me, and I give you a certain amount of deposit and you give me a receipt that you have received this deposit and that there shall be made a certain contract on a certain day.

Q You are now speaking of a binder in connection with real estate that you have bought. When you buy a piece of real estate before the real contract is signed you pay a deposit and have the man selling you the property to sign a memorandum showing what the property is and what he is selling you, and how much you are to pay for it; that is right, isn't it? A Yes. 20

Q And agreeing that a contract is to be signed some time in the future? A Yes.

Q And that is what you thought this paper was? A That is what I thought this paper was. 30

Q Whom did you think this binder bound? A Who?

Q Yes. A I thought that that was to bind me to lease the property.

Q You thought you were bound to lease the property? A Yes.

Q And you thought you were bound to lease the property according to the terms mentioned 40

Samuel M. Adelman, cross.

in the binder? A Well, some terms, yes; according to the terms which are mentioned in the binder and some which were yet to be put in the lease.

Q What other terms were to be put in the lease other than those which were in this binder?

10 A A good many other terms to be discussed.

Q What are they? A Terms to be discussed: He shall not have less than 75 tons of coal in the cellar—

Q Why didn't you put that in the contract?

A At that time, I explained, it was very late and I was very tired, and I thought it should be put up for the next day and we should then go over it because we could talk those terms over. If we had done it then it would have taken practically all night.

20 Q Mr. Adelman, didn't Mr. Granat say to you: "Never mind about the contract"; he would take a receipt for the \$500. Do you remember that? A No.

Q You don't remember that? A No.

Q Don't you remember that he didn't want to go to the trouble of making out a big, long contract, but you said your son would have to prepare a memorandum or binder that would contain the provisions in it? A I don't remember it. If it was said, I didn't hear it.

Q Now you say you always rely upon what your son does for you and he attends to all these matters for you? A I generally explain what I want.

Q You have been to my office a great number of times in connection with clients of mine where your son has never been there? A Yes.

40 Q Isn't it a fact that your son has never been in my office with you during the time that I have

Samuel M. Adelman, cross.

known you of eight or ten years? A That might be.

Q And you are always careful to read over your contracts? A When it comes to contracts, and my son is always with me.

Q When you prepare contracts and pass titles don't you read every single line of what is prepared? A Mr. Lichtenstein, you made a statement and I want you to recall it, that I have been often in your office. I had your deceased brother read it for me and I had confidence in him. 10

Q We were not your attorneys? A Well, I was there with others.

Q You say that people in the office would read the papers to you, but you wouldn't read them yourself? A If I had confidence in those people I would not. 20

Q But you would read them over? A If I had confidence in them I wouldn't. Mr. Gaede never does it when he makes out mortgages for me. I have confidence in Mr. Gaede and I very seldom read them over.

Q Now, when your son was typewriting the paper did he discuss with you what he was writing? A No; I was away about ten feet, I guess. 30

Q And when it was all prepared did he hand the paper to you? A To sign.

Q He didn't hand it to you to read? A No; he says, "It is all right, pop."

Q You didn't read it over? A No.

Q So that you think your son didn't read it over? A He read it over, I suppose, but he didn't read it to me.

Q And you just put your name on it? A I just sat down at another desk and I signed my name. 40

Samuel M Adelman, re-direct.

Re-direct examination by Mr. Lane.

Q Mr. Adelman, did you think that anybody could make you lease that property if you didn't agree upon the terms? A What do you mean?

10 Q Did you think anybody could make you lease that property if you didn't agree upon the terms afterwards? A No, I wouldn't give \$250,000 worth of property without satisfactory guarantee of some kind. Mr. Lane, if I am permitted to say it, I want to say now, as I said before, if this property wasn't taken care of, especially in the winter time, it could practically be ruined in one day—one night to the extent of half of it. Every fair-minded man knows if the pipes were burst in a five-story building and it would run from one floor to another, it would
20 practically be ruined, and then there would be \$100,000 damage. And, another thing, if I am permitted to say it, under no consideration would I lease that building in that way unless I got a reliable guarantee that it will be turned over to me in the same condition. I wouldn't lease it, but I would take care of it myself.

30 Q Is that building located so that it is peculiarly susceptible to winds and cold? A Well, yes.

Q Do you remember whether, after your son came, there was a discussion in the office as to whether you would permit them to give one month's security for the rent or two months' rent as security? A They were to give me two months' security.

Q Do you remember a discussion about that when your son came back to the office? A No.

40 Q Did they, when your son was in the office,

Harry Cohen, direct.

offer you one month's rent? A Well, it may be; I wouldn't say.

Q Well, if you don't recollect, say so. A I don't.

Re-cross examination by Mr. Lichtenstein.

Q You thought you could back out of this binder at any time, didn't you, that you signed? 10

A No, I never thought I would back out.

Q But you thought you had a right to back out if you wanted to? A No.

Q What did you think it was, then? A I thought the other people would comply with all the provisions which were made verbally and which wasn't in this contract; and if they would comply with it I wouldn't back out.

Q One more question: Did you discuss with Mr. Gaede, your lawyer, the question of whether this bond was to be given? A Did I discuss it with Mr. Gaede? 20

Q Yes. A I think he did.

Q What did Mr. Gaede tell you about the bond?

Mr. Lane: I think that is highly improper.

Mr. Lichtenstein: I will withdraw the question. That is all. 30

HARRY COHEN, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Lane.

The Court: It is now after our usual time for recess. What is the present outlook as to the extent of the testimony? 40

Harry Cohen, direct.

Mr. Lane: Well, this witness and one other will be our last. This witness, as your Honor will perceive, is an important witness that goes to the merits and it may take considerable time for his examination.

10 The Court: I don't see how we can hope to get through with the testimony today.

Mr. Lichtenstein: It won't take very long with this witness.

Mr. Lane: That is what you said before and it has taken the most of the day so far.

The Court: Well, you can see from Mr. Lane's statement that the testimony of this witness alone will take at least a couple of hours.

20 Mr. Lane: I should imagine so, and then there will be some rebuttal.

Mr. Lichtenstein: Probably fifteen minutes' rebuttal.

30 The Court: Well, I think we had better not enter in upon the examination of this witness at this time. It is now one o'clock and, as I said, I cannot give the afternoon to this case; I have other engagements. Is there any urgency about this case? Unfortunately it was set for a motion day; it was first regularly set down for March 15th, and then it went over until Monday, June 13th, upon the representation that it could be tried in two hours, and then adjourned to yesterday, expecting it would take a day; and now it has taken a day and a half and we are not through.

40 Mr. Lane: I have religiously, from the beginning, stated that it would take two days to try it, and Mr. Lichtenstein insisted that it wouldn't.

Harry Cohen, direct.

Mr. Lichtenstein: I said it would take two hours so far as my case was concerned.

The Court: If the time had been correctly measured on March 15th, I should have assigned two days, certainly not later than October. Now I am very much embarrassed in trying to force it in somewhere as early as possible. The best plan will be to set it down for a whole day, and the first whole day that I can give to it is Thursday, December 15th, and I will set the case for 10:15 at the Chancery Chambers in Paterson and we will sit, if necessary, until five o'clock; and as it is largely a fact case I would suggest that counsel be prepared to make their arguments on that day. Will that be satisfactory to counsel?

Mr. Lane: Yes, sir.

(The further hearing adjourned to Thursday, December 15, 1921, at 10:15 in the forenoon, at the Chancery Chambers in Paterson.)

30

40

Harry Cohen, direct.

CHANCERY CHAMBERS

PATERSON, N. J.

Thursday, December 15, 1921, 10 A. M.

All counsel present as before.

10 HARRY COHEN, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Lane.

Q Where do you live? A 1415 Stebbins avenue, the Bronx.

Q Do you know Mr. Samuel Adelman? A Yes, sir.

20 Q And A. Harry Adelman? A Yes, sir.

Q On the 9th of March—I think it was—you were at a conference which took place, having to do with the leasing of this property— A Was I at a conference?

Q Were you at the place where the conference took place? A I was.

Q Where was it? A In a certain small house which Mr. Adelman was building at that time.

30 Q What time did you get there? A I was there around 11 or 12 o'clock.

Q Who was there? A Mr. Adelman and those people who were working on the building.

Q Were you there when the people came? A I will state, if your Honor please, that I am laboring under some disadvantage; I took up the wrong folder of papers when I came out here, and I don't know—

40 Q Where were you when you first met these people? A Well, I was with Mr. Adelman at that small building. At one o'clock I should say

Harry Cohen, direct.

Mr. Silverfelt and a gentleman came in, which I understood was Mr. Granat.

Q You were with Mr. Samuel Adelman? A Yes, sir.

Q Go ahead. A This gentleman told Mr. Adelman he was willing to lease his apartment, and Mr. Adelman says, "all right," and they started to talk about it; and Mr. Adelman asked him for how long a time he wanted to lease it, and he told him about five years or so; and then he asked him what does he mean by a lease—how does he like to lease it on a regular lease or simply take over the house and maintain it and everything. He says, well he would like to take it over entirely—maintain it and everything. He says, "all right."

Then, of course, he says, "You know, my boy, in taking over a house like this—costly house and costly fixtures like that—and I don't want you to feel offended because I don't know your financial circumstances, but you will have to secure it, and things like that, in giving back the house."

And he says, "all right; how is it if I give you real estate security?"

He says, "Real estate security will only have to be on the house"; and Mr. Granat says, "How is it if I give you a bond from a bonding company?"

And Mr. Adelman says, "All right; that will do."

And, of course, in talking over several other points Mr. Granat says, "All right, let's go over and look over the house," and they looked through the apartments and saw the rooms and so on. When we got to the house Mr. Adelman introduced Mr. Granat to the janitor or superintendent of the house, whatever he was, and he

Harry Cohen, direct.

continued showing the houses and Mr. Adelman went back to the little house. And then shortly afterwards they came back and, of course, I couldn't very well remember all the conversation about it, because I wasn't interested.

Q Well, now, who was there when they came back? A When they came back to the little house?

Q Yes. A Well, I was there with Mr. Adelman.

Q Who else? A And working people.

Q (By the Court.) Did you go to the house with them? A Just in one apartment.

Q And then went back to the little house? A Back to the little house.

20 Q Mr. A. Harry Adelman hadn't come yet, had he? A No; he wasn't there at that time.

Q When did you first see him? A Harry Adelman came around late, about four o'clock or so.

Q Where? A At that little house.

Q And then where did you go from there? A From there we went to the office.

Q What time did you get to the office? A 30 Shortly afterwards; about half-past four or five.

Q And how long did you stay there? A Until about six.

Q What were they doing in the meantime? A Well, they were discussing all these several points.

Q During that time was there any discussion with respect to the bond, that you heard? A Yes, there was.

Q Well, what? A This question came up 40 again about the bond, and I remember distinctly

Harry Cohen, cross.

Mr. Silverfelt was alongside; he says, "Well, all right, Mr. Adelman; you needn't bother too much about it; it is understood that you will get a bond."

Q Did Mr. Granat say anything about a bond?

A Yes, he did.

Q What did he say? A He said the same thing about the bond; "it is all right, we will furnish you with a bond." 10

Q Had Mr. A. Harry Adelman started to typewrite the so-called contract before that or not? A Yes, he started while I was there.

Q He hadn't finished, had he, when you left?

A No.

Cross examination by Mr. Lichtenstein.

Q Mr. Cohen, what were you doing around this property at that time? A Well, I was associated with Mr. Adelman at that time in certain other business, and I used to come there every day. 20

Q Associated in business with him? A Yes.

Q You just happened around there that day?

A Not happened, but I used to be there every day.

Q What were you doing there during the course of that day? Do you remember anything in particular? A Not any in particular. 30

Q You can't remember anything that you were doing there that day excepting that you were there? A Yes.

Q Now, where was it that Mr. Silverfelt introduced Mr. Granat to Mr. Adelman, Sr., in the little building? A In the little building.

Q And that was around 12 o'clock? A That was around 1 o'clock or half-past—between 1 and 2. 40

Harry Cohen, cross.

Q I think you said first around 12 o'clock?

A I got there around 12 o'clock, but they came afterwards; they came later.

Q And then Mr. Granat, Mr. Adelman, Sr., and yourself stayed in the little building from about 1 o'clock until 4, did you? A No. Well, of course we went from the little building to the
10 big house.

Q I thought you said you stayed there from 1 until 4, with the exception of the time you went to the building? A I did.

Q How long did you actually stay in the little building after the introduction before you went to the big building, as you say? A Oh, for about a half hour, I should say.

Q Is that all? A Yes.

Q And there was conversation between Mr. Adelman and Mr. Granat about leasing that property during that time—during that hour? A Yes.
20

Q Were they discussing terms during that whole hour? A Yes, they were.

Q And have you told us all the terms that they discussed during that hour? A Not exactly.

Q Well, can you remember any of the other terms that were discussed between them? A Oh, they were discussing several things. I don't know exactly what you mean by "terms."
30

Q Well, you talk about the terms of a lease? A Of course, that was a very few questions. It was the length of time of the lease, whether it was to be five years or three—

Q Yes; what else? A And about the bond.

Q Bond, yes; what else? A I couldn't very well remember.

Q You can't very well remember; and still
40 you were there for an hour and you heard the

Harry Cohen, cross.

conversation between these two people while they were negotiating for a lease, and then something was said about going over to the building? A Yes.

Q Did you go over to the building at all, Mr. Cohen? A Yes, I was in one apartment.

Q Who was with you when you went into that building? A Mr. Silverfelt, and Mr. Granat, and Mr. Adelman. 10

Q What were you going along in that building for; you hadn't taken any part in this discussion, had you, about the terms of the lease? A No, I didn't take any part in the discussion.

Q You didn't open your mouth during the whole of that conversation? A No, I didn't.

Q Are you certain that you were over in that building during the time that Mr. Granat and Mr. Adelman, Sr., were there? A Yes. 20

Q Isn't it a fact that you were only over in the office when they got there? A No; Mr. Granat is sitting right here now.

Q After you got to the big building as you say and went through one apartment you didn't go any further? A No, I went back with Mr. Adelman to the little house.

Q What became of Mr. Granat? A They were introduced to the janitor there. 30

Q Did they go through only one apartment? A One apartment with us. I was with them only one apartment, and afterwards they were introduced to the janitor, and the janitor took them up to the rest of the apartments.

Q How do you know that they went through the other apartments? A I don't know; that is what they intended.

Q When you left the building you had gone through only one apartment? A That's all. 40

Harry Cohen, cross.

Q What became of Mr. Granat? A Left with the janitor, and I went with Mr. Adelman back to the small building.

Q So, that, as I understand it, while at the big building you and Mr. Adelman and Mr. Granat looked at one apartment, and then Mr. Adelman introduced the janitor to Mr. Granat and you and Mr. Adelman, Sr., left the big building and went back to the small building? A Yes, sir.

Q So, that you didn't go through any part of the house while Mr. Adelman was there except this one apartment? A I went through that first apartment and I waited downstairs.

Q I know, but you told us, if I understood you correctly, that after you and Mr. Granat and Mr. Adelman went through that one apartment you and Mr. Adelman left the others and went back to the small building? A That is correct.

Q So, that Mr. Adelman, Sr., didn't go through any part of the building, to your knowledge? A So far as I know. I went downstairs and waited there.

Q (By the Court.) How long did you wait there down on the first floor— A Not long; only about five minutes.

Q Wait a minute and hear my question. How long did you wait there before Mr. Adelman came down and joined you? A About five minutes or so.

Q Then what did you do? A Then we went back to the small building.

Q You say "we"— Me, and Mr. Adelman.

Harry Cohen, cross.

Q How long were you in the small building before Mr. Granat and his associates came in? A Oh, quite a while.

Q How long? A Well, about a half hour or so.

Q Now, when you came down with the old gentleman you went back to the little building, the new building, which was a little private home that Mr. Adelman was building? A Right. 10

Q How long was it before Mr. Granat came? A Well, about a half hour.

Q And you were with Mr. Adelman, Sr., during that half-hour in the little building? A Right.

Q Where Mr. Granat came to after he had inspected the apartment building? A Yes.

Q And you were there with Mr. Adelman, Sr.? A Yes. 20

Q Anyone else there? A Mr. Silverfelt.

Q Anyone else? A No, excepting working people.

Q Well, then, what happened after they had all gotten together in the little building? A They were discussing it.

Q Tell us what they were discussing—what Mr. Granat said and what Mr. Adelman, Sr., said. A As to the building. Mr. Granat mentioned the ceiling being cracked. 30

Q That took place over in the little building? A Yes.

Q What about the terms of the lease? A About the terms of the lease, it was decided definitely on three years.

Q What do you mean by being decided definitely? A Mr. Adelman insisted upon five years and they compromised on three. 40

Harry Cohen, cross.

Q You are talking now about the second conversation that they had after coming back to the little building? A Yes.

10 Q What else was talked about? A And then finally Harry Adelman came in, and Mr. Adelman, Sr., explained to Mr. Adelman what had happened and what it was all about, and he marked it down on a memorandum slip.

Q That was over in the little building? A Over in the little building.

Q Just tell us what Adelman, Sr., told Adelman, Jr., that Adelman, Jr., marked down on a little slip. What did he tell him? A He explained that this gentleman is willing to lease this building for three years, and that he will put up a bond for the maintaining of the house—

20 Q Yes; go right on. A (The witness pauses.)

Q What else? A What else?

Q Yes; what sort of a piece of paper did Mr. Adelman mark it down on in the little house? A A small piece of paper.

Q A piece of paper about as large as the piece of paper which I hold in my hand (exhibiting to the witness piece of paper size of that marked D. 3)? A Something like that.

30 Mr. Lichtenstein: This is not the paper itself; I merely picked it up from the desk.

Mr. Lane: It looks pretty nearly like it.

A (Continuing.) That is about the size.

Q About the size of this little piece of paper that I hold in my hand? A Yes.

40 Q And Mr. Adelman, Sr., then told him, as you have already said, some things as to what had been agreed upon and then Adelman, Jr., you say, wrote it down on that little piece of

Harry Cohen, cross.

paper right there in that little building? A Yes.

Q What did he write it with, a pen or pencil?

A Pen.

Q Was it a fountain pen? A Yes.

Q Now, what part of the little building was it that he wrote it out in? A In the front. 10

Q What room? A In the parlor.

Q Was there any table there or anything else to write on? A He marked it on the wall.

Q And you were there in the room when he did that? A Yes.

Q And who else was in the room at that time? A Mr. Granat and Mr. Silverfelt.

Q And all of these terms that you talked about this young man wrote down on a little piece of paper in ink up against the wall; is that right? A Yes. 20

Q Holding that paper up against the wall?

A I think so.

Q But I would like to know what the fact is. A I remember he was marking on the wall, and then he probably had it on his knee, and another time he would write it down walking.

Q Are you guessing at it? A This isn't guessing. As a matter of fact, I didn't pay too much attention because it didn't concern me. 30

Q That is the reason why I want to know whether you are guessing at these things or telling us what you saw. A I am telling you what I saw.

Q And what you saw was his having a little piece of paper in his hand, about the size of the paper I am holding in my hand; that his father was telling him the terms that had been agreed upon in the presence of Mr. Granat and Mr. Silverfelt, and you saw him write that down 40

Harry Cohen, cross.

on that little piece of paper, sometimes holding it up against the wall, at other times on his knee, and at other times holding in the palm of his hand walking along? A Yes, that's correct.

10 Q When he was writing on his knee was he sitting down or bending down? A Bending down.

Q You are sure that he was writing these things on the wall? A Positively.

20 Q Well, now, what were the things that you remember that he told his son to put down that had been agreed upon and that his son was writing down on this little piece of paper that he rested either on the wall, on his knee, or in the palm of his hand? A I couldn't remember very well.

Q Well, you can remember some of the conversation that took place which you have told us; can't you remember what it was he agreed upon, what it was that he told him, or even one thing that he told him concerning the lease that this young man was writing on this slip? A That he was to lease the building for three years.

30 Q What else? A That he was to give a bond.

Q You are certain of that? A Yes.

Q That all took place over in that little building? A Yes.

Q And the son was writing it out on this slip of paper? A Yes.

Q You are quite certain of that? A Yes.

Mr Lichtenstein: I ask that this slip of paper be marked for identification.

40

Harry Cohen, cross.

(The same is marked Exhibit C. 9 for identification.)

Q After the young man got through writing on this little piece of paper what became of the party and the people there? A Pardon me?

Q What became of these other gentlemen? 10
A Then we all went up to the office in the big building.

Q Was that the first time that you were in the big building with these other men, that is, Mr. Granat and Mr. Adelman? A Yes.

Q Now, what time was it that you left the little building? A That was around 4 o'clock.

Q Now, let's see; you said at first that you came to the little building about one o'clock? 20
A I came around 11 o'clock.

Q I mean the time Mr. Granat came there?
A About one o'clock.

Q And then you talked a little bit and went over to the building and stayed there about a half hour; what time was it that you came back to the big building from the little building—back to the big apartment that was being leased? A You understand, I didn't look at the time. It all took place between 2 and 4.

Q I know; but how long was it before you came back to the big building? A Back from the small building? 30

Q Yes. A Well, about a half an hour.

Q Can you tell us what time it was, approximately, that you came back to the little building after inspecting the large building?

A It must have been around 3 o'clock.

Q Then you talked in the little building, then, from 3 to 4, did you, before young Mr. Adelman came there? A Right. 40

Harry Cohen, cross.

Q What were you talking about during that whole hour? A Do you ask me what I was talking about? I wasn't talking at all; I was listening there simply. I was there and I had to stay there. I didn't take part in the discussion whatsoever.

10 Q You were in the same room? A Yes, sir.

Q And you were interested in Mr. Adelman's affairs, you say? A Not in this particular one.

Q But you were listening, weren't you? A Yes.

Q Can't you tell us what the discussion was during that whole hour before the young man came in? A No, I couldn't tell that; the same questions all over again.

20 Q The same questions that had been discussed before you went over to the big building? A Yes.

Q About the bond and about the term of the lease? A No, the bond was understood right from the beginning.

30 Q I understand that. Was it talked about again when you came back from the big building? A No, the bond was mentioned only once; in the office of the big building Mr. Silverfelt said, "Never mind; you needn't mind so much about the bond; I understand that Mr. Granat will put up a bond to secure the building."

Q Now I ask you, Mr. Cohen, did you go to lunch that day? A No.

Q You didn't? A No, because when I got to the place I had my lunch downtown.

40 Q You had had your lunch before you came there? A Yes.

Harry Cohen, cross.

Q And you said you got there about 11 o'clock? A Between 11 and 12.

Q Did you have your lunch before you got there? A Yes.

Q So, you had your lunch before 11 o'clock? A 11 o'clock. I used to have my lunch down town because there is no lunch place in that section. 10

Q Don't you know that Mr. Granat here was there and you weren't there at all, and that Mr. Granat and Mr. Silverfelt went out to lunch long before you came there? A No.

Q You don't know anything about that? A No.

Q Don't you know that you were not in the little building at all on that day or at any other time when Mr. Granat was about those premises with Mr. Adelman, Sr.? A It is surprising to me. 20

Q It is surprising to you, is it? A It is.

Q And would it surprise you to learn that this little paper that you have identified here, and which you say was written out by young Mr. Adelman in the little building in the manner which you describe, young Mr. Adelman says he wrote it in his own office in the big building? Would that surprise you? A Possibly. 30

Q Now, as a matter of fact, you didn't see the young man writing this little piece of paper at all, did you? A I did see it.

Q And you still insist that you saw him write it out in the little building? A He may have finished it in the office, but I am positive it was all done on a piece of paper—a little slip like that.

Q When Mr. Adelman, Jr., was in that building or while you were in there were they fixing up the fireplace? A No. 40

Harry Cohen, cross.

Q They weren't? No.

Q You didn't see a fireplace in that little building, did you, that was being built? A There was being built a fireplace.

Q At that time? A No, not at that time.

Q You didn't see young Mr. Adelman there with a pair of overalls on, did you? A No.

10 Q You didn't see him laying out the fireplace in that building, did you? A No, sir.

Q You weren't there at the noon hour when the workingmen were not in that building, were you? A Right.

Q Were you there when the workingmen were away to their lunch? A Yes, I was there.

Q That day? A Yes.

Q Who was there at that time? A There was Mr. Adelman, Sr.

20 Q Anyone else? A No.

Q Where was Adelman, Jr., at that time? A I don't know.

Q Was that before Mr. Granat got there? A Yes.

Q Well, were they or were they not fixing up the fireplace at that time, at the noon hour, and laying it out? A No, sir; there wasn't anything done about the fireplace.

30 Q Now, after 4 o'clock when you got back to the big building, or before that time, when young Mr. Adelman came into the small building, as you say, what did his father say to him? A Young Mr. Adelman?

Q Yes, Junior? A He explained to him about what took place with Mr. Granat, and he marked it down on a piece of paper.

Q And afterwards they went from that small building to the big building? A To the office.

40 Q Yes, to the office; and you went along with them, did you? A Yes.

Harry Cohen, cross.

Q What happened in the big building? A They were discussing it all over again.

Q What were they discussing all over again?

A About several things.

Q Tell us some of the things. You sat there, didn't you? A (Witness does not answer.)

Q Will you tell us, please, if you can answer, just how long you sat there before you went away from the office? A I went from the office around six o'clock. 10

Q So you sat there about two hours? A Yes.

Q This is only a small room, this office? A Yes.

Q Show the Court about how big this room is you were sitting in? A It is small room.

Q Ten feet square? A Possibly. It isn't quite square; I don't know, five or six by ten. 20

Q And in this room for those two hours were Mr. Granat, Mr. Adelman, Sr., and Adelman, Jr.— A And Mr. Silverfelt was there, too.

Q And what were you sitting there for during these two hours? A I used to be there every day.

Q I know, but what were you doing there? A Just sitting and listening to the conversation, or reading the paper. 30

Q Well, did you have any business to transact there? A Not on that day.

Q What did you overhear during those two hours that you were there? A That they agreed on leasing the building; and Mr. Adelman, Sr., told Mr. Adelman, Jr., about it, and Mr. Adelman, Jr., started to typewrite the contract or whatever it was.

Q When did he start to typewrite that contract? A It was about five o'clock. 40

Harry Cohen, cross.

Q Five o'clock? A Yes.

Q Well, what had been talked about from 4 to 5, and from 5 to 6 between these people? A It was talked of about the lease.

Q Tell us anything that was talked about.
A It was talked that he should have so much
10 coal in the cellar, and that the boiler shouldn't burst up, or whatever it was.

Q Well, whatever it was— A All concerning the lease.

Q And during that discussion the boy was writing on the typewriter, was he? A He started to typewrite.

Q Well, did he tell the people what he was writing? I mean, did he tell his father and Mr. Granat what he was writing on this paper? A
20 No; while they were discussing he was writing at the typewriter.

Q In other words they would discuss something and he would write it? A Some points he did that way.

Q Will you tell us who was present in that room when he started to typewrite? A I was there, and Mr. Adelman, Jr. and Sr., and Mr. Granat, and Mr. Silverfelt.

30 Q And had they agreed upon the rental? A I don't think they did.

Q You mean to say that this young man started in to write out a contract without their having agreed upon the rental? A Yes, they did agree.

Q You are sure of that now, are you? A Yes.

Q Do you remember how much the rental was to be? A About \$25,000.
40

Harry Cohen, cross.

Q Now, Mr. Cohen, isn't it a fact that they did not agree upon any rental while you were in that room, at all? A Not noontime, no.

Q While you were in that little office isn't it a fact that they never agreed upon the rental of the premises? A Not while in the small building.

10

Q In the office? A In the office they did agree upon the rental.

Q And you were present? A So far as I know. They were discussing the rental.

Q Did they agree upon the rental, the amount of money that they were to pay per year or per month? A Yes.

Q In your presence? A Yes, they agreed upon it.

Q And it was after that that the boy started to typewrite it? A Yes.

20

Q (By the Court.) What was the amount? A I can't remember. I think somewhere about \$25,000.

Q Look at that man over there (counsel pointing to Mr. Lewine); did you ever see him either in the little building or in the office? A No.

30

Q That is a fact, isn't it? A No.

Q You never saw him until you came into this court? A Right.

Q Now, don't you know that no agreement was made as to the amount of rent until Mr. Lewine here, the partner of Mr. Granat, came to that building and you had gone long before that? A Well, it wasn't definitely settled as to the rental but I know it was discussed.

40

Harry Cohen, cross.

Q Don't you know that they were waiting for Mr. Lewine to come there before they began to talk about how much the rent was to be? A Oh, no; they were discussing about the rents long before.

10 Q And don't you know that young Mr. Adelman did not start to typewrite the agreement until after Mr. Lewine came there and the terms had been agreed upon? Don't you know that? A No, sir.

Q Now, just think a minute: Isn't it a fact that he wasn't typewriting the agreement at all? A He started to typewrite the agreement, absolutely, before Mr. Lewine came there.

Q And he was writing, then, from 5 until 6 before you left? A Yes.

20 Q While you were in that little office there were people coming in and out? A Right.

Q And while those people were there was no discussion about the terms of the lease, was there, between Mr. Granat and Mr. Adelman? A We used to get interrupted once in a while.

Q Well, Mr. Adelman at that time was making contracts for putting up an enormous building up in that part of the country, on the Boulevard, wasn't he? A Yes.

30 Q There were contractors coming in there, selling brick and all sorts of mason's materials, plumbing, and all other things that go to put up a building of that size? That's right, isn't it? A No, he wouldn't take up any more, I believe, because he was busy with this lease.

Q Well, didn't he take up those matters and interrupt the lease negotiations? A For a short time.

40 Q And there were other people coming in there to lease his property, too; you remember that, don't you? A Yes.

Harry Cohen, re-direct.

Re-direct examination by Mr. Lane.

Q You were interested in the construction of these other buildings, weren't you? A Yes, sir.

Q And you were the treasurer of the company that was doing the construction work, were you not? A Yes, sir.

Q How often during that period were you in this little house referred to? A On that particular day? 10

Q Around that time. A I used to be there every day almost.

Q (By the Court.) Before you began the construction of the building? A No, I wasn't in that little building.

Q No; I mean before you began the construction of the large building on the Boulevard that has been referred to? A Oh, yes; a couple of months before. 20

Q Well, what took you there? Why was it that you went there at 11 o'clock and remained until six, when you had nothing to do with the business that they were doing there? A That was on account of the lease—busy discussing the lease; otherwise I had several matters to discuss with Mr. Adelman. I didn't figure that it would take a whole day to finish that lease, and as I didn't have any other work I stayed there. 30

Q You were waiting to discuss matters with Mr. Adelman in reference to the new building that he proposed to erect and that you had to do with? A Yes.

Q Well, you didn't give up hoping for an opportunity to talk with Mr. Adelman about your matters until six or seven o'clock? Which was it? A Until six o'clock, and 40

Benjamin Schwartzberg, direct.

then I thought there was no use waiting longer.

Q Which went first, you or Mr. Granat?

A No, I went away first.

Q And left them there? A Yes.

10 Q Had any contract been signed when you went away? A No, sir.

Q Had any contract been written out and read? A Not in full.

Q You say not in full; had it been partly read? A It was partly typewritten.

Q You were only interested in the new building? A Yes.

Q As a matter of fact, the new buildings have not been built? A No.

20 Q And the project was finally abandoned? A Yes.

Q For how long a period had you been coming around to those premises practically daily?

A Oh, for five or six months.

Q Did you have any interest whatever in this particular building which was the subject matter of this lease? A No, not at all.

Q Or any interest in Adelman's business, so far as that is concerned? A Nothing at all.

30

BENJAMIN SCHWARTZBERG, sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Lane.

Q Where do you live? A 37 Liberty Place, Weehawken.

40 Q What is your business? A Embroidery manufacturer.

Benjamin Schwartzberg, direct.

Q Where? A West New York.

Q In business for yourself? A Yes, sir.

Q How long have you been in business for yourself? A Ten years.

Q You own your own home now? A Yes, sir.

Q And you own the factory? A Yes, sir. 10

Q Were you a tenant in the Gladdon Hall in March, 1920? A Yes, sir.

Q When did you move from that house? A In June, 1921.

The Court: Is this with reference to the subject matter of the lease?

Mr. Lane: Yes, sir.

Q You remember in March of 1920 being in the office of Mr. Adelman at a time when there was a conference going on with respect to Glad- 20
don Hall? A Yes, I was in.

Q Do you remember the date? A Not exactly the date.

Q Can you tell me about when it was? A It was along the middle of March or the beginning of March. I don't remember the date.

Q How did you happen to be there? A Well, I was living there four years in that 30
apartment building and that was before Easter, and so I wanted to go in to see Harry Adelman about fixing up my apartment.

Q What time did you get there? A Around six, or ten after six.

Q What was being done when you got there, generally? A Well, so far as I remember, when I came in there was a couple of men there in the office and they were talking about some 40
business; and Harry was sitting at the desk

Benjamin Schwartzberg, direct.

doing something, I don't know whether reading or writing, and the two men were talking between them there. There was a corridor and I came in, and the door was open in the office, and I sat for awhile thinking I would be able to talk with Mr. Adelman about the apartment; and while I was sitting there—

10

Q Wait a moment. You speak of two men; do you recognize anyone in the court room as being one of the men? A I think those are two of the men there, if I am not mistaken (witness pointing to Mr. Granat and Mr. Lewine.)

Q Have you ever seen them from that time to this day? A No; I wouldn't know them if I saw them in the street—wouldn't remember them.

20

Q (By the Court.) What is that?

A If I saw them in the street I wouldn't recognize them.

Q Do you recognize them now? A Yes; I recognize the men there (witness pointing).

Q Which men are you pointing to? A (Witness points to Mr. Granat.)

Q And do you recognize that man next to him (pointing to Mr. Silverfelt)? A Yes.

30

Q Were both of these men—

Mr. Lichtenstein: Which one is he pointing to?

Q Who was the third man; do you recognize him? A Well, after awhile there was a third man that came in but while I was there there was only two men discussing—while I was sitting there.

40

Benjamin Schwartzberg, direct.

Q And the two men that were discussing were the two you have just pointed out? A Yes.

Q Go ahead. A While I was sitting there I heard some of the discussion and it interested me because I overheard the conversation about leasing Gladdon Hall, and that made me interested, and I sat there for about ten minutes and they were talking about taking a lease of the house and taking care of the house, and while they were talking a gentlemen came in, this gentleman here (witness pointing to Mr. Lewine), and they were telling him about this thing. He says, "Well, we are going to take the place for three years"— 10

Q Who said that? A Those men said it to that man that came in.

Q That is, Mr. Granat and Mr. Silverfelt said it to Mr. Lewine. Which two? A That man (pointing to Mr. Lewine) came in afterwards. 20

Q And the two men who were first there said to the third man what? A They are going to take the house for three years.

Q And what else? A And they would have to take care of the house; and they have got to give back the house in the same condition as they take the house, and they will have to give bond to Mr. Adelman. So that man there (pointing to Mr. Lewine) says, "What is the bond?" He says, "Well, there is boilers and furnishings that wants to be protected"— 30

Q (By the Court.) What is that? A Mr. Adelman wants to be protected.

And Mr. Harry Adelman turned around while these men were talking and he asked me what I wanted; and I told him I wanted to have my 40

Benjamin Schwartzberg, cross.

floor fixed for the holidays, and he told me, "Schwartzberg, I am busy now; you will have to see me some other night," and I walked out, and that is all I know.

10 Q Now, when did you first tell Mr. A. Harry Adelman that you knew anything about this matter? A Well, that was here a couple of weeks ago. It was along in October when I read about this case in the paper.

20 Q How did you come to tell him? A I met him in the street and I asked him, "How did you make out in your trial about Haddon Hall; it was in the paper? And he told me there was a lot of argument about a bond, and they claimed they didn't mention anything about the bond, and I happened to tell him I was there at the time and I overheard what the people was talking about the bond; and he asked me if I would go and testify, and I told him if I could help him I would go up.

Cross examination by Mr. Lichtenstein.

Q Will you tell me where your business is now? A 636 Adams street, West New York.

30 Q You have an embroidery plant there? A Yes, sir.

Q With regular Shipman machines? A Yes, and Reiner machines.

Q What time was it that you came in this office? A Around about six or after six at the least.

Q Had you been to your house? A No.

40 Q And you walked into this office? A Yes; it was light there in the evening and I walked in.

Benjamin Schwartzberg, cross.

Q And you walked right into the room where these people were sitting? A They weren't sitting; they were standing there.

Q How big a room is it? A A small room.

Q How big would you say it was? A About from here up to the middle of the desk.

Q How many feet would you say it was? A 10
I think about 12 by 8.

Q And in the room, at the time you got there, you saw what people? A Well, there was those two gentlemen there—

Q Mr. Granat and Mr. Silverfelt? A I didn't know their names.

Q You are pointing them out and I am mentioning their names; and who else? A And Mr. Adelman and Mr. Adelman—the two Adelmans. 20

Q Anyone else? A That is all I remember.

Q Didn't see anybody else there? A No.

Q And when you walked into the room where did you sit? A It is a corridor when you come in, and then you walk into the office. It is all open; and when I came in I stayed there only a minute or two minutes, and then I sat down at the desk.

Q When you sat down you sat down in the office? A Yes. 30

Q When you speak of the corridor— A That is bigger than the office where you go in.

Q You weren't sitting in there? A No, in the office. I walked in here (witness illustrating) and right there is the door.

Q I understand it; but when you came in through the outer door you walked into the corridor and then went right from the corridor into the office? A Yes. 40

Benjamin Schwartzberg, cross.

Q You didn't sit down in the corridor or any place like that? A No.

Q There is no place to sit down in there? A No, sir.

Q That isn't an office or room? A No, it is the corridor, the same as the corridor in any large building.

10 Q You walked into the office where these men were talking? A Yes, and I stood in the doorway for a minute or two.

Q And then you walked right over and sat down? A And then I sat down, yes.

Q You didn't stand in the doorway for any length of time? A About two minutes.

Q And then you walked and sat down near the desk? A Yes.

20 Q Who was at the desk? A Harry Adelman.

Q What was he doing? A I don't know; I didn't watch him because he was busy.

Q Can you tell the difference between a person reading and a person writing? A No, I couldn't.

Q Did you talk to him? A Yes, I said "Hello, Harry." He was doing something at the desk, doing his work.

30 Q What work was he doing? A I don't know whether he was reading or writing.

Q Did he talk to you? Did he say, "How do you do, Mr. Schwartzberg?" A No. I came in and I says "Hello," and he said "Hello."

Q Then he did say "Hello?" A Yes.

Q (By the Court.) Did you speak to Mr. Adelman, Sr.? A No; he was sitting at the other desk.

Benjamin Schwartzberg, cross.

Q Well, where was Mr. Silverfelt, this gentleman (indicating Mr. Silverfelt)? A Both of them were standing there about a couple of feet from the desk.

Q Where was Mr. Granat, this gentleman?
A Them two were standing together.

Q And you sat in this 8 x 10 room with all of these men and listened to what they had to say? A That's right. 10

Q This other gentleman, Mr. Cohen, was not there? A No, I didn't see him.

Q Was young Mr. Adelman sitting at the typewriter? A I don't remember that.

Q Well, how long did you sit there all together before you said anything besides "how do you do?" A About ten minutes. That is all I was there. 20

Q Then what happened when you sat there about 10 minutes? A Mr. Adelman turned around to me and asked me what I wanted.

Q You sat there right next to him for 10 minutes and then he turned around and said, "What do you want?" A Yes.

Q What was he doing during those 10 minutes? A He was there at the desk and I didn't care to sit there watching what he was doing, because I was interested in what they were talking about the leasing of the house. 30

Q You weren't sufficiently interested in what he was doing to see whether he was typewriting or sitting at the typewriter desk? A No.

Q Did you see him writing with a pen or pencil or on the typewriter? A No. I remember that he was doing something at the desk and that's all.

Q So you weren't paying any attention to what he was doing? A No. 40

Benjamin Schwartzberg, cross.

Q And none of these men in the place were talking to him? A Not while I was there.

Q When you came into the room were all these men there that you have mentioned? A When I stood at the door I saw the three men talking and making motions with their hands, and talking about the house.

10 Q You saw them, but you didn't hear what they said? A Not when I first came in; that is why I sat down, because I was interested, because I was a tenant there; and I made up my mind then I heard them talking that Mr. Adelman is going to sell the house and the new owners are going to raise the rent..

Q Let me ask you this: From the time you came into the office and sat down, were there in this office Mr. Granat, Mr. Silverfelt, and this gentleman Mr. Lewine (Counsel pointing the men out as he asks the question). A Not when I came in.

20 Q Tell us what transpired before Mr. Lewine came into the office? A They were talking about a lease of the house.

Q Tell us about it. A I am telling you I don't know.

Q I want you to tell us as near as you can what you overheard in that office before Mr. Lewine came. A Them two fellows were talking about the house, and I stood there leaning up against the doorway and when I heard them talking about the house I was interested in it—

30 Q What did they say that made you interested? A I can't tell, only they were talking about leasing Haddon Hall, and that made me interested, and while I was sitting there—

Q Please tell us what you overheard that was interesting to you. A I am telling you

40

Benjamin Schwartzberg, cross.

what I overheard from those two men; they were talking about leasing Gladdon Hall.

Q Tell us about that. A They were talking and that third gentleman came in.

Q Tell us what took place before he came in.

A They were talking about the house, you know—that is leasing it. 10

Q Can't you tell us one single thing that was said that impressed itself upon your mind before Mr. Lewine came in? A They were going to take the house for three years.

Q That was before Mr. Lewine came in? A Yes.

Q What else did they say before he came in?

A That is what I heard from them; I couldn't hear anything else.

Q The only thing you heard was that they were going to take the place for three years? Yes. 20

Q No other terms? A That is what I heard was that they were going to take the place for three years? A Yes.

Q No other terms? A That is what I heard from them.

Q How long were you sitting there before Lewine came in? A About three minutes. 30

Q And during those three minutes they talked about taking the place for three years?

A Yes.

Q And you were still sitting there? A Yes; because I was interested about the leasing of the house.

Q When this man Lewine came in what happened? Whom did he talk to first? A The two men were standing talking together and that man came in and said, "What is it about?" 40

Benjamin Schwartzberg, cross.

Q Was that the first thing that happened when he came in? A Yes.

Q Was there any introduction? A No, no.

Q Mr. Silverfelt didn't introduce this man Lewine to anybody? A No, I didn't see that.

10 Q Mr. Granat didn't introduce Mr. Lewine to anybody? A No, I didn't see that.

Q You are sure there was no introduction? A Absolutely.

Q In other words, they appeared to be people that knew each other? A Yes.

Q So that this man Lewine just walked in there and started to talk to these two men, Mr. Silverfelt and Mr. Granat? A Yes.

Q Where was Mr. Adelman, Senior? A He was at the desk.

20 Q He wasn't talking at all? A No.

Q At the desk with his son? A Well, his desk. There was two desks there.

Q So that Adelman, Senior, was sitting at the desk, not talking at all? A The old man Adelman was sitting at the desk; there were two desks there.

Q He wasn't talking to anybody? A No.

30 Q Adelman, Junior, was sitting at the desk and he wasn't talking and Mr. Adelman, Senior, wasn't talking? A He was reading a book.

Q And Adelman, Junior, was sitting at another desk? A He was doing some writing; I don't know what.

Q And the three men that stood over in the corner talking were they talking among themselves? A Yes, right by the door there.

40 Q You listened to what they had to say, so it wasn't what Mr. Adelman said to them or what they said to Adelman? A I don't know, as I was only there about 10 minutes.

Benjamin Schwartzberg, cross.

Q Well, when you saw Mr. Adelman was reading a book why didn't you walk up to him?

A I never bothered with him.

Q Well, Mr. Adelman, Junior, was sitting there, you say doing nothing; why didn't you talk to him? A When I came in he said "Hello" and he kept on doing something at the desk. 10

Q Why didn't you go away and come in at another time instead of sitting there 10 or 15 minutes? A Ten minutes.

Q What did you stay for? A When I heard these two men talking about leasing the house for three years I sat down and was interested in hearing about leasing Gladdon Hall.

Q Were they talking to themselves or to Adelman, Junior? A By themselves. 20

Q That is, Mr. Silverfelt and Mr. Granat were talking among themselves that they were going to lease Gladdon Hall? A Yes.

Q And Mr. Adelman, Senior, was reading a book? A Yes.

Q And Adelman, Junior, was sitting at the other desk? A He was doing some writing or reading, yes; I can't remember just what now.

Q So that there was no talk in those ten minutes between Mr. Adelman, Senior, and these people? A Not between them; the talk was between the two men. 30

Q In fact, from the time you came in there was no talk between anyone and Adelman, Senior? A No, not while I was there.

Q Mr. Adelman was reading a book, was he? A Well, he doesn't hear very good.

Q And then you overheard what the three men said? A Yes. 40

Benjamin Schwartzberg, cross.

10 Q Now tell us what you overheard. A When the third man came in he said, "What about it; what was done with it?" and so he says, "We are going to take the house for three years." I don't remember if this gentleman or the other one said, "We have to take care of the house; Mr. Adelman wants to have a bond in order to get back the house in the same condition."

Q How much was the bond to be for? A Well, I don't remember how much; I couldn't tell you because it is so long ago.

Q How much did they mention? A I think it was something like \$30,000. Whether the rent was \$30,000 or the bond \$30,000 I don't know that. I know they talked about \$30,000, but I couldn't hear the rest.

20 Q Did they tell this third man that came in there how much the rent was going to be? A He said, "How much does the rent bring net," and then I heard \$30,000, but I don't know whether the bond was \$30,000 or the rent \$30,000.

Q How much did the third man that came in say the rent of the house was going to be and how much they were going to pay? A I didn't hear that.

30 Q When he said that there was to be a bond did he say how much the bond was to be? A That's what I am telling you—whether it was \$30,000 for the bond or for the rent I don't know.

Q Did he ask the question? A He asked the question.

Q Did he ask the question, "How much is the bond going to be for?" A He did, I think, ask how much the bond is going to be.

40

Benjamin Schwartzberg, cross.

Q (By the Court.) Are you sure of that? A Yes, I am sure, because that made me interested, because I knew at that time there was a big demand for rooms and people were leasing out their property. And so after this conversation I went up to the apartment and told Mrs. Schwartzberg, "I think we are going to have a new landlord; Mr. Adelman is going—" 10

Q No, no; that isn't what I asked you; I say, are you sure— A Yes, I am.

Q You haven't heard my question: Are you sure that Mr. Lewine when he came in asked Mr. Granat and Mr. Silverfelt in what amount that bond was to be; are you sure of that? A Yes, I remember that, your Honor, but I didn't know whether it was for the bond or for the rent. 20

Q Was any other figure mentioned besides \$30,000? A I don't remember.

Q Now if the matter concerned you so much that you were so sure, why can't you remember the answer they gave about the amount of the bond? A Because it didn't concern me, your Honor. I was standing there first a couple of minutes—

Q You told us that, but what I want you to tell us is how it is you are so positive and distinct in your recollection that the question was asked about the amount of the bond and you can't tell what the answer was. A I can't, your Honor. 30

Q (Cross examination resumed.) Let me ask you this, Mr. Schwartzberg: If you remember that Mr. Lewine asked the other gentlemen how much the bond was to be for, why can't you 40

Benjamin Schwartzberg, cross.

remember the other part, the answer they gave?
A I heard \$30,000 and I don't remember, counsel, whether that was the amount of the rent or the amount of the bond.

10 Q You have already said that you heard Mr. Lewine ask these other gentlemen that were there, "How much does he want a bond for," or "How much is the bond to be for," or language to that effect—that you remember? A Well, I remember they were talking about a bond, and one of the gentlemen promised Mr. Adelman that he is going to give him a bond.

Q You heard that? A Yes, but I don't know the particulars about it.

20 Q Do you mean that, that you heard one of these other men promise Mr. Adelman that he was going to give a bond? A No, he told the third man that when he came in.

Q Now, when he told this third man that they promised to give Mr. Adelman a bond did the third man ask the others how much the bond was to be for? A He probably asked, but I only heard—

Q Did he ask the question? A He asked it, yes; he probably asked the question.

Q Now listen to me—

30 Q (By the Court.) You said, "He probably asked the question." A Now, your Honor, I don't remember how the expression was, you know. This didn't interest me about the bond; the only thing that interested me was whether they were going to lease Gladdon Hall.

40 Q Yes, you have told us that a great many times. This question now is whether you remember that the newcomer, Mr.

Benjamin Schwartzberg, cross.

Lewine, asked either of the other gentlemen, his associates, what the amount of the bond was to be. Did you say he probably asked him or did ask him? A He did ask him, but I don't remember how much the figure was.

Q Now just think a minute of what I am asking you: After he asked him that question as to the amount of the bond of the other gentlemen, or either of them, did they give a figure? 10

A No, there was no figure mentioned. Maybe he did, but I don't remember that.

Q Did they answer his question? A I didn't hear it, because I have nothing to do with this here thing and I wasn't interested.

Q You said there was \$30,000 mentioned. A That is, whether \$30,000 for the rent it brings in or the bond; I don't know which. 20

Q If you heard the question asked by the third man, "How much is the bond to be for," can't you tell us whether there was an answer to that question—never mind whether you remember 30, 40, 50, or \$75,000? A I can't remember that.

Q Did they answer the question? A Probably they did or didn't; I can't tell you anything; I don't know. 30

Q You say that you only talked with Mr. Adelman, Jr., of what you knew, a couple of weeks ago? A Yes.

Q How many weeks ago was that? A Around five or six weeks.

Q And you say you met him in the street? A Yes, I live in that block, Liberty Place.

Q And how did the conversation arise? A He was my landlord for four years, and then 40

Benjamin Schwartzberg, cross.

when I read in the paper about it I remembered about it. It had passed out of my mind.

Q How long before you met him was it that you read it in the paper? A I think I saw it in the paper around October or the end of September. I don't remember that.

10 Q How long after you read it in the newspaper was it that you talked with him? A Couple of weeks after.

Q You hadn't seen him in the meantime, then, at all? A No.

Q What did you say to him? A I asked him how he made out with the trial.

Q What was it you read in the newspaper? A About Gladdon Hall; they wanted to lease it, and there was a fight about it.

20 Q What was the fight about; do you know? A I don't remember now.

Q Was there anything said in the article about the fight? A About the bond.

Q That was in the newspaper? A Yes.

Q Did it mention how much the bond was to be? A I don't remember.

Q And you read that in the newspaper—in the "Observer"? A In the "Despatch" and the "Observer."

30 Q Both of them? A Yes.

Q And then you stopped him on the street? A That was later on.

Q And you asked him what? A That was later.

40 Q I know; but you asked him what? A How he made out; and he told me there is going to be a trial because the people claim they never mentioned about a bond; and he was talking to me and he claimed that he did tell them on the premises and he doesn't remember who

Benjamin Schwartzberg, cross.

it was at that time, and I says to him, "I was there that night when you had the conversation with this man and I overheard about the bond."

Q He told you about the bond and the dispute, and he said he didn't know who was present at the time? A I beg pardon?

Q He told you he didn't know who was there at the time; is that what he said to you? A He said he doesn't remember who was there at the time—who said it about the bond. 10

Q In other words, he was telling you he didn't know who was in the office at the time they were discussing about the bond? A That is what he told me.

Q And then you volunteered the information which you have told us? A I told him I was there. 20

Q And you told him what you heard? A Yes.

Q But he didn't remember that you were there? A I am not living there since June.

Q I know, but he didn't remember the fact that you had been there and had been seated there for ten minutes right next to him? A No.

Q And did he ask you what you overheard? A I told him I remembered about this here; I told him I was there, but I didn't remember the date; it was some evening after six when I heard this conversation with this man. 30

Q And then did you make a statement? A No; I told him I overheard about this.

Q I know, but afterwards did you make a written statement? A No, sir.

Q And then you came into court here today and you saw these men coming into the court room? A I first saw that man. 40

A. Harry Adelman, direct.

Q You wouldn't know them if you saw them in the street? A No.

Q But after you saw them in court here then you remembered them, although you never talked to any one of them in your life? A No.

10 Q And never saw them from that day until this day? A No, sir.

A. HARRY ADELMAN, recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Lane.

20 Q Mr. Adelman, I overlooked asking you this question, whether at the time Mr. Dippel was at your house you said to him, or Mr. Samuel Adelman, your father, said to him, or words to this effect: "Since entering into this contract it has dawned upon me that the property might be damaged and these people might take a whole lot of profit out of the property and I would be the loser in the end, and I want a bond as security against the possible breakdown of the boiler and the disappearance of some ice-boxes," and so on? A No, sir; that is not a fact. I did not

30 say that; never mentioned it dawned upon me since.

Q (By the Court.) Mr. Adelman, the question was whether your father made that statement. A He said, whether I or my father.

Q Did either of you make any such statement? A I know I didn't make it and I know

40 I did not hear my father make that statement.

A. Harry Adelman, direct.

Q Were you present during all the time that Mr. Dippel was there in the presence of your father? A Yes.

Q Do you know this last witness Mr. Schwartzberg? A Yes, sir.

Q When did you first know that he knew, or claimed to know, anything with reference to this transaction? A About seven weeks ago. 10

Q Was it since the last hearing? A Yes.

Q At the time of the last hearing did you recollect anybody who had been in and out during the time of this conference? A At the time of the last hearing?

Q Yes. A No, sir; I did not recollect, but I knew there were some other men in there.

Q You said that, but did you know the names of any of them? A No, I didn't recollect it at that time. 20

Q At the time that Mr. Schwartzberg spoke to you, did you at that time have any recollection of his having been in the office during the time that that conference took place? A Not when he first spoke to me, but subsequently my memory was refreshed.

Q To what extent? A To the extent that Mr. Schwartzberg was there and I had talked to him and told him I was too busy. 30

Q To any further extent? A And to the extent that then I tried to remember who else came in and interrupted, and I remembered that there was a representative from Reed & Company, some bricklayers; that there was a plumber there, and someone else there; the name of the last person I didn't remember. Subsequently, I went to Reed and tried to learn who the representative was that was there at that time in the office, and I walked to each man and they 40

A. Harry Adelman, direct.

didn't remember anything about that particular day excepting they were there; and I walked to the plumber, and he said there was some people in the office but he didn't know anything about it.

10 Q Was there anybody else that you can remember who was there at the time? A There were two or three tenants in the office, but I couldn't remember who they were.

Q Have you made inquiries of everybody as to whether they had any recollection of what took place? A Yes.

Q And the result is blank? A Blank.

Q Is there a fireplace in this small building? A There is now.

20 Q When was that put in; do you know? A That fireplace was built around the latter part of March or the early part of April.

Q Mr. Cohen has testified that this paper which has been referred to in the last hearing was written in the small building; is that the fact, or is he mistaken about that? A I believe Mr. Cohen is mistaken about that.

Q Your recollection isn't altered by anything he has testified on the stand here? A Not as to the memoranda.

30 Q I mean as to the memoranda? A No, sir.

Q That is, as to where it was written? A As to where it was written.

Q Had Mr. Cohen any interest in the discussions that were going on at that time? A Not that I know of; no interest in it except as a matter of curiosity. He had no interest in any of these buildings at that time.

40 Q What did he have interest in? A Mr. Cohen was a stockholder in Samuel Adelman, Inc., a corporation organized for the purpose of

A. Harry Adelman, cross.

developing some property in West New York. Mr. Cohen was a very heavy stockholder in that company, and my father and I were the other two stockholders. My father had an equal amount with Mr. Cohen, and I held the remainder of the stock, which gave us the majority. We had already excavated the property up there and had the material on the job, and then business became such that we couldn't go ahead on the job, on account of the fluctuations in the market in the price of materials. We had sold them the material that was already on the job, and we just simply slid along with time to see what was going to develop, and Mr. Cohen came over every day to find out if anything new developed, I suppose, and he was just hanging around. That was the only interest Mr. Cohen had at that time.

And I might add, that the corporation repaid Mr. Cohen for the stock investment which he had, and the only thing that now exists of the corporation is a so-called "skeleton," of which my mother and my father are the members. Mr. Cohen is no longer interested in the corporation or with our business. He withdrew from the corporation all of the money which he had invested.

Cross examination by Mr. Lichtenstein.

Q Can you make it any more definite as to whether it is or is not the fact that you wrote this little paper, Exhibit D. 3, in the little building. You say so far as the statement of Mr. Cohen is concerned you believe he is mistaken?
 A I know he is mistaken, because I borrowed Mr. Granat's fountain pen.

A. Harry Adelman, cross.

Q You know the circumstances of writing out that slip of paper, D. 3, as were stated by you in your previous examination, that the entire paper was written out in your office? A Yes. If I did any writing in the little building it was not on the memorandum at all.

10 Q (By the Court.) My recollection is that you testified that you wrote it out on your desk. A Yes, in the office.

Q Now, Mr. Adelman, isn't it a fact that on the day that these negotiations were going on you were in the little building and were attending to that fire-place? A It is not.

20 Q Well, didn't you have something to do with that fire-place? A The fire-place wasn't even in contemplation.

Q Didn't you have something to do with the building of that fire-place? A I had something to do with the building and laying out of the fire-place, but not that day.

30 Q Tell us what you had to do with the laying out and building of that fireplace? A We ordered the fire-place from the man who was selling us brick. I had made a contract with the brick-layer to set up that fire-place, and before he came there the material was on the job; and before he came there I had unpacked some of the material and had laid it out on the floor, so as to see what the size would be.

Q You were laying out the fire-place? A Yes.

40 Q And you had a pair of overalls on? A No. I have never worn a pair of overalls in my life.

A. Harry Adelman, cross.

Q Did you ever wear a pair of overalls? A Yes, but not in that building.

Q This was a partly-finished building? A Yes.

Q And you hadn't your street clothes on? A Yes, I did.

Q And you were musing around in this partly-finished building with brick and stuff lying out on the floor, and you were laying out this fireplace? A Let me call your attention—

Q No, answer the question first. A I was in the building, yes.

Q Weren't you laying it out and showing how it was to be done? A Just let me explain: The fireplace came in the shape of square brick. It is all special brick, not the regular building brick, but all square brick, packed in barrels, contrary to the usual custom of dumping them on the street from the truck. I opened the brick and took them out and laid them along on the floor, and it had to be away from the wall to make a good appearance. I was not handling the trowel; never laid brick in my life. I know a great deal about it; I have estimated the work on it, but I have never laid any brick.

Q (By the Court.) How many courses of brick did you lay? A I never laid a course of brick.

Q I mean these brick that you laid out? A Two, one above the other and a second one. The purpose was to see whether the brick should be laid one against the other or with a broken bond, or whether they should be laid according to the Flemish bond. That is the way I laid it out, and

A. Harry Adelman, cross.

the fire-place was subsequently built by using a straight bond.

Q You have a pair of dark brown overalls, haven't you? A No, sir; never owned a pair of dark brown overalls.

10 Q Never used a pair, either? A Never used a pair of brown overalls.

Q And you weren't explaining how the laying out of this fire-place was to take place? A I did explain it, but not that day.

Q On some day; I don't care what day, but you explained it to somebody? A No, sir; I never explained it to anybody.

Q Then why did you lay it out on the floor? A In order to find out whether the bond should
20 be a straight bond or not.

Q Didn't you explain it to somebody after you found that out? A Afterwards I explained it, but not while I was laying it out. I showed a diagram and explained it in the office later; in fact, there was a picture of the fire-place there.

Q Let me ask you this, young man: Did you ever see Mr. Granat and Mr. Silverfelt there in your office more than once? A That
30 is all; but let me add this, Mr. Lichtenstein: Mr. Silverfelt was in the building a number of times, and he was there on one particular occasion when I was laying out a fire-place. There is where you are confused, and I wanted to bring that out.

Q So you think I am confused? A Yes, sir; I know you are confused, because I am positive I am not. I know I can get hold of the day
40 of the shipment of brick.

A. Harry Adelman, cross.

Q You remember distinctly that Mr. Silverfelt was there on a day when you were laying out the fire-place? A Oh, yes.

Q But you don't remember that Mr. Granat was there? A He was not there.

Q And you are absolutely certain about it? A Absolutely.

Q You never make any mistakes, do you? A I don't say that, but I say I am absolutely certain about that fire-place.

Q Now, tell us when it was that you laid out that fire-place. A I can't give you the exact day now, but it was later, either the last part of March or the first part of April.

Q How do you fix the time? A Because the contract with the brick-layer was not made until a few days before the first of April after all this transaction had expired.

Q You remember that distinctly? A Oh, yes, and the reason why I remember that was because the question of the payment on that contract came up and I told him we were not able to pay him and it ran until around the first of the following month.

Q What was the time of the day you were laying out this fire-place? A Late in the afternoon—I beg your pardon, you might be able to fix in my mind some of the circumstances. (Witness pauses.) It was in the morning before 11 o'clock.

Q Wasn't it just at noon-time while the workmen were out to their lunch? A No, it was before 11 o'clock.

Q How do you fix that? A Because we had to have the deafening changed and the carpenter was on the job at the time and I had to explain it to him. Does your Honor know what

10

20

30

40

A. Harry Adelman, cross.

the deafening is? The boards that go under the brick that support the concrete. Do you understand?

The Court: Sufficiently for the purpose.

10 Q This morning when you testified you had to ransack your brain pretty thoroughly to find out who was there on the occasion of these negotiations? A Yes, sir.

Q And you couldn't, with all the evident effort that you made, locate anybody? A No. As a matter of fact, the other side testified that I had closed a lease with somebody, and I went through all my leases and the rentings and I couldn't find it with anybody—couldn't find out that I had rented an apartment.

20 Q Now you know that during the discussions that took place in your office there were people coming in and going out? A Yes.

Q And you know when those people came in you would be discussing this great big building? A If it was people that came in there and they had to wait for a moment to tell me their business they would be likely to hear anything that was said.

30 Q Would you say that you were discussing these things while those people were in there? A Not I.

Q You would interrupt the discussion? A Yes, in the room.

Q You were the one that was taking notes of all these things? A The discussions had already taken place and the notes had been made.

40 Q That is, Exhibit D. 3? A Yes, excepting, if you will allow me to correct you on one point. The notations of the principal points had been

A. Harry Adelman, cross.

made and were left until Mr. Lewine came, and from the time the memoranda was completed and the time Mr. Lewine came there were interruptions.

Q Well, you got over to the office about 4 o'clock, I think you said in your other examination? A Half past three, I said. 10

Q And then made— A (Interrupting counsel.) I beg pardon, I got to the building about 3:30 in the afternoon. It was a few minutes after I reached the building. It was between half-past three and four o'clock.

Q Mr. Schwartzberg says he came there after six o'clock? A During that interval.

Q You were in that office until six o'clock all the time? A Not all the time.

Q What were you doing? A I can't give you a history of what I was doing between half past three and six o'clock. 20

Q Don't you know that you were discussing the terms of this lease? A Not entirely.

Q When strangers came in you weren't discussing the terms in their presence, were you? A No.

Q And you do remember that this man sat next to you for 10 minutes? A He didn't sit next to me. 30

Q He says he did. A He says he sat on the other side of the room.

Q I thought he said he sat near your desk and said, "Hello," and you answered? A I said I may have answered "Hello to him; I turned around from the work I was doing.

Q What were you doing? A I was doing something at my desk; I can't tell you what it was. 40

Jacob Granat, direct.

Q But you were so busy that you had no time to ask what he wanted, but let him sit there for 10 minutes; and you can't tell what the important thing was you were doing? A No, sir, I cannot.

10 Mr. Lane: That is the case.

The Court: Proceed with the rebuttal.

COMPLAINANT'S REBUTTAL.

JACOB GRANAT, recalled on behalf of the complainants, in rebuttal, testified as follows:

Direct examination by Mr. Lichtenstein.

20 Q Mr. Granat, you saw Mr. Cohen on the stand this morning? A Yes, sir.

Q When did you first see that man? A I saw him on March 19th in the office of the Gladston Hall building—in that basement office.

Q And did you ever see him before that time at any other place? A No, sir.

Q That is, in the office of the building? A Yes, sir.

30 Q Did you ever see him across the street or in the building which has been termed the "little building"—the new building that was being constructed? A No, sir.

Q Did you ever have any discussion with Mr. Adelman, Senior, or Mr. Adelman, Junior, in the presence of this man Cohen in that little building? A No, sir.

40 Q Was he ever in that little building at any time when you were there? A I did not see him in the little building.

Jacob Granat, direct.

Q Well, in the room that you were in when you were with Mr. Adelman, Senior, was he present? A No, sir.

Q And you say the first time you saw him was in the office of Gladdon Hall? A Yes, sir.

Q The large building? A Yes, sir.

Q Now what time of the day was that when you first saw him? A Well, I came down between 12 and 1, and then I met both Adelmans, and we went to the office and there I met him. 10

Q Now, did you meet both Adelmans before you met Mr. Cohen? A Yes, sir.

Q What time was it that you first saw young Adelman? A I should judge about one o'clock.

Q Where was he at that time? A In that little building.

Q What was he doing at that time? A He had a pair of overalls on and he had a long ruler in his hand and he was measuring and handling bricks. 20

Q What was he doing with the bricks? A Taking them from one place to another and laying them out.

Q Was there a fire-place there where he was laying them? A It wasn't a fire-place yet.

Q Did you ever, in the presence of this man Cohen, tell Mr. Adelman, Junior or Senior, that you would give a bond to secure him for the faithful performance of any lease that was entered into? A No, sir. 30

Q Did you mention the term "bond" in his presence at all during these negotiations? A No, sir.

Q Did you see this man Cohen at any other place excepting in the office? A The only place I saw him was in the office. 40

Jacob Granat, direct.

Q And during what part of the discussion was he there—up until what time? A Up until about four o'clock he was there.

Q From what time on? A From about a quarter to half-past one until four o'clock.

10 Q Did he go to the big building with you and Mr. Adelman? A No, sir.

Q Did he inspect any flat in that building with you? A No, not that I know of. He did not go with me.

Q Was he in any of the rooms that you were in in that building? A No, sir.

Q Did you see him in that building at all? A Only in the office.

Q I am speaking now of the apartments. A I understand.

20 Q (By the Court.) What do you mean by the office? A In the office of the building.

Q In the office of the flat building? A A Of the Gladdon Hall building. They have an office there.

Q Did he cross the street with you? A No, sir.

30 Q I understand the Gladdon Hall building is across the street from the— A The office is in the Gladdon Hall building, but this building that they are speaking about across the street is the private home.

Q Is that where the fire-place was being laid out? A Yes.

Q Where was Mr. Cohen when you first saw him? A In the office of the Gladdon Hall building.

40 Q How long did he remain there? A Well, I stayed there for about an hour, and

Jacob Granat, direct.

then Mr. Silverfelt and myself went to lunch and when we came back he was in the office until about four o'clock.

Q Who went through the apartments in the Gladdon Hall building with you? A Mr. Adelman.

10

Q And did he go into one apartment or more than one? A He took me into several apartments.

Q Did he take you anywhere else? A We went through several apartments and then up to the roof of the next house.

Q Was Mr. Adelman with you all the time? A Yes.

Q (By the Court.) Anyone else? A Mr. Silverfelt.

20

Q Was the janitor with you? A No, sir.

Q Did you see the janitor of the building? A Yes, I saw the janitor.

Q Where? A One time I saw him while Mr. Adelman walked through with me through the cellar, showing me the different steam pipes. I saw a man that I supposed was the janitor.

30

Q How long did it take you to go all over these buildings? A About three-quarters of an hour.

Q Was this man Cohen going around with you during any of those three-quarters of an hour? A No, sir.

Q Mr. Schwartzberg, the gentleman that was just on the stand this morning—did you ever see him before you saw him in the court room today? A No, sir.

40

Jacob Granat, direct.

Q Did you see him in the office of the Glad-
don Hall building? A No, sir.

Q At any time during the course of the con-
versation you had there? A No, sir; I don't
know him.

10 Q Was there any time when anyone came
into that office while negotiations were going on?
A There was.

Q I mean when you would continue to talk
while strangers were in there? A No, we
stopped talking about it and ask what they
wanted, and he would say they were "busy to-
day."

Q Who would say that? A Adelman, Jun-
ior.

20 Q Do you remember anybody sitting in that
office—a stranger sitting there in that office, ten
minutes other than this man Cohen? A No,
sir.

Q Or for any length of time? A No, sir,
I do not.

Q Did you ever, so far as you can recollect,
lay eyes on this man Schwartzberg before you
saw him in court here? A No, sir; I did not.

30 Q Did you, at any time while you were in
that office, tell your partner, Mr. Lewine, that
you had agreed to give a bond to Mr. Adelman
for the faithful performance of your lease, or
any bond? A No, sir.

Q Was there any such talk between you and
Mr. Lewine, your partner? A No, sir.

Q Or was there any such talk between you
and Mr. Silverfelt and your partner? A No,
sir.

40 Q Was the term "bond" in connection with
this lease ever referred to in that office, to your
knowledge? A No, sir.

Jacob Granat, direct.

Q Concerning the testimony of Mr. A. Harry Adelman, the young man, he says that during the course of the negotiations the following terms of the lease were left open to be discussed and decided at a conference to be held in Mr. Gaede's office; is that correct? A No, sir.

Q He says that the understanding between you was that this was not to be a conclusive agreement, or final agreement, but that you were to talk about the terms afterwards, and anything that he suggested would have to go into the lease; and anything you suggested was to go into the lease, is that correct? A No, sir. 10

Q Did he tell you that the question of a bond would have to be discussed at Mr. Gaede's office and put into the lease? A No, sir.

Q And that you would have to get a bond, and the amount was to be determined at Mr. Gaede's office? A There wasn't a word mentioned about a bond. 20

Q Do you recall the conversation at Mr. Adelman's house when Mr. Dippel was there? You remember that, do you? A Yes.

Q Mr. A. Harry Adelman says that during the course of that discussion that he told you gentlemen that it was intended that a bond should be given by you, and that if it was not in the contract it was left out by mistake. Did he say any such language, or language to that effect? A No, sir. 30

Q During the course of the negotiations did Mr. Harry Adelman say anything as to how he was going to prepare this agreement—whether it was to contain all the terms of that agreement or only a part of the terms? A He said it was to contain all the terms. 40

Jacob Granat, direct.

Q Do you recall how that came about? A Well, I asked him for a receipt for the \$500, and he said, "I am a law student and I want to have everything understood before, so that we can leave nothing out."

10 Q During the time that the young man was writing out this agreement were you picking up the letter piece of paper from his desk that he had written on, at all? A I wasn't picking up any papers.

Q Did you see him writing from any paper? A He may have written on some pieces.

Q Did you see him writing on a typewriter from a small piece of paper such as Exhibit D. 3? A No, sir; I never saw that piece of paper.

20 Q Were you interfering with his typewriting on the typewriter? A While he was typewriting?

Q During the time that he was writing on the machine, were you telling him about your family affairs, or your private affairs, and interfering with his writing up of this lease or agreement for lease? A I was not.

30 Q Were you discussing with him your private family affairs while he was busy writing out this agreement? A I wasn't telling him my family affairs.

Q Is it or is it not a fact that you were? A I was not.

Q Mr. Adelman says that he did not read over this agreement after it was completed to his father; is that or is it not a fact? A It is not.

40 Q Did he or did he not read it over? A He read it over twice or three times to his father, and then the father read it himself, too.

Jacob Granat, direct.

Q During the discussion of the terms of this lease and when the young man was writing the clause with reference to his father being the sole judge of certain things did Mr. Lewine talk to Mr. Adelman, Junior, about such a clause?

A We spoke about the clause before. He told us that he was going to put that in.

10

Q What was Mr. Lewine's discussion about that? What did he say about such a clause being put in? A He thought it wasn't fair to put in a clause like that, that his father should be the sole judge.

Q What did he say? A We argued it and we came to the conclusion if we would keep the apartment in good condition why there was nothing to it.

Q The young man says that a great many of the clauses contained in this lease were clauses which he inserted, as the term was used, out of his own head, without consultation with you and his father, is that correct? A Well, I don't know what clauses he might think of.

20

Q Were there any clauses put into that lease before they were discussed between you? A Not one clause was put in the lease without discussing it before, and discussing it thoroughly.

30

Q Did you ever hear young Adelman tell Mr. Silverfelt that there was a provision in the contract for a bond? A I did not.

Q Did you ever hear the young man make any such statement to anybody that there was actually a provision in the contract for a bond? A No, sir.

Q And if there was none in the bond it was left out by mistake? A No, he did not make any such statement.

40

Jacob Granat, direct.

Q Did you ever hear Mr. Silverfelt say to Mr. Adelman Senior that you would give a bond for the faithful performance of the contract, or any kind of a bond? A No, sir.

10 Q Was the term "bond," in connection with the lease, ever mentioned in your presence by either Mr. Adelman, Senior, or Junior or Mr. Silverfelt? A It was not.

Q Did you ever tell Mr. Adelman Senior, or did you hear your partner or Mr. Silverfelt say, that you would give him real estate security? A No, sir.

Q Was there ever such talk between you? A There was no such talk.

20 Q Was there any conversation between you or your partner or Mr. Silverfelt and Mr. Adelman, Senior, where it was said that you would give security on improved real estate? A No, sir.

Q Or that you would give him a surety company bond? A No, sir.

Q Did Mr. Adelman Senior ever tell you that he wanted any such security from you? A He did not.

30 Q Did he ever say that any security that you would give on real estate would have to be a lien upon the property? A He did not.

Q Did he ever mention to you that the reason why he wanted a bond was that there was an expensive heating plant in that building that might be damaged, or any of the property might be damaged, and he wanted a bond to cover any such damage? A That wasn't anything mentioned about a bond during the entire negotiations of this lease.

40 Q Now, talking about the heating plant in that building, Mr. Granat, can you remember

Jacob Granat, direct.

whether it was a plant consisting of a sectional tube boiler or whether it was a regular tube boiler? A A sectional boiler.

Q Is that as near as you can remember it?

A Yes.

Q Have you had experience in keeping buildings that had boilers and similar heating plants? 10

A Yes, sir.

Q For how many years? A Oh, five years.

Q Mr. Adelman said there might be damage of fifty or a hundred or more thousand dollars to a building of that kind if it was neglected, by reason of the failure to have sufficient coal on hand; is that correct? A It is not. Mr. Adelman knows that himself.

Q Well, will you tell us, please, if a person were so neglectful as not to have sufficient coal on hand in a building of that kind what would happen? A It would happen that probably a riser would burst and sometimes it would be on the ground and sometimes be in one apartment. 20

Q What would happen then? A We could turn off the steam on that line and put in a new riser, and that is all it would damage.

Q Are there in these apartments any cut-offs or stop-cocks? A No, that is in the basement. 30

Q Are there independent cut-offs on each? A Yes, each valve has a different line.

Q In your experience if such a thing would happen what damage would occur? A Very little. It is hardly worth speaking about.

Q What would happen to the boiler? A Well, I don't know; it happens sometimes that a boiler will burst, but it only bursts a section; it doesn't make the boiler worthless. 40

Jacob Granat, cross.

Q And could a section be replaced if that should happen? A At any time.

Q What would a section cost? A A section would cost about \$75.

10 Q Was there any discussion about the possibility of the boiler breaking, or about there being leakage, or anything of that kind while you were discussing this lease? A No, sir.

Q Did Mr. Granat come to the office after you telephoned for him? A You mean Mr. Lewine?

Q I mean Mr. Lewine; did you tell him after he came that you had agreed with Mr. Adelman to give him a bond? A I did not tell him anything of the kind.

20 Q Did your partner, Mr. Lewine, ask you anything concerning a bond at any time that he was there? A He did not.

Q Do you remember when Mr. Lewine came into the place? A I do.

Q Do you remember whether he was introduced to anybody? A Yes.

Q Who introduced him? A I introduced him.

Q To whom? A To Mr. Adelman Junior and Senior.

30 Q Was that the first time that Mr. Lewine had met these gentlemen? A The first time.

Cross examination by Mr. Lane.

Q Do you know how much a section of this boiler weighs? A I do not.

Q Any idea? A I haven't the slightest idea.

40 Q Do you know the freight on it from the point where it is made to the point of destination will be more than \$75? A I don't.

Jacob Granat, cross.

Q Do you know anything about it? A I do.

Q What do you know about it? A I know we had to replace a section.

Q Of this boiler? A No.

Q I am talking about this particular boiler.

A Of a boiler.

Q What kind of a boiler? A Sectional boiler. 10

Q I suppose there are hundreds of kinds of boilers. A Yes, there are.

Q I am talking about this particular boiler; do you know anything about it? A I don't, no.

Q Do you know the name of the boiler? A I do not.

Q And yet you testified it would cost only \$75 to put in a section? A I said it would cost about that much. 20

Q Do you know in order to put in a section of this boiler you would have to dismantle the whole boiler? A No, sir.

Q That you would have to pull the boiler out of a pit with a derrick to put in a section? A No.

Q You know that to be a fact? A I know this boiler is like any other sectional boiler. 30

Q Don't you know that you would have to dismantle the whole boiler in order to put in a section? A No, sir.

Q Do you know or don't you know? A I do know.

Q Do you know whether there is any shut-off on the risers? A I do.

Q How do you know? A Every house—

Q I mean on this particular system? A Every system works the same; every house. 40

Jacob Granat, cross.

Q Do you mean to say there is only one system of heating? A There might be a difference in the plumbing and style of heaters, but every riser has a shut-off from the basement.

10 Q Did you see on this particular system any shut-off on the risers? A I did not see any in particular.

Q Would you be surprised to know that there wasn't any there? A I should say I would.

Q What time did you get to the little house? A Between half-past 12 and 1.

Q What time did you leave to go over to the apartment? A What time did I leave where?

20 Q The little house. A I didn't go from the little house right to the apartment.

Q What time did you leave the house, then? A Left about 10 minutes later.

Q Well, what time would that be? A Well, that would be about one o'clock.

30 Q What time did you get to Gladdon Hall office when you started the negotiations with respect to the drawing of the lease? A The next ten minutes after that we left the small building there.

Q How long did you stay there? A I stayed there for about an hour.

Q That would bring you to two o'clock? A Yes, sir.

Q And was it then that you went and looked through the Gladdon Hall apartments? A I did not.

40 Q When? A After that I went to lunch with Mr. Silverfelt first, and when we came back Mr. Adelman, Senior, took me.

Jacob Granat, cross.

Q What time did you get out? A About three.

Q What time did you get to the office again? A About four.

Q Where did you go to lunch? A I think it was on 4th street, if I'm not mistaken.

Q Fourth street, what? A West New York. I'm not acquainted in that neighborhood. 10

Q Tell me how long it took you to get there? A Well, I think it took us about between 10 and 15 minutes to walk over there.

Q How did you go, walk? A We walked.

Q How long did you take coming back, the same length of time? A Yes.

Q You walked both ways? A Yes.

Q What was the restaurant? A Bakery and luncheon. 20

Q After your return as soon as Lewine came in you immediately introduced him to Mr. Adelman? A Yes.

Q You had been talking with the Adelmans for three or four hours as to the details of this deal? A Not continually.

Q Off and on? A Off and on.

Q And didn't you have any private conversation with Mr. Lewine as to what had gone on before he came? A Yes, I did. 30

Q Where? A When I met him at the ferry.

Q When did you meet him at the ferry? A About five o'clock.

Q Did you go down to the ferry to meet him? A I went down to the ferry to meet him.

Q And then you came back with him? A Then came back with him.

Q Where did you leave Silverfelt? A Silverfelt was in the office. 40

Jacob Granat, cross.

Q Stayed there in the office? A Yes.

Q And you left? A I left.

Q And what time did you leave? A I left about five o'clock.

Q What time did you get to the ferry? A It is about 5 or 6 minutes' walk down the street.

10 Q What time did you get back? A Around half-past five.

Q You went about 5 to the ferry and got back at half-past 5? A We got back to the house before; we took Mr. Lewine through the house.

Q How long did it take going through the house with Mr. Lewine? A We didn't go through any of the apartments.

Q You went through the building, you said? A Yes, went through the building.

20 Q Where did you go? A We walked to the roof.

Q How long did it take you to do that? A We got back to the office at half-past five.

Q How long did it take you? A About 15 minutes.

Q You went at five o'clock to the ferry to get Mr. Lewine and got back to the apartment at quarter past five? A Yes.

30 Q (By the Court.) Was that the first time you went through the apartments? A This time I am speaking of—first, I went through the apartments; he took me through, inside the apartments and showed me; and when I met Mr. Lewine I told him what was going on and I wanted to show him the building. It was a little light yet, quarter-past five, in the month of March; it was daylight yet.

40

Jacob Granat, cross.

Q And then you and he went through?

A Yes, just in the house.

Q Did you go through the apartments?

A No, sir.

Q You did not see the janitor on that occasion? A No.

Q Just entered the door and went through the hall? A Yes, sir, just entered the door and went up to the roof and back again. 10

Q After you entered the hall how did you get up? A There was a stairs leading up.

Q Was it locked? A No.

Q Did you see anything on the roof? A Nothing in particular.

Q Well, anything, whether it was "in particular" or not? A Nothing in particular. 20

Q Well, did you examine the roof? A Yes.

Q What kind of a roof was it? A Gravel roof.

Q Was it dark or light? A What?

Q Daylight? A Yes, daylight. When I went with Mr. Lewine it was about a quarter-past five.

Q Was it dark or light? A It was getting dark. 30

Q It was dusk, changing from daylight to dark? A Yes, changing from daylight to darkness; right.

Q When had you talked with Lewine next before you met him at the ferry? A The next before I met him at the ferry?

Q Yes. A I called him up at an office downtown.

Q What office? A Morrison & Schiff. 40

Sol Lewine, direct.

Q When? A That same day.

Q When? A About four o'clock.

Q From where? A From Adelman's office.

Q Did you make an appointment with him to meet you at the ferry then? A Yes, sir.

10 Q Has your company still the property which it had at the time you testified before?
A Yes, sir.

Q All of it? A All of it, yes, and more, too.

Re-direct examination by Mr. Lichtenstein.

Q How did you go to the ferry from this place? A Down the stairway.

20 Q And these buildings are right on top of the Palisades? A Yes, Right opposite the house a stairs leading to the ferry, and I went down the stairway to save time.

Q (By the Court.) What ferry? A Weehawken ferry.

30 SOL LEWINE, recalled on behalf of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Lichtenstein.

Q (By the Court.) What is your name, Lewine or Levine? A It is spelled Lewine, but it is pronounced Levine.

Q Mr. Lewine, did you ever see the gentleman that was on the stand here this morning?

40 A No, sir.

Sol Lewine, direct.

Q Did you ever in your life before see him until you saw him in court here? A No, sir.

Q I refer to Mr. Schwartzberg, sitting here, that was on the stand this morning; did you ever see him before you saw him in court this morning? A No, sir.

Q Do you recall his being in the office of Gladdon Hall building at any time while you were there on the 9th of March when this agreement was prepared? A No, sir. 10

Q Was he there at any time during the time that you were there? A No, sir; nobody was there while I was there except our company?

Q Now, who were the people that were in the office there from the time you got there? A The old man, Mr. Adelman, the young fellow, Mr. Silverfelt, Granat and I; and the old man Adelman says—he suggested that we should lock the doors because we were interrupted very many times; didn't want to be "interrupted now because it is getting late"; and he locked the cellar door. The office is in the cellar. There is an office going into the building off from the entrance. You go into the entrance and then you go into the office. 20

Q (By the Court.) What time was it when he did that? A About six o'clock. 30

Q After you got in there? A After we got in there.

Q Mr. Lewine, how did you come to this building? A Well, Mr. Granat called me up. I was at 320 Broadway at our lawyers, Morrison & Schiff. He called me and wanted me to come over to Weehawken, where he was. "What about?" I said, and he said "You know Silverfelt—" 40

Sol Lewine, direct.

Q Never mind going into details; he told you to come over? A Yes, and I says, "I don't know how to get there," and he says, "You go to the Cortlandt Street Ferry. I am nearer Cortlandt Street Ferry than the 42d Street ferry." I says, "I would like to
10 know how to get there; you had better meet me," and he says, "I will meet you at the ferry"; and I went straight down to the Cortlandt street ferry and came over and met him at the ferry.

Q Did you then go with him up to the top of the hill? A Yes, and he explained to me all about this house, what they are, and I asked him "Did you come to any agreement?"

He says, "I didn't come to any agreement because I didn't want to undertake it myself; you are more experienced than I and I wouldn't
20 give them an offer at all."

Q Did he say anything at that time about a bond? A Never mentioned anything about a bond at all.

Q When you got in the office was anything mentioned about giving a bond? A No, sir.

Q Did you ask how much a bond was to be given for, or anything to that effect? A I
30 didn't mention anything about a bond.

Q Did you, at any time while you were in the office from the time you arrived at six o'clock on until the agreement was signed, hear anything mentioned about a bond? A Not a word about it.

Q When you came with Mr. Granat to the office what was the first thing that was done, when you got inside in the office? A He introduced me to Mr. Adelman, both the old man
40 and the young fellow.

Sol Lewine, direct.

Q Was there anyone else in the room at the time you came in? A There was one fellow there making a lease for an apartment, which he rented to him for the next month.

Q That was when you got in there? A Yes, a young fellow I think with a little black moustache.

10

Q And after that man left was there anyone else in that room? A The doors were locked.

Q Did you see anybody standing there after you got in? A Not a soul except our people.

Q Did you ever hear either Mr. Adelman, Senior, or Mr. Adelman, Junior, during the course of the negotiations say that they would determine upon the amount of the bond to be given by you later at Mr. Gaede's office? A Never mentioned a word about any bond at all.

20

Q Was there anything said while the negotiations were going on while the agreement was being prepared, that certain things were to be left out of the agreement but were to be put in later? A No, sir.

Q You were present at the time Mr. Dippel was at Mr. Adelman's home, were you not? A Yes, sir.

30

Q Did Mr. Adelman, Junior, at that time say that the contract that he prepared ought to have a provision in it for a bond and if there wasn't one in it should have been in there, because it was agreed upon? A No, sir.

Q (By the Court.) Did he say that?

A They came in—

Q Did he say that, his Honor asks? A He said that his father would insist that a bond

40

Sol Lewine, direct.

should be given; otherwise he wouldn't give the house.

Q Did he say that a provision with reference to a bond should be in the contract and if it was not in the contract it should have been in there? A No, sir.

10

Q (By the Court.) Did he say anything to the effect that a bond had been agreed upon? A No, sir.

Q When you got to the office of the building did you know from your partner, Mr. Granat, the extent of the negotiations that had gone on between him and Mr. Adelman up to that time? A Yes, sir.

20

Q You say you went through the building with him before you went to the office, I understand? A Yes, sir.

30

Q Did you go through any of the apartments? A No, we went in one entrance of the hall of the building and went down the other entrance; went in one corner and then up in the middle apartment house and then went down the other side to the office, and I even passed the remark that the house was a brand new house and yet they had the dumb-waiters in the hall instead of in the apartments.

Q You didn't consider that to be a modern method of constructing a house of that kind? A Exactly, because the houses we have have a dumb-waiter in the kitchen of every apartment.

40

Q (By the Court.) Leading down into the cellar? A No, in the hall on each floor.

Sol Lewine, direct.

Q I say, does the dumb-waiter communicate with the cellar? A No, sir.

Q For the purpose of bringing up coal?
A No, taking down refuse and for taking up provisions to the tenants.

Q So that the tenants had to come out into the hall to get it? A Yes. 10

Q That is the method pursued in modern buildings, to have the dumb-waiter off from the kitchen instead of in the hall, and you thought this being a new building was not up to modern requirements? A That is what I thought.

Q (By the Court.) Was this apartment house arranged with kitchens? A Yes, sir.

Q Cooking only by gas? A Only by gas. 20

Q Not by coal? A No.

Q And steam-heated? A Yes.

Q Mr. Lane asked the question whether the door leading to the house was not locked; you know, as a matter of fact, the law provides against locking? A Yes, sir; you mustn't lock the door; it must be open on the roof. 30

Q While this agreement was being prepared by young Adelman, he says that he wrote into that agreement a great many clauses out of his own head without consultation with you or with his father; is that correct? A No, sir.

Q Were there any clauses put into this agreement which were not discussed between all of you before he put them in? A No, sir; the only one was the last one which I didn't know what it was. 40

Sol Lewine, direct.

Q What is that? A That other things shall be agreed upon; and I asked him "what is this?"

Q You have explained that already in your testimony. A Otherwise everything was discussed before it was typewritten—discussed
10 with the old man, and he wouldn't give anything until the old man knew what was going in.

Q He says after the agreement was all prepared it was signed by his father without his father reading it over; is that true? A No, sir.

Q The old gentleman says that he signed it without reading it over; that he simply asked the son if it was all right; is that correct? A No, sir.

20 Q And he signed his name to it? A No, sir. Harry's desk stood right at the corner of the building, and there was a chair near the electric lights and he sat in the chair and took the contract and he read it aloud so that everybody heard it.

Q Who did that? A The old man after it was finished.

30 Q Do you recall when the young man was discussing the insertion of a clause that would give his father the right to use his judgment with reference to certain character of work and that his judgment should be conclusive and binding? A Yes, sir.

40 Q Do you remember some discussion about that? A Yes, sir; I do: I wanted to put in that people from the outside shall judge that building after we are going to leave, and he says, "I am not so bad as you make me; I will be reasonable; don't worry."

Sol Lewine, cross.

Q Do you recall the provision that he wanted to put in that the father should be the sole judge as to the repairs to the building while you held it? A No, not in my time; he didn't speak of that to me.

Cross examination by Mr. Lane.

10

Q What time did you get to the building after you came from the ferry? A It was about 20 minutes past 5.

Q Where did you go first? A We went right in the hall, and went down the hall.

Q Which hall? A Of the apartment house, the one on the left hand from the ferry, as you come from the ferry on the corner.

Q There are two entrances? A There is three entrances. We went in on the left hand building on the corner and went to the roof, then to the center of the building, and down the centre of the building. 20

Q Where did you come out? A The center of the building.

Q Whom did you see during that excursion? A I didn't see anybody excepting Mr. Granat.

Q From the time you got in the building until you went out of the building you didn't see anybody? A No. 30

Q Simply walked in and walked out? A Walked up the stairs, down the other stairs of the building.

Q Was the door open? A Yes, sir; it was open; we walked right in.

Q Was it shut or standing open? A No, it was shut.

Q Don't you know that those doors have spring locks that lock them as they close? A The door wasn't locked when we walked in. 40

Solomon Silverfelt, direct.

Q You think that door was subsequently opened, then? A I don't know how it was, but we walked right in.

Q The door was closed, though? A I couldn't tell you, Mr. Lane; we just pushed the door open and walked right in.

10 Q But it was closed? A Yes, certainly.

Q And you think the lock didn't work? A I don't know; you know they have that kind of lock that you can leave it unlocked.

Q You think it was that kind of lock? A You will have to excuse me; I can't answer about this. Those locks have two buttons, and when you push one button the door is locked, and when you push the other button the door is open.

20 Q What number were you at when you were called up? A Franklin 1268.

Q Whose store is it? A It is not a store; it is a lawyer's office—Morrison & Schiff's office.

SOLOMON SILVERFELT, recalled on behalf of the complainant, testified as follows:

30 *Direct examination* by Mr. Lichtenstein.

Q Mr. Silverfelt, you are the gentleman that brought these people together and introduced Mr. Granat to Mr. Adelman? A Yes, sir.

Q Do you remember going with Mr. Granat and Mr. Adelman, Sr., from the little building to the office? A In the first place I tried the office, and to the best of my memory I think Mr. Cohen was there, if I remember right, and we went over there to the little building and Harry

40

Solomon Silverfelt, direct.

Adelman was there. He was working; he was busy, and another man was there, and they were laying out something in the living room.

Q What were they laying out? A There is on the right-hand side a fireplace, and they had all kinds of brick, and Harry Adelman was busy showing the man how he shall put it up. 10

Q Was he in street clothes or did he have overalls on? A Had overalls on.

Q Are you sure that that was the time that you saw him there laying out this fireplace, when you were there with Mr. Granat the first time? A Yes, sir.

Q Now, while you were in that little building where Adelman, Jr., was, was this man Mr. Cohen there? A No.

Q Was he with you at all in the building? 20
A No.

Q I mean the little building? A No, sir.

Q Was he there in that little building during any part of any discussion that took place?

A No.

Q In fact, did you see him or was he in that building at any time while you and Mr. Granat and Mr. Adelman, Sr., were there? A No.

Q Where was it that he was first in the presence of yourself, and Mr. Granat, and Mr. Adelman, Sr.? A In the office. In the Gladdon Hall building they have an office. 30

Q While you were in the little building where Harry Adelman was was there any writing done on the wall on any paper? A No. Harry Adelman was busy; he couldn't do anything. He was busy with the other men.

Q When did you first start to talk about the terms of the lease, in the little building or the 40

Solomon Silverfelt, direct.

old building, that is, in the office building? A
In the office building.

10 Q (By the Court.) You say in the old
building, office building— A In the Glad-
don Hall building they have a little base-
ment office there.

Q Did Mr. Adelman, Senior, tell young Adelman
in the little new building that they had
agreed upon the terms but that there was a
bond to be given? A No, sir.

Q Was a bond of any kind mentioned in
that little building? A No, sir.

20 Q Was a bond mentioned at any time by
anyone in the office? A No, not until about
five or six days afterwards, when I met Harry
Adelman and asked him if the contract was
signed.

Q Was that the first time you heard about
a bond? A The first time I heard anything
about a bond.

Q You saw this gentleman, Mr. Schwartz-
berg, in court here this morning? A Yes, I
did.

30 Q Did you ever see him before? A No,
sir (witness laughing).

Q Where do you live? A I live in Wood-
cliff.

40 Q And you have been a real estate operator
around that part of the country how long? A
In that section I have concentrated my territory
between the Hackensack Plank Road, Town of
Union, up to 35th street northward; and then
I have operated east of Bergenline avenue once
in a while.

Solomon Silverfelt, direct.

Q You concentrate your efforts within that locality? A Yes, sir.

Q Did you ever see this gentleman here before seeing him in court today? A No, I did not.

Q Did you ever see him in the office of Glad-
don Hall? A No, I did not. 10

Q Did you see him in that building at any time during the course of the negotiations? A No.

Q For this lease? A No, sir.

Q Did you see any man sitting in that office as long as five or ten minutes, waiting there while you and the others were talking about this lease? A The only man sitting there was Mr. Cohen, and Mr. Kiddell, a plumber in West New York; and Harry Adelman said, "We don't want to negotiate anything while strangers are here;" that they didn't want strangers to know what was going on—what we were doing there. 20

Q Were there any others in there during that period? A Off and on, and one man came in and Harry Adelman told me, if I'm not mistaken, they had a conversation over the telephone with Samuel Smiley, a lawyer; I think he was one of their tenants. 30

Q Don't go into detail. A But one man came in, and I think they told me that he is employed in some bank, and they rented an apartment, and he gave Harry Adelman a check and Harry gave him a receipt.

Q Now, do you remember when Mr. Lewine came there? A Yes, sir; I do. Mr. Granat went down to the ferry for him and then he came in there and was negotiating the deal. 40

Solomon Silverfelt, direct.

Q Do you know how he came there? A I say, Mr. Granat says "How shall I get down to the ferry the quickest way," and they told him down the steps. You can see the ferry from there. And he went down there for him and they came back together.

10 Q (By the Court.) Is Gladdon Hall on the Boulevard? A On the Boulevard.

Q (By the Court, continued.) On which side of the Boulevard? A On the west side of the Boulevard.

Q You cross the Boulevard to get to the steps to go down? A Yes.

Q There are no buildings in front of this building? A No, sir.

20 Q And Gladdon Hall overlooks the buildings between it and the river? A Yes.

Q You say Mr. Lewine came there with Mr. Granat? A Yes.

Q And when he came into the office with Mr. Granat was this Mr. Schwartzberg in the office? A No, sir.

Q Do you recall anyone being there while you were there? A No, sir.

30 Q Did you see any man coming in? A No, sir.

Q Did you see this man there when Mr. Granat came in with Mr. Lewine? A No, he didn't come while we were there.

Q He says that Mr. Lewine came in there when you and Granat and Mr. Lewine were talking among yourselves; is that correct? A No, sir.

40 Q Now, after Mr. Lewine came in there was there any talk in the office about a bond at any time? A No.

Solomon Silverfelt, direct.

The Court: I would like to see the agreement that was offered in evidence at the start.

(A paper is handed to the Court.)

Q Mr. Adelman, Junior, says that he inserted into this contract a great many clauses out of his own head without discussion with these gentlemen and his father; is that correct? A No. (The witness smiles.) The old man—I know the old man well; I done some business with him; got several agreements, you know, for commission. The old man will not sign any paper without you must talk loud to him, and after you are all through he will take it in his hand and he will look it all over. He wouldn't even trust himself. He wouldn't sign any paper—a contract like that—without reading it over. 10 20

Q And you know that he does read? A Of course; sure.

Q How many years have you known him? A I have known him by sight about five or six years.

Q I mean in business. A In business about two years. 30

Q The young man says that after he got through typewriting the agreement he didn't read it over to you or his father, and the father says that he didn't read it over, but just signed his name; is that correct? A It took three hours to make that contract and every clause was read over after he completed it. It took three hours. We went home and were starved out, every one of us, at nine o'clock. It took from 6 to a little after 9. 40

Solomon Silverfelt, direct.

Q During that time were there discussions as to its terms? A Everything was discussed, over and over again.

Q Mr. Granat here says that you went to lunch around noontime; do you recall that? A Yes, sir.

10 Q Where did you go to lunch? A The nearest place was on 4th street, near Palisade avenue. There's a bakery there, and I said to Granat, "That's the best place I can take you; it will take about 10 or 12 minutes, and you can't get anything around here," and we went down there. We couldn't get down there quicker than that, as we had to walk there and back.

Q If you had to take a car you would have to go to the Boulevard? A It would have been
20 just as far that way.

Q In other words, it was quicker to walk than to go in a car? A Yes.

Q Did you go through this Gladdon Hall building with Mr. Adelman and Mr. Granat? A Yes, I did.

Q Was this man Cohen with you when you went through the building? A He was not.

30 Q Did he go through any part of the building with Mr. Adelman and Mr. Granat? A He did not.

Q How many apartments did you go through? A To the best of my memory we must have seen about—one, two—about four or five, because, if I remember correctly when we went into one apartment on one of the floors Mr. Granat wanted to see both the front and the back. That is to the best of my memory,
40 between four and five apartments.

Solomon Silverfelt, direct.

Q And who was with you when you were going through these apartments? A Mr. Adelman.

Q Senior or Junior? A Senior, with Mr. Granat and myself.

Q Was Mr. Cohen with you during this visit to the house inspecting the apartments? 10

A Oh, no.

Q Outside of going through the apartments did you go anywhere else in that building? A We went down to see the boilers. Mr. Granat wanted to see the steam plant.

Q Did he go anywhere else? A Walked out on the roof I think, too, if I am not mistaken.

Q You are quite clear on that, are you? A I am not positive. 20

Q After you got through going through the building and came to the office was Mr. Cohen there? A Yes, he was.

Q How long did he stay in that office, if you know? A Mr. Cohen must have been there until four or half-past four; I don't know just exactly, but I'm positive when Mr. Lewine came back Mr. Cohen was not there.

Q At the time that Mr. Cohen was in that office did you hear any discussion concerning a bond on the part of anybody? A No, sir. 30

Q As a matter of fact, Mr. Silverfelt, was there any discussion at any time, from the time you first introduced Mr. Granat to Mr. Adelman until the contract was signed, about a bond? A I did not hear it.

Q You were present at the house with Mr. Adelman at the time Mr. Dippel was there, were you? A Yes, I was up there. 40

Solomon Silverfelt, cross.

Q Mr. Adelman, Junior, says that on that occasion he said that the contract did provide for a bond and if it didn't provide for a bond it should have been in there and it was forgotten; did he say anything like that? A No, he did not.

10 Q Mr. Adelman, Junior, says that he met you on one occasion on the street, and that he told you that a bond was talked about and should have been in the contract; is that correct? A No, sir.

Q And that on one occasion when he met you on the street you told him that a bond was provided for and should have been given, but the people couldn't get a bond? A I did not.

20 Q (By the Court.) Did you ever say anything of that sort to him? A No. I knew that they couldn't get a bond like that.

Cross examination by Mr. Lane.

Q Would you recognize everybody who came into that office during the afternoon and went out again? A Pretty near.

30 Q Would you, I say? A I would.

Q There were many interruptions, weren't there? A Yes.

Q A great many? A No; off and on people came in there.

Q There was a plumber there? A A plumber was there.

Q And a man that had something to do with the bricks? A Yes, sir.

40 Q There was a tenant there? A Tenant, yes.

Solomon Silverfelt, cross.

Q Do you know the tenant's name? A No. There was one tenant, a lady, and she called for Mr. Harry Adelman and he got up and spoke to her. I don't know; I wasn't interested in that at all.

Q And there was another tenant there? A Another one was there that rented an apartment. 10

Q And what took place with respect to that one? A He got a check for \$75, and he looked the party up and the man said he was working in a New York bank.

Q (By the Court.) During those interruptions did the negotiations regarding Gladdon Hall go on? A When they came in Mr. Adelman told me distinctly that he didn't want people to know what we were talking about, and as soon as a stranger came in they stopped talking or continuing their negotiations about the lease. 20

Q Is that all that took place with respect to the tenant that rented the apartment? A Well, off and on people came in there.

Q Is that all that took place with respect to that particular tenant? A They took a check from him and they were supposed to make up a lease. 30

Q Well, was that all? A As far as I remember. I wasn't interested in that.

Q Nothing unusual about it, was there? A I think I told Mr. Granat, "Look here, he said the apartment is \$70 and he used to get \$55."

Q Do you know that or are you thinking it? A He said it. 40

Solomon Silverfelt, cross.

Q Now, were there any other tenants there?
A Off and on. I didn't take any notice of them.

Q But you would recognize each one? A If I saw the face I would recognize him.

Q And what time did you get to the little house? A I remember when I went over with Mr. Granat the working men—some of them—were sitting outside and having their lunch.

Q What time was it? A It must have been between 12 and 1.

Q It was between 12 and 1 when you got to the little house? A Yes, sir.

Q Then where did you go? A We went with Mr. Adelman right in the living room.

Q How long did you stay there? A Not long; only about 5 or 10 minutes.

Q Then where did you go? A Back to the office.

Q What time did you get back to the office? A It must have been about one o'clock.

Q How long did you stay there? A Well, we stayed there until about—(witness paused) Well, the whole thing took until about 2 o'clock. We went to lunch around 2 o'clock.

Q You went to lunch about 2? A About 2.

Q Is that right? A Around that time.

Q And what time did you get back? A Well, it must have taken us about three-quarters of an hour.

Q About 3 o'clock you got back, then? A Yes.

Q What time did you go to look at the apartments? A I think when we came back we went and looked at the apartments.

Q Then you interrupted your negotiations long enough for you to get lunch and look at

Solomon Silverfelt, cross.

the apartments, didn't you? A To the best of my memory I think that we went through the apartment after lunch.

Q You started your negotiations in the office, and then you were interrupted by going and looking at the apartments, and then you went out to lunch and came back around 3 o'clock? A I say we went to look at the apartments after we got back from lunch. 10

Q All right. You interrupted the course of your negotiations to go out to lunch? A Yes, sir.

Q Why didn't you tell us, on September 29th, that you started the negotiations at 12 o'clock and that these negotiations went on without interruption until nine o'clock? A I couldn't say that, because we were out to lunch and also people came in there. How could we keep on talking from 12 o'clock till nine? 20

Q I don't know, but that is what you testified on September 29th; and the Court even asked you if you didn't stop for supper and you said you did not. A We had to stop if we went to lunch.

Mr. Lichtenstein: There wasn't a word about lunch until you brought it in today. 30

Q (By the Court.) Do I understand you to say, Mr. Silverfelt, there was a pause in the proceeding and you availed yourselves of that opportunity to go to lunch? A Yes, sir.

Q What was the occasion of the pause? A The occasion I remember well. A man came in there with bricks and he showed them to Mr. Adelman, and in the meantime we went out to lunch. 40

Solomon Silverfelt, cross.

Q You say a man came in with bricks?

A Yes, some plumbers with samples of all kinds of bricks and showed them to him.

Q Was this in the office? A In the office in Gladdon Hall.

10 Q Where was the little house that is so often referred to? A This is the north-west corner of the Boulevard and Liberty Place, and Gladdon Hall is on the south-west corner of Liberty Place and the Boulevard.

Q How far is that from the roadway down where the trolley cars go to the ferry?

A Well, it would be about 8 or 10 blocks westerly. We had to walk about four blocks west.

20 Q I want to be sure that you understand me. The trolley car passes from the Boulevard down an inclined plane and over a bridge into the ferry house, making a long turn? A Yes.

Q Now keep this point in your mind, just where the trolley cars meet the Boulevard and runs down to the ferry. A We have to turn to the right to go down to the ferry.

30 Q That is the very thing I want you to keep in mind, the point where the road runs down on which the trolley cars go from the Boulevard to the ferry; there is a long slant there. A That is by Fourth street.

Q Precisely. Now keep in your mind this point: Up at the Boulevard where that long slant begins, is Gladdon Hall north or south of that point where the incline begins?

40 A It is south.

Solomon Silverfelt, cross.

Q Ten blocks? A It will be between 8 and 10 blocks.

Q And is there a staircase down from about where Gladdon Hall is? A Yes, but you see you cut through there in going down to the ferry.

Q Now, what did you mean when you spoke of four blocks? A Four blocks where we went to lunch. It is four blocks from the Boulevard down to the bakery, west of the Boulevard; but in going down to the ferry he doesn't need to go to Fourth street at all. 10

Q You have answered my question. This bakery is about 4 blocks west of the Boulevard? A Yes.

Q Whereabouts? A On Fourth street. 20

Q How far is Fourth street from where the cars go down the inclined plane, the point I spoke of a little while ago where the trolley car— A About four blocks.

Q And it took you 12 minutes? A It takes about 10 or 12 minutes to get there.

Q (Cross examination resumed.) You testified on September 29th, "We were in the office of Mr. Adelman from about half-past 12 until 9 o'clock. Mr. Granat was there, Mr. Adelman, Junior, and Senior, and myself, and another man came in and went out—I think a man by the name of Cohen. I think he was there until about 4 o'clock, and he left before the agreement was closed"; and you further testified in your examination by the Court: 30

Q You began about half-past 12, and did you negotiate continuously? 40

Solomon Silverfelt, cross.

And you answered:

A Yes, except there were interruptions when people came in.

Q Until when? A The contract was signed about 9 o'clock.

10 Q Didn't stop for supper? A No, we did not.

And further, on page 96, you testified: to the same effect, that you started at half-past twelve and kept continuously at it until the contract was signed. Why didn't you at that time say you stopped for lunch? A To the best of my memory, I think I am positive I mentioned lunch, because we went out to lunch.

20 Q You think you mentioned going to lunch? A I don't know, if it isn't there. I know I am positive we went to lunch.

Mr. Lichtenstein: Your Honor understands that we are proceeding upon the theory that we are not going into the question of an accounting until your Honor determines the main issue.

30 The Court: Oh, yes; the issue will be decided first as to the lease. Is this the case?

Mr. Lane: I want to recall Mr. Adelman for a minute.

A. Harry Adelman, direct.

DEFENDANT'S REBUTTAL.

A. HARRY ADELMAN, recalled on behalf of the defendant, in rebuttal, testified as follows:

Direct examination by Mr. Lane.

Q Mr. Adelman, are you familiar with the heating system in this building? A Yes, sir. 10

Q Are there any cut-offs on the risers? A There are none.

Q Do you know what kind of boilers you have there? A Yes, sir.

Q Do you know how many pounds each section weighs? A Each section in that boiler weighs about 900 to 1,000 pounds.

Q Do you know whether you can put in a section without ripping the whole boiler out? A No, sir; the boiler is so assembled that in order to remove one section you have to rip off the asbestos from the boiler and remove a long bolt tying the whole boiler together. 20

Q Are you familiar with the locks on the front doors of these buildings? A Yes, sir.

Q What kind are they? A Snap locks. The button originally on the locks we removed, so that they would not be permitted to be left open. 30

Q The locks are there now, are they? A Yes, sir.

Q How do you get from the hall to the roof? A There are two ways: The first is from the front entrance of the building by walking up the stairs and landing on the roof from the bulk-head; the second way is through the back cellar to the air-shaft and into the hall that leads to the roof. 40

A. Harry Adelman, direct.

Q During the course of these negotiations did Mr. Granat leave to get Mr. Lewine? A No, sir.

Q Did he from your office telephone Mr. Lewine? A He did.

Q Can you tell us about what time that was?
 10 A I can't give you the exact hour. It seems to me, however, that it would be around about four o'clock.

Q Do you know how far it is from Gladdon Hall to this bakery that has been spoken of? A About 14 or 15 blocks.

Q Do you know how long it would take to go from Gladdon Hall to the ferry? A I have walked it four or five times a week to the ferry and it takes me from 15 to 20 minutes, leaving our house which is directly across the street
 20 from Gladdon Hall to the concrete steps, and when I run down the stairs I can save three minutes.

Q (By the Court.) Across what street?

A Across the Boulevard.

Q No, you said your house. A Glad-
 don Hall is the northeast corner of the Bou-
 30 levard and Liberty Place, and our house is the southwest corner.

Q Is that what has been called "the little house?" A Yes, it has been spoken of as a little house and yet it is built for two families.

Mr. Lane: The house is built on what appears to be a one-family house. I suppose in comparison with this big apartment house it might be considered a small house.

The Witness: It is approximately about
 40 37 feet front by 50 feet deep.

A. Harry Adelman, cross.

Q Do you remember whether Silverfelt and Granat left for lunch? A Oh, no, they never left for lunch.

The Court: What is the significance of that?

Mr. Lane: I don't know that there is any significance at all to it. It doesn't make a particle of difference in the case whether they went to lunch or not; but they say they went to lunch when in fact they didn't. 10

The Court: It merely bears upon the accuracy of their recollection?

Mr. Lane: Well, at least that.

Cross examination by Mr. Lichtenstein.

Q How do you know that they didn't go to lunch? A Because they were in the office. 20

Q You weren't in the office until four o'clock? A Who said I wasn't in the office until four o'clock? I said I reached there between half-past three and four o'clock.

Q All right. How did you know that they didn't go to lunch at 2 o'clock? A I understood Mr. Lane to say— What was that you asked me, Mr. Lane? 30

Mr. Lane: My question was whether there was any talk of their having left for lunch.

A No, sir; I didn't intend to intimate that I knew whether they went to lunch up to four o'clock.

Q Another question: You don't mean to say you haven't got a valve that will shut off your boiler from the risers? A No, sir. 40

A. Harry Adelman, cross.

Q Absolutely none? A None.

Q What sort of a system have you got there?

A The Thatcher system.

Q And with that system you say if anything happens to any part of the boiler you have no way of cutting off the house from the boiler? A No, sir.

10 Q Not even from the boiler itself? A Absolutely none. I will invite you at any time to inspect it.

The Court: If these physical facts are important I would suggest that counsel have some impartial man go there and make an examination. This is a very unsatisfactory way to leave the evidence in.

20 Mr. Lichtenstein: I don't consider it very important.

The Court: Of course, the argument will be that this was a peculiar arrangement and susceptible to injury and destruction by explosion and so forth, and therefore it was not an unreasonable thing to require a bond, and that a prudent landlord would not make an agreement like this.

30 Mr. Lane: The testimony of Mr. Granat is that all buildings that he is acquainted with have cut-offs. Mr. Adelman testifies that this system in Gladdon Hall has no cut-offs. The physical facts are up there if anybody wishes to send an expert there. They are welcome to do that at any time they please.

40 The Court: Well, if it is desired to make that matter clear I will give them an opportunity. It is very easy to do it—very easy to get an impartial steam-fitter to go there and make an examination and report.

A. Harry Adelman, cross.

Well, the case then is closed. How much time do counsel want for the argument of this case?

Mr. Lichtenstein: Your Honor said the last time it is purely a fact case, but Mr. Lane doesn't think so.

The Court: Well, how much time do counsel want? How much time must I find open for you? I can give you two hours on February 28, here in Paterson. I have a case set for trial that day at 10 o'clock, but I will put this argument ahead of that, and give counsel three hours all together. 10

Mr. Lichtenstein: That will be satisfactory to me.

Mr. Lane: It will be satisfactory to me.

CASE CLOSED.

20

(Arguments to be had in Paterson on Tuesday, February 28, 1922, at 10 o'clock in the forenoon, it being understood that both arguments will be completed by 1 o'clock P. M.)

30

40

*Complainant's Exhibits.***EXHIBIT C. 1.**

Copy annexed to bill of complaint as Exhibit
"A."

10

EXHIBIT C. 2.

Letter dated March 19, 1920, addressed in registered envelope to Mr. Samuel M. Adelman, 1933 Bergenwood Road, North Bergen, N. J., reading as follows:

"WEST HEIGHTS REALTY CORP.
441 West 151st Street,
New York City.

20

March 19th, 1920.

Mr. Samuel M. Adelman,
1933 Bergenwood Road,
North Bergen, N. J.
847 Boulevard East,
Weehawken, N. J.

Dear Sir:

30

We have communicated with your attorneys Messrs. Gaede & Gaede, regarding the preparation and execution of the lease under our agreement for premises known as Gladdon Hall Apartments, A.B.C., located at No. 847 Boulevard, East, Weehawken, N. J., and were advised by Mr. Henry J. Gaede that it was impossible for him to attend to this matter.

40

We, therefore, hereby notify you that we are ready and willing to comply with all the terms and conditions under the said agreement on our part to be performed and accept the written lease outlined therein, upon your notification to

Complainant's Exhibits.

us at the above address by registered mail of the day and hour to appear at the office of Gaede & Gaede on or before March 25th, 1920.

Very truly yours,

WEST HEIGHTS REALTY CORP.

BY SOL LEWINE 10
PRESIDENT

(SEAL OF WEST HEIGHTS REALTY CO.

ATTACHED)
REGISTERED.

20

30

40

Complainant's Exhibits.

EXHIBIT C. 3.

	1	Rent	B		gr. fl. 4s
		A-5 55	1-A 5 47.50		
		B-6 62	B 52	1 A	40
		C-6 56	C 50		40
10		D-4 40	D 50		42
		—	2-A 50	Jan. 1-D	40
		2A-5 55	B 50	2-A	40
		B-5 57.50	55		40
		C-3 33			
		C-4 44	65		57
		E-4 40	50		55
		—	50	3-A	40
		3A-5 55	55		40
		5 57.50	55		
20		3 33	4-A 50		57
		4 44	50		55
		4 40	55	4-A	40
			55		40
		4A-5 55	5-A 47.50		57
		5 57.50	47.50		55
		3 33	52.50	5-A	40
		4 44	52.50		40
			<hr/>		
		4 40	1044.50		52.50
30			1128		
			923		52.50
			<hr/>		
		5A-5 57.50	3090.50		923.
			3090.50		
		5 52.50	30905.00		
		3 33	<hr/>		
		4 44	37086.00		
		4 40			
		<hr/>			
40		1128			

*Complainant's Exhibits.***EXHIBIT C. 4.**

Duplicate of Exhibit C. 1 printed as Exhibit
"A" annexed to the bill of complaint.

EXHIBIT C. 5.

10

Reading as follows:

New York, Mar 23 1920 No. 595
IRVING NATIONAL BANK

Pay to the

order of S. M. ADELMAN, \$3625.00/100
Thirty six hundred twenty five 00/100....

dollars through New York Clearing House

WEST HEIGHTS REALTY CORP.

A. J. GRANAT

TREAS." 20

SOL LEWINE

PRES

ENDORSED ACROSS FACE OF CHECK

"ACCEPTED PAYABLE

THROUGH N. Y. CLEARING HOUSE

2457 Mar 23 1920

IRVING NATIONAL BANK

NEW YORK" 30

ENDORSEMENT ON BACK OF CHECK

"WEST HEIGHTS REALTY CORP."

WEST HEIGHTS REALTY CORP.

EXHIBIT C. 6.

Photograph by consent not reproduced.

40

*Complainant's Exhibits.***EXHIBIT C. 7.**

S. M. ADELMAN,
 Realty Promoter.
 847-849 Boulevard East,
 WEEHAWKEN
 NEW JERSEY.

10

March 9, 1920.

In consideration of Mr. Silberfeld's services in securing a lessee for apartment house at N.W. corner Liberty Place and Boulevard East, Weehawken, I agree to pay to him upon the signing of the lease the sum of Fifteen Hundred Fifty-six Dollars in the following manner: At the conclusion of the signing of the lease between S. M. Adelman and West Heights Realty Corp. the sum of One Thousand Dollars and a four (4) promissory notes for \$139.00 each for one month each.

20

(Signed) S. M. ADELMAN.

EXHIBIT C. 8.

30 I hereby designate Mr. Silberfeld as an agent and broker to sell or lease for me or procure a purchaser for my premises known as Glad-don Hall, Weehawken, N. J., and in the event that he sells or leases the same or procures a purchaser therefor, I agree to pay him in consideration of his services 2½% commission on lease or purchase price upon the execution of the contract of sale or lease. This authorization as an agent is not to entitle Mr. Silberfeld to commis-
40 sion if the property is sold by another broker.

Defendant's Exhibits.

It is understood that any sale of said premises at any time, to any person to whom the same shall first be offered by Mr. Silberfeld, shall entitle him to the compensation herein mentioned.

(Signed) S. M. ADELMAN.

“ A. HARRY ADELMAN.

10

EXHIBIT D. 1.

Reading as follows:

No. 37 NEW YORK March 9th, 1920

THE BANK OF WASHINGTON HEIGHTS.

Amsterdam Avenue and 155th Street.

PAYABLE THROUGH

NEW YORK CLEAR- 20

ING HOUSE.

PAY TO THE ORDER OF S. M. ADELMAN,
Five hundred 00/100 Dollars.

\$500.00 Sol Lewine.

SOL LEWIN

REAL ESTATE AND INSURANCE

441 West 151st Street.

30

40

*Defendant's Exhibits.***EXHIBIT D. 2.**

Bank book Irving National Bank, New York,
in account with West Heights Realty Corp.

	1919			
	10/11 M	.....5000	2/ 3 H	..... 712 10
10	14 M	.....1165 00	5 L	..... 705 35
	11/ 3 S	..... 203 50	2/10 H	..... 678 55
	5 H	..... 867 10	16 L	..... 691 10
	10 L	..... 645 30	17 L	..... 100
	17 L	..... 994 69	18 L	..... 146
	12/ 2 L	..... 770 60	24 L	.....3369 30
	5 H	..... 585 60	3/ 3 L	.....2210 90
	9 S	..... 407 15	3/ 2 L	.....1999 90
	11 L	..... 379 45	1 L	..... 185
	29 M	..... 410 35	4 L	..... 358 11
20	1/5/20	.....1392 50	8 J	..... 828 25
	8 M	..... 680 65	11 M	..... 253 80
	16 L	..... 141 60	12 H	..... 58
	19 L	..... 356 25	16 H	..... 219
	27 L	.....1632 60		
	3/22 P	..... 265	18 Z	..... 336
	23 M	.....2136	9/ 7 M	..... 882 50
	24 M	..... 500	11 M	..... 432
	25 M	.....3625		
30	26 H	.....3625		
	2 M	..... 315 75		
	5 F	..... 409		
	12 F	..... 189		
	2 F	..... 464 25		
	6 F	..... 173 75		
	20 M	..... 121		
	17 M	..... 179 50		
	5/ 4 M	..... 801 83		
40	5/10 H	..... 361 69		

Defendant's Exhibits.

6/18 R	.....	311
7/ 6 H	.....	962 25
19 H	.....	245
8/ 3 Z	.....	965 50

EXHIBIT D. 3.

10

Before reverting fire escapes to be repainted by party of the 2 part.

Leave screens, awnings

Pty 1st part to repair roof replace rough capping on parapet walls and paint fire escapes as soon as weather permits.

All buildings to be reverted to pty of 1st part in same cond. as received.

Bond to be given by 2 pty to cover full amount of lease in add to security. 20

Coal, water gas and all janitor repairs.

(on the back)

Failure to pay rent on day agreed upon shall const forfeiture.

Security.

30

EXHIBIT D. 4.

Bank book of the Colonial Bank.

40

Defendant's Exhibits.

EXHIBIT D. 5.

A. Harry Adelman,
1933 Bergenwood Road,
North Bergen, N. J.
Phone Union 3521

10

S. M. ADELMAN
Realty Promoter
847-849 Boulevard East,
Weehawken, N. J.
Phone Union 4810

March 9, 1920.

20

In consideration of Mr. Silberfeld's services in securing a lessee for apartment house at N. W. corner Liberty Place and Boulevard East, Weehawken, I agree to pay to him upon the signing of the lease the sum of Fifteen Hundred Fifty six Dollars in the following manner. At the conclusion of the signing of the lease between S. M. Adelman and West Heights Realty Corp. the sum of One Thousand Dollars and a four (4) promissory notes for 139.00/100 each for one month each.

30

40

*Memorandum of Conclusions.***MEMORANDUM OF CONCLUSIONS.**

September 26, 1923.

Not to be filed of printed.

Vendee's suit for specific performance of a contract to lease a large apartment house in Jersey City called Haddon Hall. 10

Mr. Julius Lichtenstein for complainant.

Mr. Merritt Lane for defendant.

STEVENSON, Advisory Master.

This suit is brought by the complainant, the West Heights Realty Corporation, to enforce a contract in writing made on the 9th day of March, 1920. Both sides admit that the date stated at the commencement of the contract (1919) is a mistake, and that in fact the contract was made on March 9th, 1920. By this contract the defendant agreed to make a lease to the complainant of the property above mentioned, for the term of three years to commence on the first day of April, 1920. 20

The contract was drawn by the defendant's son, a young man who finished a few weeks later a four years course of legal instruction in a well-known law school, and who was admitted to practice law in New Jersey in December, 1920. This young man was sworn as a witness and examined and cross examined at length, and proved himself to be an adroit, astute young lawyer, who, while he was receiving his legal education, had considerable experience in contracts pertaining to real estate in which his father, the defendant, was interested. The defendant, it may be noted at this point, was a large holder of real estate and was engaged 30 40

Memorandum of Conclusions.

in constructing and managing large apartment houses in Jersey City.

10 The stenographer's record of the testimony and the proceeding before me is contained in 388 typewritten pages. There is a great deal of contradictory evidence. I shall not undertake to minutely discuss this mass of evidence and point out in detail all its peculiar features. For present purposes it will be sufficient to state the conclusions which I have reached with such explanation and comment as may occur to me. In case of an appeal the printed appeal book may be furnished to me and thereupon this memorandum, with or without revision, will be filed and the same can be printed separately for the use of Appellate Court.

20 On March 9th, 1920, the complainant, represented by its president, Mr. Sol Lewine, and its secretary, Mr. Jacob Granat, had a meeting with the defendant, Mr. Adelman, for the negotiation of a contract for a lease of the premises in question. Mr. Solomon Silverfelt, the real estate agent who had brought the parties together, and the defendant's son, the young law student above referred to, were also present during a part if not practically the whole of the negotiation.

30 Some other persons from time to time came into the room where the negotiation was going on, and are alleged to have casually heard something of what the parties were saying, in which they, the outsiders, had no interest.

40 The negotiation lasted for about nine hours and resulted at about nine o'clock at night in the execution of this formal written contract, drawn and typewritten by Mr. Adelman, Jr. According to legal form and precedents this contract was technically complete. It begins in the

Memorandum of Conclusions.

usual manner stating the parties and their residences, and sets forth in legal language the agreement of the parties.

The complainant had no counsel. Mr. Adelman, Jr., the young law student, inserted in the contract exceedingly strong provisions in favor of the lessor, his father, making him in respect to the most important matters, such as repairs, default, etc., a judge in his own cause to the extent which the law permits in such cases. 10

The contract occupies two and one-half pages of typewriting with the lines close together in what is called "single space," and contains seventeen paragraphs. Not only is the property described and the rental (\$24,700. per annum), and the mode of payment prescribed, but there are minute provisions which the lease is to contain in regard to taxes, repair of the interior and exterior of the building "satisfactory to the party of the first part," about which matter "his judgment shall be binding"; payment of water, coal, gas and electric repairs; violations of the city, State and national regulations with a provision in case of failure for the termination of the lease. The contract also provides that the lessor (the defendant) should pay the interest on the mortgages on the premises, and pay taxes up to the sum of \$5,000., and also pay for fire and rent insurances and public liability insurance, and that the lessee should pay all other insurances. The party of the second part, the lessee, is required to return the property to the lessor "in the very same condition and repair as it is now of the date of lease," and the contract provides that the "party of the first part (the defendant) shall be the judge of such condition 20 30 40

Memorandum of Conclusions.

of repair, and only the party of the first part shall judge."

10 The party of the second part, the lessee, was required to return with the building all screens in good repair for all windows, and awnings for certain specified windows, such awnings to be in good repair.

Provision is made that failure of the lessees to pay the agreed rental on the 15th day of the month, and the allowance of one day's grace to the 16th, "shall constitute a forfeiture of the rights" of the lessee, and that thereupon the lessor "shall take possession of the premises free of any rights" of the lessee.

All doubtful covenants, etc., were to be construed in favor of the lessor.

20 The lessee was to pay for all coal in the cellars as of April 1st, 1920.

The foregoing statement of the contents of the contract indicates how carefully and minutely the provisions of the lease were considered and provided for.

30 The two paragraphs of the contract which are most important in this case come at the end of the instrument divided only by a provision in regard to assignment and sub-letting and are as follows:

"Any further provisions, clauses, agreements to be made in addition to the above mentioned and later to be agreed upon, shall be incorporated in addition to the provisions herein contained in a lease to be made in the office of Gaede & Gaede, 91 Washington St., Hoboken, N. J., not later than March 25, 1920.

* * *

40 "The party of the second part to insure faithful performance of all the covenants to be contained in the lease shall deposit with

Memorandum of Conclusions.

the party of the first part the sum of four thousand one hundred and twenty-five dollars (\$4,125.), from which is to be deducted the consideration of this agreement five hundred dollars (\$500.). And the said security shall be held by the party of the first part to insure faithful performance of the party of the second part during the full term of the lease, and the party of the second part shall apply the last two months' rent as the return of the said security. The deposit is to draw interest at 6% during the term it is held, payable semi-annually."

10

Mr. Adelman, Jr., put his initials on the margin of each of the three sheets of this contract and at the end wrote with a pen the words, "Consisting of three (3) sheets."

In my judgment this instrument on its face is a complete enforceable contract at law and in equity.

20

The answer sets up as the first defense the statute of frauds. The complainant, however, is not undertaking to enforce a parole contract pertaining to real estate, or a written contract plus additional oral provisions; the bill is filed to enforce this written contract executed by the defendant, Mr. Adelman, Sr., under his hand and seal, and executed by the West Heights Realty Corporation by Sol Lewine, President, the corporate seal not being attached, presumably being unattainable when the contract was signed at night at a place remote from the office of the complainant.

30

The defense of the statute of frauds plainly is unavailable to the defendant. The only question is whether this instrument is a valid written contract which a court of equity will specifically enforce.

40

Memorandum of Conclusions.

The second defense is that the contract is too uncertain for enforcement by specific performance. In my judgment what has been and will be set forth herein will show that this defense is without merit—that the contract is certain and enforceable in equity in a suit for specific performance.

10

The third defense is that the contract “contemplated that before any lease or agreement should be in fact executed there should be a further agreement between the parties, and terms to be inserted in said lease were to be agreed upon; that no such terms were agreed upon in writing as required by the statute of frauds, and no completed agreement in writing or a memorandum of which is in writing has been made between the parties.”

20

This defense according to the argument of counsel for the defendant, is based upon the first of the two paragraphs near the end of the contract set forth above. It is argued that this paragraph of the contract provided that in addition to the numerous minute provisions contained therein the parties were to agree thereafter upon very important provisions, about which as the result demonstrates, they would be extremely liable to disagree. This construction of the clause under consideration of course emasculates the whole contract and renders it unenforceable either at law or in equity. The result would be that these men met and negotiated for nine hours continuously, had their agreement in regard to the lease, so far as they had reached any, not merely noted down for reference upon a further conference for the continuation of the negotiation, but put in the form of a solemn agreement in writing executed by

30

40

Memorandum of Conclusions.

them, and that all this labor was a nullity—that either party by failure to agree upon other terms to be discussed in the later proposed conference would have the absolute power to render null and void all that had taken so much time to negotiate and embody in a written contract.

Such a construction in my judgment should 10
be avoided if a meaning which would not in-
validate the whole agreement can be fairly as-
certained and placed upon the language in ques-
tion. These men were not children, or men or
women inexperienced in business. Both the com-
plainant and the defendant were in the real
estate business—particularly the business of
erecting and renting large apartment houses
of the character of Haddon Hall. We certainly
ought not to impute to this clever, well educated 20
young lawyer, who had already had unusual ex-
perience in large real estate transactions on be-
half of his father, the intention at the end of
this elaborate instrument to insert a provision
under the terms of which either party would
manifestly have the right to render the contract
void and all the labor of the nine hours of
negotiation vain. It is not, however, the mean-
ing in the mind of Mr. Adelman, Jr., but the
meaning of the words of this contract with which 30
we have to deal.

Without further discussion of the language
of this clause I may state my conclusion that
the clause taken in connection with the provi-
sion of the first page that “the lease is to con-
tain among its provisions the following:” etc.,
amounts merely to this:

“This contract provides for the foregoing
matters which are to be inserted in the lease,
and the parties agree that any further pro- 40

Memorandum of Conclusions.

visions which may be made in addition to those which are specified, and which later may be agreed upon 'shall be incorporated in addition to the provisions herein contained' in the lease provided for in this contract, and which is to be made in the office of Gaede & Gaede, 91 Washington St., Hoboken, N. J., not later than March 25, 1920."

10

It may be agreed that the construction which I have placed upon the clause in question deprives it of legal force. In large numbers of cases contracts, including contracts drawn by fair lawyers, contain clauses which express the desires, wishes or intentions of the parties, but which have no legal or equitable force. It is better to construe a single clause in an elaborate and extensive contract as an inoperative but harmless provision than to give the clause a construction which renders the whole contract voidable at the option of either part, thus depriving the entire instrument of all finality and legal force. But it should not be conceded that the clause in question had in fact no function, was destitute of legal validity and force. It was a distinct agreement between the parties that neither in the future would claim that there had been any "provision" or agreement affecting their respective rights as lessor and lessee, which was not "incorporated" in the lease. The parties said in effect: All "the provisions, clauses, agreements" contained in this contract and in any additional provisions, clauses and agreements which we may hereafter before execution of the lease, negotiate and agree upon must be incorporated in the lease." If it be conceded that this statement was legally of no value to either party, the moral force of it I think is plain. It may be noted that if either party after

20

30

40

Memorandum of Conclusions.

the lease was made should undertake to set up that there was a subsequent oral modification of the contract which was not recognized in the lease, he would be confronted by his own agreement in writing that any subsequent alteration of or addition to the terms of the letting should be embodied in the lease. The clause in question compelled each party to see that the lease contained the provisions set forth in the contract, and also any subsequent provisions which might be orally agreed upon whether with or without a new consideration. 10

It may be noted that the astute counsel for the defendant in his brief takes the position that inasmuch as the contract is incomplete, and contracts of this character are required to be in writing by the statute of frauds, "no right can be based upon it either in law or in equity." 20 Although this position is taken not exactly with reference to the particular defense now under discussion, it seems to amount to a plain declaration that the entire contract was invalid in law and in equity; was a vain form and that neither party acquired any rights of any kind under it. As stated above, the complainants are not seeking to enforce any parole contract. The statute of frauds has no application to their case. They 30 bring their suit to enforce this particular written contract according to its terms, and the only question is whether under the correct construction of this clause pertaining to any possible additional agreements the whole instrument must be adjudged to show in its face that it was not a complete contract and hence incapable of enforcement at law or in equity according to its terms. The complainant has no concern with possible future additional agreements to be in- 40

Memorandum of Conclusions.

corporated in the lease except so far as the evidence of what was said and done in regard to that matter constitutes evidence of fraud or mistake. The answer, as we shall see, does not pretend to set up as a defense any fraud or any mistake.

- 10 The fourth defense, or what I suppose the pleader intended to set up as a separate defense, is found in the fourth paragraph of the answer which alleges that at the time the contract was executed "it was represented by the complainant to the defendant that a bond would be given by the complainant to secure the performance of any contract which was to be made as a result of the said instrument in writing, and that the bond so
- 20 to be given was to be a bond of a bonding company, and that in addition to the giving of said bond two months' rent should be paid in advance"; that defendant refused to consider any proposition "without a bond being given which would secure defendant for the performance of the entire contract; that it was represented to the defendant that the details with respect to said bond would be subsequently agreed upon, and that it would be better to get the other matters out of the way first; that as a result the other
- 30 matters were discussed and an instrument in writing signed by the defendant, but at no time did defendant waive the giving of the said bond."

The answer then sets up what was said at certain conferences between the parties after the contract had been executed and after the defendant had demanded a bond of a surety company for \$75,000., to insure the return of the property in as good condition as it was in at the date of

Memorandum of Conclusions.

the lease; and the refusal of the complainant to give such a bond.

The answer in the fifth paragraph, evidently in connection with the last defense above mentioned, alleges that on March 25, 1920, there was a meeting of the parties in which the matter of the lease was discussed "and that at said conference it was then and there conceded that under the terms of the said written instrument there were provisions and clauses to be agreed upon between the parties, and that such provisions, etc., were not in fact agreed upon orally or in writing.

The allegation in regard to what was "conceded" stands absolutely without proof of any kind. The subject matter of the contract—this large apartment building with sixty-four apartments containing 293 or 294 rooms, was of such a character that the complainant in order to get the full value of its lease had to take possession seven days after the date of this meeting at which its officers undoubtedly made an effort to effect settlement. No doubt the complainant would have been willing to alter its contract in some respects in favor of the defendant, and so its representatives expressed themselves, if the defendant would recede from his unjust demand that they should give a surety bond for \$75,000. which the evidence indicates no surety company in the country would give them, and the annual premium for which, according to common experience, would be a large annual sum. Any definite statement of fact made by the parties to this suit subsequent to the execution of the contract, would be competent evidence on certain matters against the party making the settlement. How far such

10

20

30

40

Memorandum of Conclusions.

statements would bear upon the construction of a written contract we need not pause to inquire. There was no concession made by the complainant in regard to the meaning of the contract if such concession made by the officers of the complainant would bind it. It would be strange, indeed, if the officers of the complainant, these experienced dealers in real estate, in the letting and management of apartment houses, would not have been willing to endeavor to placate the defendant, however unjust his demand may have been, in order to get the fruits of their contract and get possession of Haddon Hall on the first of April, 1920.

10 It will be observed that Mr. Adelman, Jr., drew the contract in such form that the money deposited was security not only for rent but for the performance of all the covenants in the lease on the part of the complainant. If Mr. Adelman, Sr., had succeeded in getting a deposit of 20 ten or twelve thousand dollars, the amount of five or six months' rent, the money as well as the bond would have stood as security for the return of the property in good repair.

The testimony of the witnesses, Messrs. Cohen and Schwartzberg, who were put upon the stand 30 to corroborate the testimony of the Adelmans in regard to the bond, in my judgment is unreliable and it will be unsafe to attribute much weight to it. These witnesses a year or a year and a half after they say they overheard a small part of a negotiation, in which they had no interest whatever, undertake to testify that they heard the statement made in various forms to the effect that the complainant was to give a bond.

Mr. Schwartzberg whose attention was called 40 to the matter for the first time about two years

Memorandum of Conclusions.

after, as he alleged, he overheard the conversation of the parties, testified that in connection with the talk about returning the property in good condition it was said that the complainant would "have to give bond to Mr. Adelman." The credibility of Mr. Schwartzberg's testimony, or the accuracy of his memory, is certainly impaired by the fact that when he was asked on cross examination for how much the bond was to be, he replied that he did not remember how much; that he could not tell "because it is so long ago." Upon being interrogated further how much was mentioned he replied: "I think it was something like thirty thousand. Whether the rent was thirty thousand or the bond thirty thousand I don't know that. I know they talked about thirty thousand but I could not hear the rest." A little later Mr. Schwartzberg testified that he thought that the question was asked: "How much the bond is going to be," and upon being asked further whether he was sure of that he replied: "Yes, I am sure." Still later, he testified that in the conversation between Mr. Lewine and Mr. Schwartzberg, about which he had been testifying, Mr. Lewine "probably asked" what the bond was to be for; and immediately being asked whether Mr. Lewine asked the question he answered: "He asked it, yes; he probably asked the question." And in a few minutes in answer to another question he said positively: "He did ask him but I don't remember how much the figure was." Being further pressed as to whether any figure was stated this witness answered: "No, there was no figure mentioned; maybe he did but I don't remember that." Then comes the following:

10

20

30

40

Memorandum of Conclusions.

“Q Did they answer his question? A I didn't hear it because I have nothing to do with this here thing and I wasn't interested.”

10 The testimony of this witness to the effect that he heard the word “bond” used is certainly weakened by the manner in which he gives his testimony, and the various phrases which he employs to describe the same thing. The defendant, Mr. Adelman, Sr., states positively that while at the start he demanded a bond and stated that he would not “go into the negotiation” unless the complainant agreed “distinctly to give a bond,” the amount of the proposed bond was not suggested but was left to be “threshed out.”

20 Noting Mr. Cohen's first statement to the effect that Mr. Adelman, Sr., first stated that the complainant would have “to secure” the lease or the contract or the return of the property, it may be at least surmised in favor of the honesty of these two witnesses that they heard the talk about the deposit which should be held for three years at 6% as a security for the performance of the contract. It distinctly appears that the parties to this contract negotiated in regard to the amount of money measured by the monthly rental which should be deposited as security. It certainly is not improbable that after the year and a half or two years from the date when Messrs. Cohen and Schwartzberg casually overheard a conversation in which they had no interest, these men should accept the suggestion of Mr. Adelman, Jr., that a bond had been talked about and believe that the “security” which was the subject of negotiation was referred to as a bond. It does not

30

40

Memorandum of Conclusions.

appear that either of these witnesses knew that the form of the security, which was beyond all question the subject of negotiation, was a deposit of cash.

The testimony of Mr. Granat and Mr. Lewine, the officers of the complainant company, who negotiated the contract, and the agent, Mr. Silverfelt, directly and positively contradicts the testimony of defendant and his witnesses. These witnesses for the complainant repeatedly and positively allege that nothing was said during any negotiation prior to the execution of the contract, about a bond being given. Their testimony accords exactly with the contract as framed by Mr. Adelman, Jr. 10

The truth in regard to this mass of contradictory evidence I think is very distinctly indicated by the testimony of Mr. John E. Dippel, a member of the bar of this State of good standing, whose testimony stands without impeachment. Mr. Dippel had been counsel for the complainant, but had nothing to do with the negotiation or the execution of the contract. When the defendant a day or two after the contract was executed made his demand for a bond for \$75,000, Mr. Dippel, who knew all the parties, undertook to call with Mr. Granat and Mr. Lewine at Mr. Adelman, Sr.'s, house to see whether he could not effect a settlement so as to avoid litigation. Failing in his attempt and in a further attempt on March 29th in Mr. Lane's office in Newark, he thought that the litigation on behalf of his clients should be handled by a more experienced court lawyer than himself, and accordingly turned the case over to Mr. Lichtenstein who acted from the start as solicitor and counsel for the complainant. Mr. 20
30
40

Memorandum of Conclusions.

Dippel, therefore, stands as an intelligent witness who was paying careful attention to all that was said and done, but who retired from the affair altogether and has no interest and has had no interest in the suit.

10 Mr. Dippel testifies that when the parties met in Mr. Adelman, Sr.'s, apartment the question of a bond arose and Mr. Granat said that it was impossible to get a bond for security on a leasehold. Mr. Dippel was asked who suggested the bond and he replied that Mr. Adelman was the one who talked about the bond. In response to the question. "What did he say?" Mr. Dippel replied:

20 "He said since entering into this contract that it dawned on him that the property might be damaged and that these people might take a whole lot of profit out of the property, and that he would be the loser in the end, and he wanted the bond as security for the rent and to secure him against a possible breakdown of the boiler and the disappearance of some iceboxes, etc."

30 Mr. Dippel further testified that Mr. Adelman said that he wanted a bond for \$75,000 and that Messrs. Granat and Lewine immediately stated that they would not consider the proposition at all.

"They said that was not any part of their agreement in the first place, and in the second place, no surety company would give such a bond; but that they were willing to give any additional sum in cash above the four thousand dollars that they had agreed to in the original agreement."

40 No settlement was reached at this conference, and after the failure to effect settlement at the

Memorandum of Conclusions.

conference in Mr. Lane's office on March 29th this suit was brought.

In Mr. Adelman's statement which Mr. Dippel swears positively he heard, and to which naturally his mind would from time to time recur during the pendency of this suit, we find a plain admission by Mr. Adelman, Sr., that the liability of his property to damage during the term had "dawned" upon his mind "since entering into this contract," and the conjunction of the two propositions in regard to the liability to damage and the necessity of a very large bond, indicates that the desirability of a bond "dawned" upon Mr. Adelman's mind at the same time that the liability to damage to be covered by the bond "dawned" upon that mind. Mr. Adelman, Sr., may also have reflected that his original demand for cash security amounting to ten or twelve thousand dollars, had been reduced to the \$4,125 mentioned in the contract. Because Mr. Adelman, Sr., thought of something within twenty-four hours after he had executed the contract which would have led him to demand an important provision to be inserted in the contract for his protection, constitutes no ground on his part for an attack upon the contract.

It is a most significant fact that, while Mr. Dippel's testimony was given as a part of the complainant's case before any witness for the defendant was sworn and Mr. Adelman, Sr., heard Mr. Dippel's statement, when he (Mr. Adelman, Sr.) gave his testimony he did not undertake to contradict Mr. Dippel or to make any explanation of the remark which Mr. Dippel said he made. Mr. Dippel's testimony stands entirely without contradiction.

10

20

30

40

Memorandum of Conclusions.

Mr. Adelman, Jr., having given his principal deposition first, which was followed by the only deposition given by the defendant, Mr. Adelman, Jr., was recalled and asked "whether at the time Mr. Dippel" was at the Adelman residence "you said to him, or Mr. Samuel Adelman your father said to him, or words to this effect, 'since entering into this contract it has dawned upon me,' " etc., fully describing the statement of Mr. Adelman, Sr., which Mr. Dippel testified he made. The answer of Mr. Adelman, Jr., and subsequent testimony are as follows:

"No, sir, that is not a fact. I did not say that; never mentioned it dawned upon me."

Q Mr. Adelman, the question was whether your father made that statement?

A He said whether I or my father.

Q Did either of you make any such statement? A I know I didn't make it and I know I did not hear my father make that statement."

There is certainly ground for suspicion that Mr. Adelman, Jr., was disingenuous and evasive in giving this testimony. When he was pinned down to the question whether his father made the statement he testifies that he "did not hear" him make the statement. Mr. Adelman, Jr., was present during the whole interview, unquestionably an attentive and interested observer and listener. He is shrewd enough not to say that he did not remember whether his father made a statement so injurious to his cause and to the testimony of his father, himself and his father's other witnesses. Probably he did not wish to have his testimony flatly contradict that of Mr. Dippel. He, therefore, escapes such contradiction, and also escapes making the highly improbable statement that he did not remember this

Memorandum of Conclusions.

part of the conversation, if he had to admit that he heard it, by denying that he heard it.

The extraordinary estimation by Mr. Adelman, Sr., of the possible damage to this apartment building from the bursting of pipes in winter, and other damage from defaults of the complainant in taking care in other respects of the leased property amounting to \$100,000 or even one-half of the value of the whole property, suggests the surmise that Mr. Adelman, Sr., was not sincere in the representation which he made. He brought no expert witness to testify as to the extent of the destruction of the interior of this building by the bursting of pipes, etc. To ordinary minds, unaided by impartial statements from experts, Mr. Adelman, Sr.'s, estimate of damage to his building is so remote and visionary as to appear preposterous. Mr. Adelman almost at the beginning of his deposition on his own behalf gave his account of the initiation of the negotiation with the complainant. He says that he stated to Mr. Granat, who opened the negotiation on behalf of the complainant:

“My time is very limited. Before we take up the matter I want time, I would like to know whether will excuse me. I don't know anything about your company. Now, in this building are very costly fixtures, that is, electrical fixtures, and there are costly fixtures in the vestibules, very costly showers in the bathrooms, gas engines, refrigerators, clothes-driers and three separate appliances for the steam heating as well as three separate appliances for hot water. How would you secure me and guarantee that at the end of the lease it would be in the same condition—turn it over to me as it was before when they were taking it?”

Memorandum of Conclusions.

Then followed, according to the witness, talk about a bond from a bonding company. Is it possible that Mr. Adelman, Sr., is telling the truth when he represents that the liability to damage to the costly fixtures which he enumerated was in his mind before the negotiation was opened, and that it first dawned on his mind that he should have a large bond after the contract had been made? Which time was he telling the truth? The probable answer to the question is that we can safely stand upon the testimony of the complainant's witnesses to the effect that there was nothing said about a bond at the opening of the negotiation or during the course thereof, and that Mr. Adelman, Sr., did not at the start contemplate as possible enormous damage to his valuable fixtures, etc.

Accepting Mr. Dippel's clear account of Mr. Adelman's statement after the contract was made, and when without conference with the complainant he bluntly demanded a bond for \$75,000, which he must have supposed the complainant could not give, and the demand for which if rightly made would discharge him from the contract, the view seems to become possible that the whole story which Mr. Adelman, Sr., tells as to the opening of the negotiation is pure fiction, that the story of the defendant's witnesses to the effect that nothing was said about a bond, and consequently nothing about any possible enormous liability to damage, is correct; that Mr. Adelman, Sr., repented of his contract and looked forward to the collection of the large increased rental of the building which almost immediately took place, and that he (Mr. Adelman, Sr.) resorted to a subterfuge to get

Memorandum of Conclusions.

discharged from the contract which he perceived he had unwisely entered into.

If the construction which I have above given to the clause of this contract in question is correct, the defendants are in the position of setting up a parole agreement or understanding in order to render the written contract incomplete. It would seem to be a dangerous thing to allow parties who have entered into a written contract, complete in all its parts, to destroy it by rendering it incomplete by parole evidence that when the contract was made the parties agreed that some other important terms should be subsequently negotiated and incorporated in the contract. No authority has been cited to sustain such an attack upon a written contract complete in all respects as it reads—valid and enforceable on its face.

If such a defense to a written contract is allowable in any court in this State, it certainly is safe to say that the fatal fact that the apparently complete written contract was accompanied by a collateral oral agreement which rendered the written contract incomplete and unenforceable, certainly should be proved practically to a demonstration in accordance with the principle hereinafter referred to in connection with the defense of mistake.

A careful examination of the whole testimony bearing upon the question now in hand, indicates to my mind distinctly that the weight of evidence is in favor of the proposition that this contract is entirely silent in regard to giving a bond because the giving of a bond was not referred to during the negotiation at any time, or at any rate was never agreed to—the deposit agreed upon being intended as the security to the

Memorandum of Conclusions.

defendant for the full performance of all the covenants on the part of the lessee to be expressed in the lease precisely as the contract provides.

10 The later defenses set up in the answer, the defense of laches, and that the object of the contract on the part of the complainant was to get possession of Haddon Hall, raise the rents of the tenants and go into the business of "profiteering in rents" against public policy and to the injury of the defendant who would be liable to have his taxes largely raised in view of the increased income, etc., do not, I think, call for consideration. It is sufficient to say that the bill was filed within three months after it was apparent that no lease would be made in accordance with the contract unless a bond for
20 \$75,000 was given.

No evidence was produced to show that the situation when the bill was filed was different in any respect from the situation at the time the contract was made, or at the time when the bond for \$75,000 was demanded. The defendant has not shown that he was in any way disadvantaged in respect of his defense or otherwise by reason of the delay in filing the bill which delay
30 was negligible when compared with the duration of the suit. The defense based on the alleged intention of the complainant to profiteer in rents stands absolutely without proof and I do not think it was pressed. As to the suggestion in the answer of injury to the complainant if rentals were increased, etc., of course that is incidental to any such contract. If, as for all that appears was the case, the rentals were properly subject to increase, etc., the complainant cannot be made to surrender its rights
40

Memorandum of Conclusions.

under this contract because the defendant did not think of the possible consequence of the lease when the contract was made.

The defense that the provision for a bond was omitted from the contract by mistake—an oversight on the part of Mr. Adelman, Jr., in neglecting to follow a memorandum which he had before him, in which he had jotted down while the negotiation was proceeding the different points which were agreed upon, and which he was to embody in the typewritten contract which he afterwards prepared—is, I think, sufficiently disposed of by pointing out that no such defense is set up in the answer and that such defense is absolutely inconsistent with the allegations of the answer.

The answer alleges as a part of perhaps the principal defense which it undertakes to set up, that at the time of the execution of the contract the complainant “represented” to the defendant that a bond would be given by a bonding company, and that “the details with respect to said bond would subsequently be agreed upon.” Nowhere in the defendant’s testimony does he state or even intimate that he thought that the contract which he signed contained a provision for a bond. His whole testimony, if it does not directly state, implies that the matter of the bond was not to be determined in the contract, but was reserved for future negotiation and settlement.

It is conceded by the defendant and his son, his principal witness, in their testimony that no amount of the bond was fixed, but these witnesses wish the Court to understand that these competent experienced real estate dealers agreed that a bond was to be given, but whether

10

20

30

40

Memorandum of Conclusions.

it was to be for one dollar or one hundred thousand dollars was left open for subsequent agreement.

10 Certainly this intelligent young man, practically a lawyer at the time, must have had some idea what the effect would have been of inserting in this instrument a provision that a bond should be given without stating what the amount of the bond should be. If there had been any talk about a bond being given at or before the time of the execution of the contract, it is manifest that unless the amount of the bond was agreed upon a provision that a bond should be given would not only be vain and even mischevious but would render the contract incomplete and imperil if not destroy its entire validity.

20 Mr. Adelman, Jr., does not state what clause was in his mind in regard to giving a bond, which clause he omitted from the contract by mistake. Did he intend merely to provide that a bond, or a surety company bond, should be given by the lessee to secure the return of the leased property at the end of the term? He admits, as the defendant admits, that the amount of the bond was left undetermined in the negotiation, and was reserved for future consideration after the execution of the contract and before the execution of the lease. If such was the form of the agreement contemplated by Mr. Adelman, Jr., it would seem that he was sufficiently clever and learned in the law to see that such a bare agreement might be deemed fully performed if the complainant, the lessee, should tender a bond for \$100.

40 Did Mr. Adelman, Jr., contemplate that the clause should provide for the bond in an amount

Memorandum of Conclusions.

to be agreed upon after the instrument which he was drawing was executed and before the lease was made? May we suppose that Mr. Adelman, Jr., was not sufficiently intelligent and qualified for the sort of legal work in which he was engaged to enable him to perceive the vice of such an agreement—an agreement to agree?

10

It should be observed that the mistake, which Mr. Adelman, Jr., alleges he made in omitting this clause in regard to a bond from the contract appears from his own testimony and that of his father, the defendant, to have been a mistake in the mind of Mr. Adelman, Jr., only. The father, the defendant, does not pretend that he likewise was under this mistake—that he supposed that the provision for a bond of some sort and in some shape was incorporated in the contract when he signed it. Hence we have a suggested defense based on a mistake made not by any party who executed the contract but by the scrivener who drew the contract—the mistake consisting of the accidental omission from the contract of a provision, not which any contracting party desired to have inserted and thought was inserted, but of a provision which the scrivener thought would be advantageous to one of the parties for whom he was acting and which he forgot to insert in the contract.

20

30

The testimony of the two Messrs. Adelman in regard to what they thought this formal contract amounted to, greatly affects the force and value of their testimony. They say that they did not regard the instrument as a contract but only as a receipt or as a "binder." How there can be a binder which binds no one who executes it Mr. Adelman, Sr., did not explain. At one point Mr. Adelman, Sr., testifies that he thought the in-

40

Memorandum of Conclusions.

10 strument was "merely an agreement" and that he understood that a "binder" was "a contract to make a lease." Mr. Adelman, Jr., went so far as to say that he had reserved the right to put anything in the contract without the consent of the complainant, provided he thought that it was reasonable.

20 The foregoing discussion of the testimony of the defendant and the witnesses called on his behalf, although much longer than I had anticipated, imperfectly sets forth the numerous inconsistencies which abound in that mass of testimony. It would be impossible to make a complete and minute examination of all the unsatisfactory, vague, contradictory and improbable statements which appear in the testimony which these witnesses give, without greatly extending this already too lengthy opinion.

 Conceding that a mistake on the part of the defendant alone in which the complainant did not share, might afford a sufficient ground in equity for the denial of the remedy of specific performance, as laid down by Prof. Pomeroy:

30 "The evidence must be of the clearest and most convincing nature; the burden of proof is on the plaintiff and he must prove his case beyond a reasonable doubt," 2 Pom. Eq. Jur. 3 ed. §862. *Id.* 860. *Stockbridge v. Hudson R. Iron Co.*, 102 Mass. 45.

 If under the circumstances of this case a mistake in the mind of Mr. Adelman, Jr., who was not a party to the contract, as to the giving of a bond, can afford a defense to this action for specific performance against Mr. Adelman, Sr., in my judgment the proof is entirely inadequate to establish the fact of such a mistake in the

Decree.

mind of Mr. Adelman, Jr. He alone testifies that he made a mistake; his testimony stands without corroboration and a careful study of his whole deposition supports, I think, the view that his statements are entirely unreliable.

My conclusion is that the complainant is entitled to a decree. More than two-thirds of the term (three years) having elapsed before the cause was submitted for decision it is evident that the only practical remedy under present conditions is a decree for an accounting. The nature and extent of the accounting about which matters counsel have not been heard, will be determined on settlement of the decree.

10

DECREE.

20

This cause coming on to be heard in the presence of Lichtenstein & Lichtenstein, solicitors of the complainant, West Heights Realty Corporation, and Merritt Lane, solicitor of the defendant, Samuel M. Adelman; and the Court having examined the pleadings and having taken proofs orally and in open court and having heard and considered the arguments of counsel thereon;

And it appearing to the satisfaction of the Court that on the 9th day of March, 1920, the defendant, Samuel M. Adelman, entered into a contract in writing, whereby he agreed to let, lease and rent to the complainant and the complainant agreed to lease and rent of and from the said defendant the lands and premises known as Gladdon Hall, A-B-C, situate on the northwest corner of Liberty Place and Boulevard East, in the Township of Weehawken,

30

40

Decree.

County of Hudson and State of New Jersey, and more particularly described as follows, viz.:

All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Weehawken, in the County of Hudson and State of New Jersey,

10

COMMENCING at the corner formed by the intersection of the northerly side or line of Liberty Place with the westerly side or line of the New County Road (also known as Hudson County Boulevard Loop) as both of said streets are laid down, designated and delineated upon a certain map entitled, "Map of Eldorado, Weehawken, Hudson Co., N. J., as modified by the joint consent of all the owners, dated June, 1895, made by Thomas H. McCann, Civil Engineer, Hoboken, N. J.," and duly filed in the Hudson County Register's Office on August 27, 1895, and from said point of beginning, running thence (1) westerly and along the northerly side or line of Liberty Place a distance of one hundred and thirty-two (132) feet, more or less, to the southeasterly corner of lot numbered two hundred and eighteen (218) as shown and designated upon the map of Eldorado above mentioned; thence (2) running northerly and for part of the distance along the easterly side of said lot numbered two hundred and

20

30

40

Decree.

as Hudson County Boulevard Loop) and running thence (3) from said point easterly a distance of one hundred and fifteen (115) feet to the westerly side of said New County Road, and running from thence (4) southerly and along the westerly side or line of said New County Road (also known as Hudson County Boulevard Loop), a distance of one hundred and twenty-five (125) feet to the point or place of beginning." 10

for the period of three years, to commence on the first day of April, 1920, at the yearly rental of \$24,750;

And it further appearing that the complainant, pursuant to the terms of said agreement, paid the said defendant the sum of \$500, referred to in said agreement as the consideration thereof, and that the complainant has at all times been and still is ready, able and willing to comply with the terms and provisions of said agreement on its part, but that the defendant refused to perform said terms and provisions, or any of them, on his part; 20

And it further appearing that the complainant, in the bill of complaint filed herein, prays for an order or decree, compelling the defendant to comply with and perform the terms of said agreement on his part and to account to the complainant for the rents, issues and profits of said premises from the date when the defendant should have delivered possession thereof to complainant, in accordance with the terms of said agreement; 30

And the Court being of the opinion that the complainant would be entitled to the specific performance of said agreement, as prayed, but that because of the fact that the entire period during which the defendant agreed to let, lease 40

Decree.

and rent said lands and premises to the complainant, as aforesaid, has elapsed, a decree for specific performance by the defendant would be futile and that, under these circumstances, the Court should render a decree for an accounting;

10 It is thereupon, on this 23rd day of October, 1924, ORDERED, ADJUDGED AND DECREED that the said defendant, Samuel M. Adelman, account under oath for the rents, issues and profits of said lands and premises received by or chargeable to him during the term for which said lease should have been given in accordance with the terms of said aforementioned contract, and the expenditures made by or chargeable to the said defendant out of said rents, issues and profits and properly chargeable against the same before
20 this Court, to whom said matters and things are hereby referred, to be ascertained by and reported on by him, and that in connection with said accounting said Master consider the rights of the complainant and defendant as established by the provisions of said aforementioned contract.

30 And it is further ordered that said Master report what balances appear to be due from said defendant to said complainant with all convenient speed; and all further equity is reserved until the coming in of said Master's report.

And it is further ordered that the counterclaim filed in this case by the defendant be, and the same is, hereby dismissed.

E. R. WALKER,
Chancellor.

Respectfully advised.

EUGENE STEVENSON,
Advisory Master.

40 O. K. as to form.
MERRITT LANE.

Notice of Appeal.

NOTICE OF APPEAL.

Filed November 25, 1924.

The defendant hereby appeals from the whole and every part of the decree made in this court in the above-entitled cause upon the 23rd of October, 1924, to the Court of Errors and Appeals in the last resort in all causes. 10

MERRITT LANE,
Solicitor of Defendant.

MERRITT LANE,
Counsel for Defendant.

Dated, Nov. 25, 1924.

I conceive there is good cause for appeal in the above-stated cause. 20

MERRITT LANE,
Of Counsel with Defendant.

30

40

*Petition of Appeal.***PETITION OF APPEAL.**

Filed December 12, 1924.

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

10 The humble petition of Samuel M. Adelman,
the appellant in the above-entitled cause, re-
spectfully shows that he finds himself aggrieved
by a decree made in the Court of Chancery by
his Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey, bearing date the 23rd
day of October, 1924, in a cause wherein the said
West Heights Realty Company was complain-
ant, and the said Samuel M. Adelman was de-
fendant in this respect to wit:

20 That the said decree orders, adjudges and de-
crees that the said Samuel M. Adelman account
under oath, for the rents, issues and profits of
said lands and premises received by or charge-
able to him during the term for which a certain
lease, referred to in the said decree, should have
been given in accordance with the terms of a
certain contract therein referred to, and the ex-
penses made by or chargeable to the said
defendant out of said rents, issues and profits.
30 And your petitioner humbly appeals from said
decree as aforesaid upon the ground that the
same is erroneous for that the Court should
have adjudged and decreed that the contract to
enforce specific performance for which the said
suit was brought, should not be specifically per-
formed for the reason, among others, that the
contract was not complete and is not an en-
forceable contract in equity and for the reason
that the said contract is too uncertain for en-
forcement by specific performance and for the
40 reason that the said contract contemplated that

Petition of Appeal.

before any lease or agreement should be in fact executed there should be a further agreement between the parties, and terms to be inserted in the lease agreed upon, and that no terms were agreed upon in writing as required by the statute of frauds and no completed agreement in writing or memorandum of which is in writing was made between the parties, and for the reason that it was represented by the complainant to the defendant that a bond would be given by the complainant to secure the performance of any contract which was to be made as a result of the said instrument in writing, and the bond so to be given was to be a bond of a bonding company, and that in addition to the giving of the said bond two months' rent should be paid in advance and that the said complainant did not comply with such agreement; and because the complainant was guilty of laches in instituting suit, and because the enforcement of said contract in equity would be contrary to public policy and because the provision with respect to the bond was omitted from said contract by mistake and because it appears by the testimony that it was not intended that the paper writing referred to as a contract should have the force and effect of the contract and because the suit was not prosecuted with due diligence and because the enforcement of said contract would be inequitable and would result in great harm and injury to the defendant, and said decree is likewise erroneous because at the time of the pronouncement of said decree the term for which the lease was to be given had expired, and the right of the said complainant, if any, was to sue the defendant at law for breach of the contract; that there was a full and complete and adequate

10

20

30

40

Petition of Appeal.

remedy at law, that the Court of Chancery had no jurisdiction to grant a decree for accounting; and your petitioner submits that the decree of the Court should have been a dismissal of the bill.

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

MERRITT LANE,
Solicitor of Appellant.

MERRITT LANE,
Of Counsel with Appellant.

20

30

40

Answer to Petition of Appeal.

ANSWER.

Filed December 15, 1924.

The answer of the above-named complainant-respondent to the petition of appeal of the above-named defendant-appellant:

This respondent, not acknowledging all or any 10
of the matters which in the said petition of
appeal are contained to be true, for answer
thereto, nevertheless, says and admits that a
decree was on the 23rd day of October, 1924,
made and entered in the Court of Chancery, in
the cause for that purpose mentioned in said
petition, as is therein stated; but as to the sub-
stance and form thereof, this respondent prays
to refer thereto when the same shall be pro-
duced. And this respondent is advised and 20
believes that the said decree is agreeable to
equity, and he prays that the same may be
affirmed, with costs to be assessed to this
respondent.

LICHTENSTEIN & LICHTENSTEIN,
Solicitors for Respondent.

JULIUS LICHTENSTEIN,
Of Counsel with Respondent.

Dated, December 15, 1924. 30

THE HISTORY OF THE

REVOLUTION

OF THE UNITED STATES

OF AMERICA

10

The history of the American Revolution is a story of a people who fought for their rights and freedom. It is a story of a nation that was born in a struggle for liberty and justice. The American Revolution was a turning point in the history of the world. It was a time when the people of America stood up for their rights and demanded that their government respect their freedoms. The American Revolution was a time when the people of America showed the world that they were capable of self-government and that they were willing to fight for their rights. The American Revolution was a time when the people of America showed the world that they were capable of creating a new nation that was based on the principles of liberty and justice for all. The American Revolution was a time when the people of America showed the world that they were capable of standing up to a powerful empire and winning. The American Revolution was a time when the people of America showed the world that they were capable of creating a new nation that was based on the principles of liberty and justice for all.

OF THE UNITED STATES

OF AMERICA

OF THE UNITED STATES

OF AMERICA

11

THE HISTORY OF THE

12

1 MAY.T.1930

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

New Jersey Court of Errors and Appeals

<p><i>Between</i></p> <p>WEST HEIGHTS REALTY CORPORATION, <i>Complainant-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p>SAMUEL M. ADELMAN, <i>Defendant-Appellant.</i></p>	}	<p><i>On Bill for Specific Performance.</i></p> <p><i>On Appeal from Decree in Chancery Granting Relief.</i></p> <p>STEVENSON, A. M.</p>
--	---	--

BRIEF FOR APPELLANT.

Statement.

This is an appeal from a decree of the Chancellor (p. 343) directing defendant to account to complainant for the rents, issues and profits of property described in the bill for the term of three years commencing on the 1st day of April, 1920, following conclusions of Stevenson, Advisory Master, before whom the case was heard (p. 319).

The bill (p. 1) was to compel specific performance by defendant of a contract made on March 9, 1920 (p. 6), by which defendant agreed to lease to complainant the property of defendant known as Gladdon Hall, in Weehawken, New Jersey, a large 64 family apartment house, for three years, commencing April 1, 1920, at a yearly rental of \$24,750. The bill was filed April 28, 1920 (p. 1); process was not issued until June 7, 1920, and therefore suit not commenced until then. *Del River v. Mercer Freeholders*, 88 N. J. Eq. 506, and cases at 511.

(The date of the contract appearing as Exhibit Schedule A is incorrect. It is there set out as March 9th, 1919. It should be March, 1920 (p. 24.)

An answer and counter-claim were filed July 7, 1920 (p. 11). They set up, in substance, (1) that the contract was too uncertain for specific enforcement, it providing (p. 9, l. 26) "Any further provisions, clauses, agreements to be made in addition to the above mentioned, and later to be agreed upon shall be incorporated in addition to the provisions herein contained, in a lease to be made in the office of * * * not later than March 25, 1920," and that it was understood, at the time of the execution of the paper writing, that before the contract should become effective, a bond should be provided for to be given by complainant to defendant, the terms and conditions of which were to be subsequently agreed upon and that it was understood, at the time of the execution of the paper writing, that it was not complete and did not contain all the terms and conditions to be inserted in the lease (paragraphs 3, 4, 5 of the answer); (2) that complainant was a corporation organized for the purpose of speculating in rents and without financial responsibility, that the purpose of complainant was, as soon as it should obtain possession of the property, to fix unconscionable and excessive rents and to take, as its profit, for the period of the lease, the difference between the amount it would pay to complainant and the excessive amounts which it would receive from the tenants and that such course of conduct would result in irreparable damage to defendant, and that the enforcement of specific performance would be inequitable, unfair, unjust and contrary to public policy (paragraphs 6 and 7 of the answer); (3) laches.

The lease was to be given on March 25, 1920. On or before that date complainant knew that it would not be given. It was to go into effect on the 1st of April, 1920. The bill was filed April 28, 1920, but no process issued until June 7, 1920, or approximately three months after complainant had knowledge that the lease would not be executed. Defendant had no knowledge of the filing of the bill and assumed that complainant had abandoned any idea of obtaining the lease, and thereupon proceeded to operate the property in a manner which otherwise he would not have done. Under the cases the suit was not commenced until June 7, 1920. *Del River v. Mercer*, 88 N. J. Eq. 506.

The counter-claim asked for a cancellation of the contract.

The case came on for hearing before the Vice-Chancellor on September 29, 1921 (p. 22). It was continued on September 30, 1921 (p. 146). It was again taken up on December 15, 1921 (p. 218). It was argued February 28, 1922. It was decided September 26, 1923. At the time of the decision the term, for which the lease was to be given, had expired. The decree was not taken until October 23, 1924 (p. 348), or 13 months after the decision. The term having expired, the decree provided for an accounting for the rents, or, in effect, for damages which would be recoverable at law.

Defendant took the position at the very onset of the case that it was one in which equity would not decree specific performance but would leave the parties to their remedy at law, if any they had (p. 24).

THE FACTS AND ARGUMENT.

Before considering the facts, I desire to advert to one remark of the Advisory Master where he intimates (p. 335) that defendant, Samuel Adelman, heard the testimony of Mr. Dippel and did not deny it. Samuel Adelman is entirely deaf and has been so for many years. He can only hear by the use of an instrument. It is extremely difficult to carry on any conversation with him. He could not hear what was going on in the court room. He can only hear when the instrument is directly pointed to the person with whom he is talking. This fact explains the sketchiness of his testimony and also how the negotiations could have been carried on without his understanding everything that was said. He relied, to a great extent, upon his son, Harry Adelman. The Advisory Master suggests (343) that even if Harry Adelman had been mistaken it could afford no defense to Samuel Adelman, the owner of the property. But the mistake of Harry Adelman was the mistake of Samuel Adelman. One other thing—the Advisory Master suggests that Harry Adelman was a shrewd young man with knowledge of law. As matter of fact he was but slightly over 21, with just enough idea that he knew some law to make him dangerous to his father in the drawing of the contract. He was not likely to be able to cope with the gentlemen representing the complainant who were in the business of profiteering in rents.

TO GRANT RELIEF WOULD OFFEND PUBLIC POLICY.

Complainant corporation was incorporated in November, 1919. It had but \$5,000 paid in capital (p. 34). At the time of the making of the contract for the lease of this apartment house

in New Jersey it had four leaseholds in New York, on apartment houses, involving rentals in the aggregate of approximately \$55,000. Its rentals on these leaseholds, which it had to pay to the owners, was approximately \$34,000 (p. 35). In other words, it rented apartment houses from their owners, paid the rent, and yet had a profit upon these four leases, if the testimony of its officers is to be believed, of over sixty per cent., which could only have been obtained by a general raising of rents. But all these leases were cancelled (p. 36).

The testimony of Granat, secretary of the company, from pp. 34 to 40, taken in connection with the bank book of the company, Exhibit D. 2, p. 316, which shows the last deposit as of November, 1920, indicates, I submit, that the company was never anything but a shell; it was organized for the purpose of profiteering in these rents so that personal responsibility could be escaped by the real parties in interest. It went out of business prior to November, 1920 (p. 68). Although Granat says it did not go out of business he testifies (p. 69):

“Q Did you make any deposit between November, 1920— A We did not, not under the corporation’s name.

Q Why not? A Our leaseholds—the property—was sold; it was cancelled.

Q Well, did your company go out of business? A We did not.

Q Did the company do any business between November, 1920, and June, 1921? A No.

Q Didn’t? A No.

Q Well, for that period it was out of business? A It was not out of business. It was always *ready, able and willing* to do business.”

They abandoned their plan of purchasing leases in the name of the corporation and com-

menced a new business of buying properties in the individual names of Granat and Levine (p. 70).

From the testimony of Granat it appears that the plan was to, by means of this corporation, make a profit on excessive rentals. This was the period during which it was necessary for governing bodies to pass rent laws in order to keep rentals down to a reasonable amount. Landlords, living in the same vicinity as their tenants, were at a disadvantage in raising rents. Someone thought of the scheme of having landlords lease the properties as a whole to operators. The landlords, of course, got for their holdings a reasonable rental. The profit of the operators depended upon how much they could raise the rent over what the landlords had considered to be a reasonable rent. But the operators did not desire to do business in their individual names. They did not desire to assume individual responsibility. So, they went one step further and organized what were, in effect, paper corporations. These two gentlemen, Granat and Levine, were two of these operators, and, for the purpose of carrying on their trade as middlemen, they organized the paper corporation "West Heights Realty Corporation." That this was the purpose is indicated by the testimony of Granat (pp. 65, 66). He attempts to put defendant in the position of attempting to exact from his tenants unreasonable rentals, forgetting the application of the maxim *in pari delicto potior est conditio defendentis*, and then follows this testimony (p. 66):

"Q You thought that was an unreasonable increase, didn't you? A I thought so.

Q At the time this lease was made it was contemplated or considered by both of

you that the rents would be raised, wasn't it? A It was introduced by the other side.

Q I don't care who introduced it; isn't that a fact? A It would be foolish on our part to see how much profit we could make. That is common sense.

Q All right. It was understood that the rents were to be raised, wasn't it? A He asked us to raise the rents.

Q All right. You agreed to that, didn't you? A I didn't have to agree to that.

Q Did you understand that you were to raise the rents? A I did not make up my mind whether I would or not.

* * * * *

Q How did it come about that you were discussing the laws of New Jersey as to the raising of rents? A We were all talking over the property and Adelman, junior, told us about summary proceedings, which I wasn't acquainted with.

Q How did that come up? A He told me how if you want to get a tenant out—to dispossess that tenant for non-payment, asking a tenant to vacate, how much time you got to give him."

In view of the amount that defendant was getting for the rental of the premises it would be necessary for complainant, in order to make a profit, to raise the rent.

Using this same corporation as a means Granat and Levine did the same thing in New York, but in New York there were clauses contained in the leases which permitted the landlords, upon short notice, under certain circumstances, to cancel and all these leases were cancelled.

It is true that Granat, on page 5, attempts to figure a profit of some \$4,000 upon the rents as they existed (Exhibit C. 3), but he produces no statement showing expenses (p. 67) although he said he had made one (p. 68).

The testimony of Granat indicates (p. 71) that they were driven out of their business as middlemen trafficking in these leases in New York:

“Q The old bank book shows that you stopped making deposits; was that at the time when your leaseholds had been terminated? A Yes. (This was in November, 1920.)

Q And they were terminated because of the termination clauses which were contained in the leases in New York usually? A Yes.

Q And then when you found something that the company wanted, you then opened up a new bank account? A We were always willing to try to do business, but the real estate market quieted down for a while and we did not do any business. * * *

Q Did the real estate market quiet down, or did the City of New York pass rent laws which interfered with your activity? A Well, I don't know; it is according to your opinion.

Q The rent laws of New York did interfere with this kind of business, didn't it? A Well, that is a matter of opinion. The conditions may have quieted it down or it may have been the rent laws.”

The Advisory Master says (p. 340) that the defense to this contract, based upon this ground, does not require consideration. I submit that it does and that it is wholly immaterial whether defendant knew the purposes and participated in it. If he did, when he realized the consequences of what he had done, he immediately repudiated.

This is an appeal to a court of equity to enforce specific performance. It is not a matter of right but of grace.

“Where the consequence of enforcement of the contract is to inconvenience the public, the discretionary power of equity is exercised to refuse its aid.”

Pomeroy Eq. Jur., vol. 5, p. 4956, sec. 2217.

And see the cases quoted in *Driver v. Smith*, 89 N. J. E. 352, and the last opinion of this Court, *Migel v. Bachofen*, 2 N. J. Advance Reports, p. 1494, 96 N. J. Eq. 608

The effect of permitting specific performance of this contract at the time of the filing of the bill, which is the time to be considered, would have been to use the process of a court of conscience to enforce a contract made for the purpose of violating public policy and permitting those really responsible to escape responsibility under the cloak of a foreign, in effect, paper corporation, hiding not only the landlord but the individuals who were the real middlemen.

Certainly, if specific performance of a contract, made for this ostensible purpose, is to be directed by a court of equity, its terms must not only be clear and beyond doubt, but it must also be clear and beyond doubt that it was fairly entered into, and that it was not unconscionable or affected by any other inequitable feature.

THE CONTRACT IS UNCERTAIN.

The memorandum of the Advisory Master indicates that the contract and its terms are not, by any means, clear and beyond doubt. In dealing with the defense of uncertainty arising upon the face of the contract the Advisory Master covers five pages. He concedes that the contract clause providing for future agreement, may be construed as counsel for defendant contended, in which event the contract would be unenforceable; he *then* says that to so construe it would emasculate the whole contract, and that *therefore* he will not construe it in that way but in another way which he sets forth on p. 325. On p. 326, he says:

“It may be agreed that the construction which I have placed upon the clause in question deprives it of legal force.”

Conceding that the clause in question may be construed as counsel for defendant contends and if so construed, makes the contract unenforceable, and that it may be construed as he, the Advisory Master, construes it and as so construed makes the clause without legal force, he, nevertheless, holds that the contract is so *certain as that equity will enforce it*.

And, so with respect to the defense that it was understood that defendant was to get a bond and that the details of the bond were to be arranged and a provision with respect to the bond made before the written agreement became effective, the Advisory Master for several pages considers the very conflicting testimony. He says (p. 333):

“The testimony of Mr. Granat and Mr. Levine, the officers of the complainant company, who negotiated the contract, and the agent, Mr. Silverfelt, directly and positively contradicts the testimony of defendant and his witnesses.”

On p. 339:

“A careful examination of the whole testimony bearing upon the question now in hand, indicates to my mind distinctly that the *weight* of evidence is in favor of the proposition that this contract is entirely silent in regard to giving a bond because the giving of a bond was not referred to during the negotiations at any time, or at any rate was never agreed—the deposit agreed upon being intended as the security to the defendant for the full performance of all the covenants on the part of the lessee to be expressed in the lease precisely as the contract provides.” (Italics mine.)

The statement of the Advisory Master indicates that the situation is *not* one where the right of complainant is clear.

LACHES.

The contract was made March 9, 1920. On March 24, 1920, there was a conference of the interested parties in the office of Mr. Lane. There was a refusal at that time to give the lease and Mr. Lane stated to complainant's representatives, and they were represented by counsel, that the only way they could get a lease would be by action for specific performance, in the Court of Chancery (p. 110).

The bill was not filed until April 28, 1920, or more than a month after the time fixed for the giving of the lease. Defendant did not know that such a bill had been filed. No process was issued until June 7, 1920. No explanation is given for this delay. In view of what took place at Mr. Lane's office, as related by Levine (p. 74), and by Harry Adelman (p. 109), defendant assumed that complainant, whom he knew to be, by that time, a mere cloak for Granat and Levine for the purpose of profiteering in rents, had abandoned any idea of getting the lease.

However that may be the burden is upon the party seeking specific performance not only to proceed forthwith but to diligently prosecute his suit.

- Garriss v. Garriss*, 16 N. J. E. 79;
Van Doren v. Robinson, 17 N. J. E. 256;
Lawrence v. Lawrence, 21 N. J. E. 317;
Merritt v. Brown, 21 N. J. E. 401;
Houghwant v. Murphy, 22 N. J. E. 531
 (Court of Errors and Appeals);
Ketcham v. Owen, 55 N. J. E. 344,

particularly cases referred to at p. 349;
Agens v. Koch, 74 N. J. E. 528,

particularly at p. 536, where the Court says:

“The lapse of time, in this aspect, is set up as a defense to the suit, because of laches in seeking the equitable remedy, an altogether different question from the element of time in the contract itself. As to this defense of laches the general rule is that where one party, arbitrarily or otherwise, notifies the other that he will not perform the contract, the bill must be filed speedily unless the party receiving this notice be in possession. In *Ketcham v. Owen*, 55 N. J. E. (10 Dick.) 344, 349, &c. (1897), I referred to the cases on this subject, and held that a delay of three years was fatal. The doctrine is that the failure of the party receiving notice of abandonment, to make immediate assertion of his right to enforce the contract, may be considered as such an acquiescence in the notice and an abandonment of equitable rights as to leave the parties to their legal remedies and liabilities. *Walker v. Jeffreys*, 1 Hare 341, 348 (Vice-Chancellor Wigram), 1842.”

And in this case we have the testimony that the representative of complainant stated that it was going to sue at law. We have not only conduct evidence within the rule of *Falkner v. Wassmer*, 77 N. J. E. 537, indicating that complainant acquiesced in the abandonment of equitable rights but a statement to that effect acted on by defendant.

And the general rule is stated in 25 Ruling Case Law title “Specific Performance,” p. 250, sec. 54:

“Again the plaintiff’s laches may consist of his failure to promptly institute and prosecute proceedings in reference to such contract.”

962 J. Eq. 456-

And while in the case of *Fox v. Fridrich*,¹²⁶ Atl. 535, the Court found that the complainant had first declined to carry out the contract and then had changed his mind, the reasoning indulged in by the Court is applicable to this case. The Court said:

“The hazard of operation was thus forced on defendant by complainant’s default; had such operation been unsuccessful it reasonably may be assumed that complainant’s determination not to perform would have remained unchanged. It seems impossible to determine that, in a contract of this nature, involving the sale of a going business, and in which these obvious consequences of a default in prompt performance upon the part of complainant exist, the time agreed upon when payment is to be made, and the business is to be turned over to complainant, can be considered an immaterial element of the contract. Indeed performance by the purchaser on that day or reasonably soon thereafter would more nearly appear to be of the very essence of such a contract. A decree for performance would necessarily involve an accounting during the period of defendant’s operation of the business since complainant’s default, to determine what charges and allowances growing out of such management and operation of the business should be equitable and just; a difficult if not impossible understanding, and a task imposed by complainant’s default.”

In the case at bar, assuming that there was no default upon the part of complainant, nevertheless complainant was advised by defendant, for what appeared to the defendant to be justifiable cause, that defendant would not carry out the contract. Complainant not only delayed in instituting the suit but stated that it did not intend to institute a suit in equity but intended to recover at law. The result was that defendant went on and dealt with the property as his own

and it is almost an impossible undertaking to arrive at a just and true accounting between the parties.

It is not proceeding forthwith to wait to file a bill over a month and a half after formal notice that the only way it could get the lease would be by action for specific performance, and after the time for performance had expired, nor is it diligent prosecution to wait for approximately six weeks before serving process notifying defendant that a suit has been begun. The burden of proceeding at once is more rigid where specific performance is asked of a contract to give a lease for a short term of years. At the time the cause was submitted to the Court for decision two-thirds of the term had expired. At the time of the filing of the conclusions the term had expired over five months, and at the time of the making of the decree the term had expired over a year and a half. The net result is that the decree does not grant (for it could not) specific performance. It does grant an accounting which, in effect, is but damages which would be recoverable at law.

THE CONTRACT IS INCOMPLETE AND
WAS NEVER INTENDED TO BECOME
EFFECTIVE AS WRITTEN.

The manner in which this contract for a lease was executed is described by Harry Adelman, the son of defendant, on p. 110. He first knew of the proposed transaction on March 9th, about three o'clock in the afternoon. His father, who is deaf, had had a talk with Granat and Silverfelt, an agent, who introduced him on the same day (p. 195). They went through the building. Samuel Adelman testifies what was said from pp. 190 to 196. He describes on p. 195, what

damage could be done to the building. It cost \$250,000. Slight negligence with respect to the steam plant would cause a loss of over \$100,000 throughout the building. At that conference he stated that he would not lease the building unless they gave a bond to return the building in as good condition as when they got it (p. 192). They all went to the office, getting there about four o'clock, where Harry Adelman was, and there was a discussion as to the terms which were to go in the lease which was to be made at a later date. A check for \$500 as a deposit was tendered. Harry Adelman's first thought was merely to give a receipt for the check. He then thought that they might as well agree *upon such terms as could be agreed upon at that time*. His father told him, in the presence of all, that a bond was to be given for the return of the property in good condition (p. 112). The bond was to be that of a bonding company, but the amount was not fixed. Various terms were discussed and agreed upon, but with respect to the bond (p. 113) the details were left to be determined finally at the time the lease was to be made in Gaede's office. There were other additional terms discussed but not agreed upon (p. 113). These matters were to be left open for consideration at Mr. Gaede's office. Because of these open matters, which had not been agreed upon, but with respect to which it was understood there was to be an agreement before any lease was given, the clause in the contract—

“Any further provisions, clauses and agreement to be made in addition to the above-mentioned and later to be agreed upon shall be incorporated in addition to the provisions herein contained, in a lease, etc.”
(p. 114).

was inserted.

There was some doubt in the mind of complainant's representatives whether they could get a bonding company to go on the bond and Harry Adelman said that he thought he could get a company. The *very next day* Harry Adelman called up Levine and told him that he had been in touch with the representatives of the bonding company; whereupon Levine told him to send them over (p. 115), Levine admits this conversation, although he places it some three or four days after the making of the contract (p. 72), and he disagreed with Harry Adelman as to what was said. He states that Harry Adelman said to him that his lawyers had advised his father to demand a bond, to which Levine replied "What for; we are giving you security," and that he said, "I don't know anything about it, Harry; I don't think we will give you any bond. I feel sure we can't give you any bond." Harry Adelman asked him, "why" and he replied, "In the first place, we cannot give you any bond because no such bond can be obtained; and in the second place it is not a part of our agreement" to which Harry Adelman replied, "I will get you a bond" to which Levine replied, "Go ahead and do it; I will see about it. I will see my corporation; I'm not the only man here. We will speak of it to the people and see what we can do."

Levine says (p. 73) at one place that the amount of the bond was stated to be \$75,000 and, at another that he cannot remember.

I submit that if no bond had been talked about the reply of Levine to the suggestion of a bond from Harry Adelman (p. 70) would not have been as indicated on p. 70. It is entirely too argumentative.

Three or four days later Silverfelt, the agent, came to see Harry Adelman and told him that Granat had taken up the matter of the bond with the bonding company and that they could not give a statement sufficient to warrant the surety company giving such a bond (p. 116).

Subsequently, complainant retained Mr. Dipple and there was a conference between the Adelmans and Mr. Dipple at Adelman's house (p. 117). At that time Mr. Dipple took the position that there was nothing mentioned in the contract about the bond and that they would not give a bond, to which Harry Adelman replied that the agreement was that a bond should be given; that, in fact, the contract was intended to be no more than a receipt (pp. 117, 118). The bond was to secure the return of the property in the condition in which it was given to them.

There was a subsequent conference at the office of Mr. Lane on March 24th (p. 119), and at that conference various conditions, some included in the contract and some not, were taken up, and there were agreements reached with respect to some. There were other conditions discussed and agreed upon (p. 121). They would not, however, give a bond. They were advised that if they wanted the lease they would have to sue in the Court of Chancery (p. 122).

Sometime about the 15th of April, Harry Adelman met Mr. Dipple and on that occasion he, Dipple, told Harry Adelman that "they were going to sue at law and get damages." Adelman had no idea that they were going to sue in Chancery for specific performance until on or about the 10th day of June, 1920, when the subpoena was served (p. 122).

With respect to what took place at the office, Harry Adelman is corroborated by Samuel Adelman (p. 196). He is also corroborated by the witness, Harry Cohen (p. 218), who was present at the time of the conference between Samuel Adelman, Granat and Silverfelt, upon the property before they went to the office to draw the contract, and who heard considerable of what was said (p. 219), among other things, that Granat agreed to give a bond of a bonding company to secure the turning back of the building in as good condition as when received. He was also corroborated by Benjamin Schwartzberg, who remembers going into the office of Harry Adelman in March, 1920, between six or ten minutes after six when the contract was being prepared and overhearing a part of the conversation with respect to the bond (p. 241). He was a tenant in one of the buildings and tells a circumstantial story as to how he happened to be present at the time (p. 241).

Granat denies any conversation with respect to a bond (p. 267). He denies that Cohen was present when they went over the property but admits that he was present at the office (p. 267). He denies that there were any terms of the lease left open for discussion (p. 271), but his admissions as to what took place and the agreements he made at the office of Mr. Lane on March 24, 1920, negatives this. Levine likewise denies any conversation with respect to the bond (pp. 282, 285). Silverfelt, the real estate agent (p. 290), denies any talk with respect to the bond until five or six days after March 9, 1920.

Although Granat, Levine and Silverfelt deny having seen Schwartzberg in the office at the time of the drawing of this contract, Silverfelt says

that a man *did* come in during the course of the preparation of the papers with respect to the renting of an apartment and that he gave Harry Adelman a check and Harry gave him a receipt (p. 293). As matter of fact, this was Schwartzberg.

Notwithstanding the fact that Silverfelt was in this office he says he met Harry Adelman four or five days after and asked him *if the contract was signed. This would seem to indicate that Silverfelt considered that the paper, which was signed, was not, in fact, a contract and that the Adelmans' statement that it was merely intended as a memorandum of certain things which had been agreed upon, leaving certain things to be agreed upon before the transaction became consummated, is true. The preparation of this paper took from six o'clock until nine P. M. (p. 295).*

Mr. Dippel testifies (p. 99) that he was retained by complainant; he had a conference with the Adelmans, Silverfelt, Levine and Granat, at the Adelman apartment, and he puts Adelman in the position of saying that—

“Since entering into this contract that it dawned on him that the property might be damaged and that these people might take a lot of profit out of the property, and that he would be the loser in the end, and he wanted the bond as security for the rent and to secure him against a possible breakdown of the boiler and the disappearance of some ice boxes, and so forth.”

and that he wanted a bond of \$75,000. He says that complainant refused stating that they would not consider the proposition at all; that it was not part of their agreement in the first place, and that, in the second place, no surety company would give a bond; that they never heard of anything like that, and that they were will-

ing to give an additional sum in cash of \$4,000 that they had agreed to in the original agreement; that the party broke up.

Considerable reliance is placed by the Advisory Master upon the testimony of Mr. Dippel (p 334). It is said that his testimony is not contradicted (p. 335).

It is submitted that Mr. Dippel's testimony falls of its own weight. He was counsel for the parties. He first says (p. 105) that it was not stated at the time of the conference at Mr. Adelman's house that whatever was said would be without prejudice. He then says (p. 105) that a statement to that effect *was* made and that whatever statements were made were under that protection. Nevertheless he testified to what had been said. He places Adelman in the position of making the statement that "since entering into this contract it dawned on him," etc. In other words, he places the Adelmans in the position of deliberately making a statement which would deprive them of any right to rely upon the refusal of complainant to give a bond. He testifies to a voluntary admission with respect to a most crucial point in the case, and he, the counsel for complainant, is the one who does this testifying, the statement having been made at a time when he says the conference was to be without prejudice.

I say it falls of its own weight if the Advisory Master's estimate of Harry Adelman is correct. He says of Harry Adelman that he was practically a lawyer (p. 319), and that he proved himself "to be an adroit, astute young lawyer." Now, Mr. Dippel, counsel for complainant, in his testimony places this adroit, astute young lawyer in the position of making a statement, in his own house, voluntarily, which absolutely

would negative that which all knew he has been contending for.

There is no point in the Advisory Master's statement that this testimony of Mr. Dippel has not been denied. Harry Adelman, in his examination, testifies, on cross examination as to what was said at that conference (p. 169), and the cross examination by Mr. Lichtenstein, counsel for complainant, indicates that Mr. Dippel is mistaken with respect to what he states Harry Adelman said at that conference. On p. 169, Mr. Lichtenstein examined Harry Adelman with respect to this conference:

"Q Let me see if I can refresh your memory by something you said yesterday; isn't it a fact that you didn't know of your failure to insert this clause as you say until Mr. Dippel was at your house on the night mentioned? A I said it was Mr. Dippel or it might have been Mr. Silverfelt. Now, that my memory is refreshed, I think we met Mr. Silverfelt about it and he took them to Mr. Dippel. * * *

Q Do you recall yesterday you said when Mr. Dippel was at your house you said he asked you why it was that you didn't want to execute the lease and why you were asking for the bond, and you said that you told him that it was in the agreement? A Yes."

Of course, if Harry Adelman thought it was in the agreement when he was talking with Mr. Dippel, he never said to Mr. Dippel that it "had dawned on him after the contract was made, etc." Harry Adelman testifies with respect to the conference (p. 173) and his testimony is in direct conflict with that of Mr. Dippel.

The testimony of Mr. Dippel was, in fact, contradicted by that of Harry Adelman and it is so perfectly inconsistent with the position

which was taken by the Adelmans as to clearly indicate that Mr. Dippel was mistaken.

Samuel Adelman was deaf and when the Advisory Master says that (p. 335) "Mr. Adelman heard Mr. Dippel's statement" he is mistaken. Because of his deafness and the impossibility of properly examining him his testimony was directed (p. 190) to nothing except what was absolutely necessary. If he was not given the opportunity to in terms, deny the statements of Mr. Dippel it is the fault of counsel.

As corroborating the testimony of the Adelmans that the bond *was* referred to we have Exhibit D. 3 (p. 317) which is a memorandum made by Harry Adelman at the time the contract was drawn. That memorandum contains the words, "Bond to be given by 2 pty to cover full amount of lease in add to security." There is no doubt but that a memorandum similar to D. 3. was made at the time. See Granat's testimony, pp. 40, 41; Harry Adelman's testimony, pp. 112, 124; Samuel Adelman's testimony, p. 207. Both sides agree that such a memorandum was made.

Further, as corroborating the testimony that a bond was referred to we have the admitted fact that when Harry Adelman telephoned Levine and spoke about the bond he, Levine, communicated with his partner Granat and his partner Granat called up the bonding company and attempted to get a bond (p. 44), and we have this testimony from Levine (p. 79):

"Q Did he (Harry Adelman) tell you what that bond was for? A No; he said that his lawyer advised his father to demand a bond of \$75,000.

Q Did you ask what it was for? A I wouldn't ask him as it didn't interest me at all.

Q You were interested enough to tell your partner? A To tell him the news, certainly.

Q And your partner telephoned the bonding company? A The same day or the next day.

Q Did he tell you that he called up the bonding company? A He did.

Q But, you weren't sufficiently interested to find out what the bond was for? A Absolutely not; and I still don't know what it was for.

Q You never tried to find out? A Well, I know why; because they refused to give us a lease—

Q I'm talking about the reason they gave. A They didn't require any bond at all.

Q Nothing was said about it being as security for the return of the building in as good condition as when you got it? A No.

Q Don't you remember in my office when we were discussing the terms, that it was stated to you it was for the return of the building in as good condition as when you got it? A Yes.

Q Then why do you say that the reason wasn't discussed? A Possibly it was.

* * * * *

Q And wasn't it discussed as to why the bond should be required when Mr. Adelman first telephoned to you? A No, sir.

Q You still say you didn't have interest enough to find out what the bond was for? A No.

Q So, you didn't know why the bond was required until you came to my office? A Exactly."

And see Granat's testimony, p. 47.

And, notwithstanding the fact that complainant *now* says that all the terms were agreed upon when the contract was drawn, they subsequently negotiated many other terms and agreed upon them. (Granat's testimony, pp. 31, 30, 46, 47; Harry Adelman's testimony, pp. 120, 121). And

Granat testifies (p. 31) that Harry Adelman said at the conference in Mr. Lane's office that his "father would waive the question of the bond" if certain other conditions were agreed to.

But, I submit, the conduct of complainant's representatives, at the time the contract was drawn, *is conclusive* that the contract is not certain for it appears that when the clause, which the Advisory Master construes *now* in a way to make the contract certain, but to deprive the clause of any legal force, was inserted in the contract it was *not understood by complainant's representatives* for Granat testifies (p. 64) that the way that clause happened to be inserted was:

"Q You say that everything that was to go in this lease was agreed upon at the time this written instrument was signed? A Yes, sir.

Q There wasn't anything left to be discussed about anything? A No, sir.

Q Can you tell me why it was, then, that this clause was put in; any further provisions, clauses, agreements to be made in addition to the above mentioned, and later to be agreed upon, shall be incorporated in addition to the provisions herein contained, in a lease to be made in the office of Gaede & Gaede? A When we were all through Mr. Adelman, junior, said, '*Well, maybe we have left something out.*' Now, when we come to the final closing,' he says, 'if you will suggest something which will be agreeable to us and it is agreed upon we will enter it into this agreement; the same on the other hand, if they will suggest anything. Otherwise it stands as it is.'

Q Did he say that maybe they had left something out? A No, sir.

Q You started off by telling us that Mr. Adelman stated 'Maybe, we have left something out.' A Maybe, yes; but it has got to be agreed upon.

Q But, he started his statement, by saying, 'Maybe, we have left something out,' did he? A Yes."

And see the testimony of Mr. Levine (p. 287):

"Q Were there any clauses put into this agreement which were not discussed between all of you before he put them in? A No, sir; *the only one was the last one which I didn't know what it was.*

Q What is that? A That other things shall be agreed upon; and I asked him 'what is this?'"

The testimony of Harry Adelman is that (p. 114) the clause was inserted because they did not have time to insert everything that was to go into the contract and that he explained it to complainant's representatives as follows:

"They asked me about it later, just before it was signed, and I told them that was to take care of all items which we were talking about at the time, which were the question of the bond, the question of tenancy, and the question of janitor, the use of the building, any cancellation clause, or anything else that might be discussed between us and insisted upon on our part."

The reason why the details of the bond could not be agreed upon, as stated, was that they could not determine the amount of the bond nor could they determine whether it should be given by a bonding company or whether it would have to be real estate security, because no one knew whether a bonding company would give such a bond.

Upon the question of the certainty of this contract and as to whether it is complete or not we have, first, the fact that *upon its face the contract is incomplete* for, as ordinarily interpreted, the clause which is referred to, contemplates that there were other agreements not yet concluded

which were to go into the written lease; second, that to say the best for complainant the *clause may be interpreted in two ways*; if interpreted in one way and as ordinarily it would be understood, the contract is incomplete and unenforceable, if interpreted as the Advisory Master interprets it, the contract is complete but *the clause is deprived of any legal effect*; third, that when the contract was drawn *there was a question as to what was meant by this clause in the minds of the representatives of complainant* and they asked for an explanation, assuming, but not conceding, that the explanation made by Harry Adelman, as testified to by complainant's witnesses, would make the contract complete, the explanation, as testified to by Harry Adelman, would make the contract incomplete.

The result of this is that either the contract is incomplete or it is so uncertain as that a Court of Equity will not specifically enforce it.

THE LAW.

The contract is within the statute of frauds and all of the details must be settled by it without the aid of parol evidence or it is unenforceable.

Charlton v. Columbia, 67 N. J. E. 630;
Schenck v. Spring Lake, etc. Co., 47 N. J. E. 44;
Johnson Miller v. Buck, 35 N. J. L. 338,
 29 L. R. A. 431.

Aside now from the question of completeness the contract must be certain in all its parts and unambiguous.

Cases cited above, and *Moore v. Galupo*, 65 N. J. E. 194.

The ambiguity may be created by, but it cannot be removed by parol evidence.

Schenck v. Spring Lake, 47 N. J. E. 44.

Pomeroy Eq. Jur., vol. 5, p. 4911, sec. 2186, states the rule:

“A contract that is incomplete, uncertain, or indefinite in its material terms will not be specifically enforced in equity. There is required a greater degree of certainty and definiteness for specific performance than to obtain damages at law. For specific performance is demanded that degree of certainty and definiteness which *leaves in the mind of the Chancellor or Court no reasonable doubt as to what the parties intended*, and no reasonable doubt of the specific thing equity is to compel done. The element of completeness denotes that the contract embraces all of the material terms; that of certainty denotes that each one of these terms is expressed in a sufficiently exact and definite manner an incomplete contract, therefore, is one from which one or more material terms have been entirely omitted. An uncertain contract is one which may indeed embrace all the material terms, but one or more of them is expressed in so inexact, indefinite, or obscure language, that the intent of the parties cannot be sufficiently ascertained to enable the Court to carry it into effect.” (Italics mine.)

The same author states, sec. 2190, p. 4922:

“The material terms, or the existence of the contract, may be uncertain or lacking, in reference to: (1) The parties contracting or (2) the price or some definite means of ascertaining it; (3) the subject matter; (4) conditions, etc.”

I submit that the uncertainty, at least, of this contract is demonstrated by the memorandum of conclusions of the Advisory Master, and the amount of effort which he is required to make, including, what I submit, is a strained construc-

tion of the clause in question and the careful weighing of parol evidence.

The Advisory Master (p. 344), conceding that a mistake on the part of defendant alone might afford a sufficient ground in equity for the denial of the remedy of specific performance, as laid down by Prof. Pomeroy, sec. 860, in which section the professor says—

“A mistake which is entirely the defendant’s own, or that of his agent, and for which the plaintiff is not directly or indirectly responsible, may be proved in defense, and may defeat a specific performance.”

goes on to state that the evidence must be of the clearest and most convincing nature and that the burden of proof is on the “plaintiff” and he must prove his case beyond a reasonable doubt, citing 2 Pom. Eq. Jur., 3 ed., sec. 862.

But, Prof. Pomeroy in that section is treating of a suit to *reform* a contract on the ground of mistake and *then specifically enforce it*—an entirely different rule applies where the mistake is made a matter of defense against specific performance, for, as Prof. Pomeroy says, in his second edition under the title of “Equitable Remedies,” vol. 5, sec. 2207:

“It necessarily follows that a less strong case is sufficient to defeat a suit for specific performance than is requisite to obtain the remedy.”

Just as parol evidence may be used for the purposes of creating an ambiguity but cannot be used for the purpose of removing one. And the general rule with respect to the action of specific performance is stated by Prof. Pomeroy, vol. 5, p. 4945, sec. 2207, as follows:

“The contract must be perfectly fair, equal, and just in its terms and its circum-

stances. The contract and the situation of the parties must be such that the remedy of specific performance will not be harsh or oppressive. If, then, the contract itself is unfair, one-sided, unjust, unconscionable, or affected by any other inequitable feature; or if its enforcement would be oppressive or hard on the defendant, or would prevent his enjoyment of his own rights, or would work any injustice; * * * then a specific performance will be refused. It necessarily follows that a less strong case is sufficient to defeat a suit for specific performance than is requisite to obtain the remedy * * * The oppression or hardship may result from unconscionable provisions of the contract itself; or it may result from the situation of the parties, unconnected with the terms of the contract or with the circumstances of its negotiation and execution; that is, from external facts or events or circumstances which control or affect the situation of the defendant."

And the last opinion on the subject in this State is *Migel v. Bachofen*, 2 N. J. Advance Reports 1494, where this Court said:

"A court of equity ought not to lend its aid in the carrying into execution a scheme so manifestly unfair to the defendant, and for this reason a decree of specific performance should have been denied. The remedy by specific performance is discretionary; the question is not what must the court do, but what, in view of all the circumstances of the case in judgment, should it do to further justice; and, where the enforcement of the contract will be attended with great hardship or manifest injustice to the defendant, the court should always refuse its aid."

Nor will the Court enforce a contract which will do injury to third parties or to the public.

Pomeroy Eq. Jur., vol. 5, p. 4956, sec. 2217.

96 N. J. Eq. 608.

Vice-Chancellor Van Fleet in *Sternberg v. O'Brien*, 48 N. J. E. 370, at p. 372, an injunction case, referring to the general rule quoted with approval Chief Justice Best in *Homer v. Ashford*, 3 Bing 322, 326, as follows:

“The law will not permit any one to restrain a person from doing what the public welfare and his own interest require that he should do.”

And public policy has been defined as that principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be designated, as it sometimes has been, the policy of the law or public policy in relation to the administration of the law.

13 Corpus Juris, sec. 360, p. 425, and cases cited.

And the same work, in section 362, title “Contracts” states: that there are many things which the law does not expressly prohibit or penalize, which are so mischievous in their nature and tendency that on grounds of public policy they are not permitted to be the subject of an enforceable agreement; that public policy varies with time and place.

CONCLUSIONS.

In the case at bar, we have the two elements present of great hardship to defendant and but little benefit to complainant and of injury to the public, and we have involved not the question of declaring a contract void but whether, under all of the circumstances, the discretionary remedy of specific performance will be awarded. There is great hardship to defendant. He is required to surrender control of this sixty-four family apartment to a corporation, which is, in effect, but a

paper corporation, which cannot get a bond from a surety company to insure the turning back of the building in as good condition as when received; he is exposed to the hazard of having rents unreasonably and arbitrarily raised creating discord among tenants with whom he will be obliged to deal after the expiration of the lease; he is exposed to having his taxes raised; the various municipalities at that time, in their endeavor to keep down rents to a reasonable level, having adopted the plan of greatly increasing the valuation of buildings where rents were, in the opinion of the officials, arbitrarily raised; he is exposed to the danger of having his property injured by slight negligence to a very great amount without recourse; the property is his; he has invested capital; complainant secures the use of this property practically without investment. And, added to this, we have the sharp dispute in the testimony as to whether or not, in order to protect defendant against these consequences it was agreed, at the time the contract was made, that it should not be effective until complainant should give a bond to save defendant harmless, and we have the insertion, in the contract of a clause which, upon its face, renders it incomplete, and if not incomplete, at least uncertain, a clause which might well have been designed, as testified by Harry Adelman, to provide for a further agreement, before the contract should become effective, with respect to this bond.

And an injury to the public is present. At the time of the making of this contract rents were being raised arbitrarily and unreasonably and because of the emergent condition the States and the various municipalities were passing laws commonly known as rent laws. To protect the public from an emergent condition legislatures

were stretching their powers under the constitution to the utmost limit. The design of this contract was to relieve the landlord of the odium of raising of rents. The individuals interested in taking the property, to relieve themselves organized what was, in effect, a paper corporation. Complainant was attempting to make a profit out of the renters and contrary to public policy as it was then formulated. Complainant was engaged in the same business in New York. Its leases had been cancelled in New York, complainant's agent says because of the change in the real estate condition, but his testimony (p. 71) indicates, I submit, that it was because of the passage of rent laws interfering with his activities.

It is submitted that under these circumstances complainant is in no position to invoke the discretionary remedy of specific performance.

Lastly, we have the fact that the bill was not filed until over a month after complainant was advised that if it desired to obtain a lease it would have to resort to specific performance and after the lease was to be given and that process was not issued until approximately six weeks after the bill was filed, or two months and a half after the lease was to be given.

It is a general rule in actions for specific performance that not only must complainant be diligent in instituting his suit but he is to be diligent in prosecuting it. Where the action is to enforce a contract to give a lease for three years, a delay of over a month in instituting a suit is not diligence and a delay of six weeks, after instituting suit, in issuing process is not diligence in prosecuting the suit in view of the rule that in Chancery a suit is not commenced until subpoena issued, *Del River v. Mercer*, 88

Eq. 506. In the meantime defendant assumed that complainant had abandoned the idea of specific performance and intended to sue for damages, and Harry Adelman met Mr. Dippel and was so advised by him. This is denied by Mr. Dippel, and we have another sharp conflict of testimony. However that may be, until process was served, defendant had no idea that specific performance was to be resorted to. This building is a sixty-four family apartment and it was necessary for defendant to go on and operate and he went on and operated it, treating the property as his own, and operating it as if complainant were not interested therein. He, in fact, changed his position. It would be unjust now to call him to account as if during all of that period of time he was acting for complainant.

And it is to be observed that in the decree, while defendant is required to account to complainant, if, upon that accounting, it appears that, as matter of fact, defendant has spent more moneys than he has received, *there is no provision that complainant pay to defendant the amount of the excess expenditures.* The decree is one-sided. *It does not compel complainant to elect to take the property or to leave it.* It permits it to experiment. If, upon the accounting, it appears there is excess income it will get it, but, if upon the accounting, it appears that there are excess expenditures it does not have to pay them. The accounting directed is not a mutual accounting. In any event if there is to be an accounting it should be a mutual accounting.

As the decree now stands it is a decree simply for damages for breach of the contract. The Court of Chancery has no jurisdiction to award damages for a breach of the contract, *Sperry &*

Hutchinson v. Hertzberg, 69 N. J. Eq. 264 at 291;
McGann v. LaBrecque, 91 N. J. Eq. 307.

It is respectfully submitted the decree should
be reversed.

Respectfully submitted,

MERRITT LANE,
Of Counsel with Appellant.

1

New Jersey Court of Errors and Appeals

Between

WEST HEIGHTS REALTY CORPORATION,
Complainant-Respondent,

and

SAMUEL M. ADELMAN,
Defendant-Appellant.

On Bill for Specific Performance.
On Appeal from Decree in Chancery Granting Relief.

Stevenson, A. M.

REPLY BRIEF FOR APPELLANT.

I.

Respondent does not answer the point made at pp. 33, 34 of appellant's brief and in the petition of appeal, p. 351, in which it is alleged: "and said decree is likewise erroneous because at the time of the pronouncement of said decree the term for which the lease was to be given had expired, and the right of the said complainant, if any, was to sue the defendant at law for breach of the contract; that there was a full and complete and adequate remedy at law, that the Court of Chancery had no jurisdiction to grant a decree for accounting; that the Court of Chancery had no jurisdiction to grant the decree at the time it did, the decree being nothing more or less than for damages for breach of a contract," those damages to be fixed by an accounting rather than by a jury.

The cases of *Hutchinson v. Hertzberg*, 69 N. J. E. 264 at p. 291, and *McGann v. LaBrecque*, 91 N. J. E. 307, cited at p. 34 of appellant's original brief, apply.

II.

Leaving out of consideration the oral testimony, it appears *from the contract itself* that it was not complete.

This point was argued in the original brief of appellant, p. 14, etc. It is answered by respondent, p. 6 of its brief, Point II. The clause in the contract quoted, p. 15 of appellant's brief and p. 6 of respondent's brief, indicates that there were other terms to be agreed upon without the aid of the oral testimony.

Respondent cites as authority that the contract is complete, *Levine v. Lafayette Building Corporation*, 105 N. J. E. 532. It is, in fact, authority to the contrary. This Court in that case reversed the decree of the Court of Chancery, 6 N. J. Advance Reports 1196, 142 Atl. 441. The Vice Chancellor below in that case relied upon *Luczak v. Mariove*, 92 N. J. E. 377, affirmed 93 N. J. E. 501, and *Wharton v. Stoutenburgh*, 35 N. J. E. 266. *Wharton v. Stoutenburgh* is cited at p. 26 of respondent's brief. This Court said:

“With respect to the leading case of *Wharton v. Stoutenburgh*, 35 N. J. E. 266, cited several times in the opinion below, it may be well to point out, as was done recently in *Harman v. Wilson*, 101 N. J. E. 743, 748, 749, that it was a suit by a landlord, against a tenant *who had gone into possession, to compel the tenant to execute a written lease prepared by counsel, in complete form, and the terms whereof had been orally agreed on by the parties to the last punctuation mark.* The case was therefore one of specific performance of an oral contract *partially performed.*”

We have no such situation in the case at bar. Here the tenant is attempting to enforce a con-

tract to give a lease. No part of the contract has been performed. The tenant never went into possession.

The contract must, therefore, be full and complete within its four corners, else it cannot be specifically performed.

Venino v. Naegele, 99 N. J. E. 183, affirmed 100 N. J. E. 357.

If the oral testimony be resorted to I submit that it appears that the contract was not intended to be complete and I have nothing further to say upon the subject than I did on p. 14 *et seq.* of the original brief.

Respondent considers the oral testimony from p. 7 to 24 of its brief, a matter of 17 pages. If it takes 17 pages of discussion of testimony to answer the claim that the testimony shows that the contract was intended to be incomplete, can it be said that *it is certain* that it was intended that the contract stand without further additions?

The Court of Chancery will always deny specific performance unless the contract is *certain* in all its parts and unambiguous. The remedy is one of judicial discretion and the Court will not act unless the right of complainant is clear. I have cited the cases under the title "The Law", p. 26 of the main brief.

Respondent attempts to remove the ambiguity in the contract (if the contract, to say the best for respondent, *is* ambiguous), by the oral testimony but the difficulty is that, while in a specific performance suit oral testimony may *create* an ambiguity, it cannot remove it.

Schenck v. Spring Lake, 47 N. J. E. 44;
Pomeroy Eq. Jur., vol. 5, p. 4911, sec. 2186;

Pomeroy Eq. Jur., vol. 5, sec. 2207.

III.

Respondent under its Point III alleges that it was not guilty of laches.

He cites those cases which hold that *mere delay* without injury is not sufficient to bring into application the doctrine of laches. But, I submit, he overlooks that not only is laches a defense in an action for specific performance but *mere delay either to begin or to prosecute the suit is a defense.*

The cases are cited on p. 11, *et seq.* of the main brief.

But, as matter of fact, there *was* injury to appellant by reason of the delay as is pointed out on p. 13 of the original brief. He assumed, not only because of the delay but also of the conduct of respondent, that respondent did not intend to attempt to compel a delivery of the lease and therefore he went on and dealt with the property as his own, with the result that it is impossible to arrive at a just and true accounting between the parties.

Respondent also overlooks the doctrine of election which was stated in *Faulkner v. Wassmer*; 77 N. J. E. 537.

It is respectfully submitted that the decree brought up should be reversed.

Respectfully submitted,

MERRITT LANE,
Of Counsel for Appellant.

1 MAY.T.1930

New Jersey Court of Errors and Appeals

Between,

WEST HEIGHTS REALTY
CORPORATION,
Complainant-Respondent,
and
SAMUEL M. ADELMAN,
Defendant-Appellant.

On Bill for
Specific
Performance.

On Appeal from
Decree in
Chancery Granting
Relief.

Stevenson, A. M.

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement.

This is an appeal by appellant (defendant below) from a decree of the Chancellor directing the defendant-appellant to account for the rents, issues and profits of the lands described in the bill. The decree was advised by the late Honorable Eugene Stevenson, sitting as Advisory Master.

The bill was filed to compel specific performance by the defendant-appellant of a written agreement made March 9th, 1920 (which by error bears date March 9th, 1919), under which appellant agreed to lease unto the respondent certain apartment houses in Weehawken for a term of three years commencing April 1st, 1920. The agreement is set out in full on page 6.

Defendant filed an answer and counterclaim, setting up:

1. That the agreement should not be specifically enforced because of uncertainty.

2. That specific performance would be inequitable because the complainant corporation was organized for the purpose of speculating in rents and was without financial responsibility.

3. The formal lease referred to in the agreement was to be executed on March 25, 1920, and before that date defendant notified complainant that the lease would not be executed by the defendant; that since the bill was filed on April 28, 1920, defendant assumed that complainant had abandoned any idea of obtaining the lease and operated the property in a manner which otherwise he would not have done.

The counterclaim asks that a decree be made that the contract in question does not evidence a complete contract, is not binding upon the defendant, and that it be delivered up for cancellation.

At the time the case was decided, the term of the lease which was to be entered into between the parties having expired, the decree sets forth that "The Court being of opinion that the complainant would be entitled to the specific performance of said agreement, as prayed, but that because of the fact that the entire period during which the defendant agree to let, lease and rent said lands and premises to the complainant, as aforesaid, has elapsed, a decree for specific performance by the defendant would be futile, and that, under these circumstances, the court should render a decree for an accounting."

We will take up the questions raised in the order in which they are argued in appellant's brief.

POINT I.**To grant relief would not offend public policy.**

The entire point made by appellant is that the respondent corporation was organized for the purpose of profiteering in rents, and that the agreement was made during a period when it became necessary for governing bodies to pass rent laws to keep rent within reasonable limits. This statement is inaccurate—the first Emergency Rent Law in New Jersey was passed in 1922, (Chapter 93, L. 1922), or more than two years after the agreement in question was entered into. But aside from this, there is nothing in the record to justify the statement that such was the purpose or intent of respondent.

The respondent company organized in 1919, with a paid-in capital of \$5,000, was engaged in the business of renting and operating apartment houses in New York City—a method of operating apartment houses which has been well known for many years. The tenant under such arrangement relieves the landlord of the ordinary burdens of maintaining and looking after his property, and places such operations in the hands of specialists who have their own force of mechanics to make repairs, and collect their own rents, which materially reduces the overhead and thus results in a profit to both (p. 49).

At the time the parties negotiated for the lease in question respondent had under lease four apartment houses (p. 35). In order to indicate that the business of the respondent was that of profiteering, as counsel terms it, he examined the witnesses Granat and Lewine at great length; but nowhere does it appear that in their operations in connec-

tion with these leaseholds they did anything which was unfair, immoral or contrary to law. In some cases they raised rents, and in others they did not (p. 36).

After the agreement was signed appellant endeavored to back out of what he considered was not an agreement entirely to his satisfaction; and, thereafter, the parties met and the suggestion was made by appellant that respondent agree that if increases were made, a \$13 room should not be increased to exceeding \$14, and in order to obtain the lease respondent was willing to so agree (p. 46). This surely does not indicate any intent or desire to do the things which appellant charges.

Based upon the rent list submitted there would be a net profit to it, as figured by respondent, of about \$4,000 (p. 51).

During the negotiations between the parties respondent was advised that the owner had prior to that time sent out notices to his tenants that the rents would be increased (p. 65), and during the actual negotiations, and in the presence of the respondent's officer, one tenant's rent was actually increased by appellant (p. 65). Under these circumstances, it is apparent that the alleged fear expressed by appellant after the agreement was made and at a time when he desired to back out that the rents would be increased to his injury, was a mere subterfuge.

On page 7 of appellant's brief it is stated that the corporation raised rents in New York under the leases held by it, and that by reason of such increases such leases were cancelled. Nowhere in the record is there a word of evidence to this effect. All the leases contained a cancellation clause in case of sale of the property by the owner, and it was for this reason that the leases were terminated (p. 36).

The officers of the corporation, Granat and Lewine, held leaseholds on other properties in their own names, and those leases were merged by their purchasing these properties and conveying the same to the respondent corporation (p. 70).

It is a well known fact that prior to and at the time of the negotiations in question the cost of maintenance of property and taxes increased materially, as did also the general cost of living, and that owners were obliged to increase rents in order to save their properties.

The conclusion of the Advisory Master (p. 340), that the contention that respondent's purpose was to get possession of the property in question and to go "into the business of profiteering in rents was against public policy and to the injury of the defendant and would be liable to have his taxes largely raised in view of the increased income *did not call for consideration*" is, in our opinion a correct finding based both upon the facts and the law.

The authorities cited on pages 8 and 9 of the appellant's brief, *Driver v. Smith*, 89 Eq., 339, and *Migel v. Bachofen*, 90 Eq. 608, are inapplicable. Not a word of evidence appears in the case to indicate that the consequences of the enforcement of the contract would result in "inconvenience to the public" or such inconvenience as would result in equity refusing to give its aid.

This is not a case in which the enforcement of the contract "will be attended with great hardship and manifest injustice to the defendant." It is a clear case of an attempt on the part of the appellant to be relieved of his just obligation under a contract which was carefully prepared after many hours of discussion of its terms, as will be hereafter pointed out.

POINT II.

The contract is certain, definite and complete in all its terms and was intended to be a binding and enforceable contract effective as written.

Appellant contends that the contract is uncertain, incomplete and was never intended to become effective as written. The entire argument is based upon the clause contained in the contract (p. 9), which reads as follows:

“Any further provisions, clauses, and agreements to be made in addition to the above mentioned, and later to be agreed upon, shall be incorporated in addition to the provisions herein contained, in a lease to be made in the office of Gaede & Gaede, 91 Washington St., Hoboken, N. J., not later than March 25, 1930.”

The agreement was prepared under the following circumstances: On March 9, 1920, the parties having been brought together by a real estate broker named Silverfelt, who was a witness in the case, met at the office of appellant in Weehawken. There were present at the time of the final negotiations and execution of the agreement, the appellant Samuel Adelman, his son, A. Harry Adelman, Jacob Granat, the Secretary and Sol Lewine, the President of the respondent company, and the real estate agent, Silverfelt. The examination of the property, the negotiations of the terms of the agreement and the typewriting of the same consumed between 8 and 9 hours (p. 40). The respondent company was not represented by counsel, but the appellant, Samuel M. Adelman, was rep-

resented by his son, who, at the time had attended New York University Law School for three years, was then in his senior year and graduated within two months after the agreement in question was signed, and was admitted to the Bar in the following December (p. 125). His father was a builder and contractor, and the son assisted in the care of the large real estate interests of his father (p. 125). The preparation of contracts and leases was nothing new to Adelman, Jr. (pp. 130-131), and the father, who was a man of large experience in erecting, operating and leasing buildings, testified (p. 209): "I have made many, many contracts and also signed many leases." A mere casual reading of the testimony of the Messrs. Adelman, Sr. and Jr. clearly shows that they were both men of at least the experience of respondent's representatives; and the statement of the Advisory Master in his conclusions (referring to Adelman, Jr.), that "this young man was sworn as a witness and examined and cross-examined at length and proved himself to be an adroit, astute young lawyer who, while he was receiving his legal education had considerable experience in contracts pertaining to real estate in which his father, the defendant, was interested" (p. 319), is an accurate description of the capacity of this young man.

In order to substantiate the defense that the agreement was uncertain, incomplete and never intended to become effective as written, but that it was intended that a large surety company bond was to be given for the restoration of the premises at the end of the term, young Mr. Adelman, examined as a witness, testified that when the parties began to negotiate the first thing discussed was the question of the giving of a bond by respondent to appellant; that his father "insisted entirely and told me over and over again, and it was discussed

again in my presence, that a bond was to be given for the return of the property in as good condition as it was when the lessees got it" (p. 110), and that it was absolutely and definitely settled that a bond was to be given (p. 111).

The contract, he says, "was to be given only as a receipt for the deposit which Mr. Lewine tendered at the time, which was a check for \$500 (p. 111)" and further, "First, I was to write out an ordinary receipt, because I had to go to the class that evening in a law school; and then I thought it would be well, so far as we were concerned, to include almost everything in this receipt, and I went to work and drew it as a regular form of contract instead of saying 'Received from so and so the sum of \$500 as a deposit' or words to that effect" (p. 111). After the terms had been agreed upon, of which terms he claims to have made note, he prepared the agreement on a typewriter, in the form in which it appears in evidence. The matter of the bond he says was "left to be determined finally at the time the lease was to be made in Gaede's office, as to the details of it" (p. 113); and that this was because the amount of the bond and the name of the surety company to go on the bond had not been determined and was to be left open until the time the lease was to be executed (p. 113).

"Q. Was there anything said as to the clause which is inserted in this agreement, 'Any further provisions, clauses and agreements to be made in addition to the above mentioned,' and so forth?

A. That was why that clause was put in there. I inserted that clause because we did not have time to insert everything that was to go into the contract.

Q. What was said about it? A. Nothing, as far as I remember.

Q. Did you just insert the clause and they sign it without any explanation at all?

A. They asked me about it later, just before it was signed, and I told them that was to take care of all items which we were talking about at the time, which were the question of the bond, the question of tenancy, and the question of the janitor, the use of the building, any cancellation clause, or anything else that might be discussed between us and insisted upon our part" (p. 114).

Throughout the testimony of this witness, as well as that of the father, the point was made that the important term was the giving of a bond to secure the return of the property in good condition, and the witness says that he wrote these terms down in memorandum form for use in drafting the agreement (p. 127). The memorandum he refers to (p. 135) appears as Exhibit D-3 (p. 317).

That the evidence of Adelman, Jr., concerning the agreement to give a bond and the purpose of the bond is unreliable, is indicated from his testimony on page 138. Exhibit D-3, reads: "Bond to be given by 2 pty. to cover full amount of lease in add. to security." Although the witness had previously stated that the question of the bond was to be left open for further negotiation until the lease was signed, he now says (p. 138) in answer to the court's question as to what he meant by the language last above quoted concerning the bond that his intention was "to put into the contract that the building was to be—that the return of the property was to be guaranteed during the term of the lease; that is, if any boilers were out of order they

were to be repaired and the building was to be returned to us during the entire term of the lease.”

“Q. Doesn't it mean the amount of money due on the lease? You say here, 'Bond to be given by second party to cover full amount of lease in ad. to security.' What does that mean?

A. The security was given to cover the amount of the rent, and the bond was to be given for the return of the property” (p. 139).

That such was not the intention of the parties clearly appears from the last clause of the agreement (p. 10), which reads:

“The party of the first part to insure the faithful performance of all the covenants to be contained in the lease shall deposit with the party of the first part the sum of Four thousand one hundred twenty-five Dollars (\$4,125) from which is to be deducted the consideration of this agreement (Five hundred dollars). And the said security shall be held by the party of the first part to insure faithful performance of the party of the second part during the full term of the lease.”

After the agreement was signed, and appellant had a change of heart, he demanded a \$75,000 bond, saying that since entering into the contract it dawned on him that the property might be damaged, and that the tenants might take a lot of the profit out of the property and he would be the loser in the end, and wanted a bond as security for the rent and for possible damage to his property. He wanted a bond of \$75,000 for the total of the three years' rent (p. 100). That he made such a demand is shown by the testimony of three witnesses for

the respondent, and that the \$75,000 bond was demanded for the three years' rent is indicated by the fact that three years' rent at \$24,750 per year amounts to \$74,250.

As a further indication of the unreliability of the testimony of Mr. Adelman, Jr., after he had given his reason for failing to include a provision concerning the giving of a bond in the contract, as above noted, we find a statement by him that if provision for a bond was not in the contract *it was by mistake left out* (p. 117).

Again, on page 149, after Mr. Adelman, Jr.'s attention was called to the fact that there were four separate and distinct paragraphs in the agreement all of which directly or indirectly related to the obligation of the tenant to make repairs to the building and to keep it in repair, and the returning of the property at the end of the term in the same condition it was in when possession was delivered, he again repeats that he forgot to put in a clause concerning a bond.

“By the Court:

Q. Do you say that you put that requirement in?

A. The requirement was left out by mistake.

Q. Well, you overlooked it?

A. I overlooked it; yes.”

(P. 150):

“Q. Why didn't you incorporate in this agreement when you prepared it a provision that they had agreed to give you a bond in the sum of \$50,000 or \$75,000, for the purpose of providing against the very contingency you wanted to provide against?

A. Because it was overlooked.

Q. Then it wasn't because the details were to be left until the lease was prepared?

A. No.

Q. (By the Court) Did you look through your memorandum to see whether you had put everything in your lease?

A. Unfortunately I didn't."

(P. 165) :

"Q. In the last clause of the agreement you provide for the faithful performance of all the covenants of the agreement and that this deposit was for that purpose; you didn't intend that to be so?

A. No, sir.

Q. Didn't it occur to you when you were writing that clause and writing in the deposit for the faithful performance of all the covenants in the lease, that there was something else agreed upon—the giving of a bond for the faithful performance?

A. No; it didn't occur to me at that time."

That the witness, Adelman, Jr., intended to do just what he said, namely, not to give a mere receipt but to prepare a full and complete contract embodying all the terms agreed upon between the parties so that nothing was to be left undone other than the execution of a formal lease embodying these agreed upon terms, clearly appears from the document itself (p. 6). As the Advisory Master states (p. 320) "the negotiations lasted for about nine hours, and resulted at about nine o'clock at night in the execution of this formal written contract drawn and typewritten by Mr. Adelman, Jr. According to legal form and precedents this con-

tract was technically complete. It begins in the usual manner, stating the parties and their residences, and sets forth in legal language the agreement of the parties." The comments of the Advisory Master as to the careful consideration that was given in the preparation of the agreement and the many and somewhat harsh provisions, all of which were for the benefit of the landlord, are set out in his conclusions (p. 321) as follows:

"The contract occupies two and one-half pages of typewriting with the lines close together in what is called 'single space', and contains seventeen paragraphs. Not only is the property described and the rental (\$24,700 per annum), and the mode of payment prescribed, but there are minute provisions which the lease is to contain in regard to taxes, repair of the interior and exterior of the building 'satisfactory to the party of the first part', about which matter 'his judgment shall be binding'; payment of water, coal, gas and electric repairs; violations of the city, State and national regulations with a provision in case of failure for the termination of the lease. The contract also provides that the lessor (the defendant) should pay the interest on the mortgages on the premises, and pay taxes up to the sum of \$5,000, and also pay for fire and rent insurances and public liability insurance, and that the lessee should pay all other insurances. The party of the second part, the lessee, is required to return the property to the lessor 'in the very same condition and repair as it is now of the date of lease', and the contract provides that the 'party of the first part (the defendant) shall be the judge of such condi-

tion of repair, and only the party of the first part shall judge.'

The party of the second part, the lessee, was required to return with the building all screens in good repair for all windows, and awnings for certain specified windows, such awnings to be in good repair.

Provision is made that failure of the lessees to pay the agreed rental on the 15th of the month, and the allowance of one day's grace to the 16th, 'shall constitute a forfeiture of the rights' of the lessee, and that thereupon the lessor 'shall take possession of the premises free of any rights' of the lessee.

All doubtful covenants, etc., were to be construed in favor of the lessor.

The lessee was to pay for all coal in the cellars as of April 1st, 1920."

Mr. Adelman, Sr., says that the very first thing talked about when he started to negotiate for the lease (pp. 191-192) was that he wanted a bond to secure the return of his property in good condition, and that this was agreed upon. And, (p. 194) he says, "I will not go into the negotiations until we agree distinctly to give a bond." For the purpose of overcoming the effect of his having signed the agreement without the bond provision, which he considered so important according to his testimony, he said:

"By the Court:

Q. You didn't read it?

A. I didn't read it; in fact, I didn't recognize that to be a contract.

Q. The question is not whether you recognized it as a contract, but I asked you, did you read it?

A. No, sir." (p. 197).

He further says that the agreement was not even read over to him.

Page 199.

“Q. Was the amount of the bond ever stated at any time?

A. I had told my son that the amount of the bond was to be \$75,000.

Q. When did you tell your son that?

A. I told my son *the next day*.

Q. The next day after the contract was signed?

A. The next day after the contract was signed.”

And on *page 211* he said of the agreement:

“I thought that was to bind me to lease the property.

Q. You thought you were bound to lease the property?

A. Yes.

Q. And you thought that you were bound to lease the property according to the terms mentioned in the binder?

A. Well, same terms, yes; according to the terms which are mentioned in the binder, and some which were yet to be put in the lease.

Q. What other terms were to be put in the lease, other than those which were in this binder?

A. A good many other terms to be discussed.

Q. What are they?

A. Terms to be discussed; he shall not have less than 75 tons of coal in the cellar—”

Page 215.

“Q. You thought you could back out of this binder at any time, that you signed?

A. No, I never thought I would back out.

Q. But you thought you had a right to back out if you wanted to?

A. No.

Q. What did you think it was, then?

A. I thought the other people would comply with all the provisions which were made verbally and which wasn't in this contract, and if they would comply with it I wouldn't back out.”

Appellant's witness, Cohen, who was associated in business with the Adelmans, claims to have been present during some preliminary talk between the Adelmans and Mr. Granat, secretary of the respondent company.

On page 220 he says that, “This question came up again about the bond, and I remember distinctly Mr. Silverfelt was alongside of me. He says, ‘Well, all right, Mr. Adelman, you needn't bother too much about it; it is understood that you will get a bond.’” He further says that Mr. Granat said it was all right, a bond would be furnished.

Although he claims to have been present for an hour or more during the discussion of the terms of the lease, he is very hazy and indistinct about any of the other terms, excepting the talk about the bond.

Exhibit D-3 was introduced by appellant for the purpose of showing that a memorandum was made of a bond to be given, Mr. Adelman, Jr., having already testified to the making of this memorandum. The witness Cohen was asked concerning it (p. 277), and said that Mr. Adelman, Sr. told his

son about the terms of the agreement, and that the son marked them down "on a memorandum slip," a small piece of paper about the size of Exhibit D-3; that he made the memorandums by use of a fountain pen, and that the same was made by Adelman, Jr. placing a paper on a wall of the building (p. 227).

This statement of Mr. Cohen's to the effect that he made the memorandum by holding it against a wall was apparently too much for Mr. Adelman, Jr., who (p. 258) says, "I believe Mr. Cohen is mistaken about that."

Another witness, named Schwartzberger, was called by the appellant for the purpose of substantiating the alleged story concerning the giving of a bond. He was a tenant of Mr. Adelman, and claims that around 6 or 6:10 in the evening he came into the office where the parties were congregated (p. 241); that he remained there for about ten minutes, and although the parties had been in conference for approximately five hours prior to his alleged coming into the office, he heard the people talking about taking a lease, taking care of the house; that they were going to take it for three years; that they would give back the houses in the same condition in which they were taken, and that they would give a bond to Mr. Adelman, and that one of the men, Mr. Lewine, said: "What is the bond?", and Mr. Adelman said: "Well, there's boilers and furnishings that wants to be protected." And that then Mr. Adelman, Jr. turned around and asked him what he wanted, and he replied that he wanted some of his rooms fixed. He was told that the parties were busy, and he walked out.

When he was asked how he came to be in court, he said that several weeks before the hearing he met Mr. Adelman, Jr. in the street, asked him how

the trial was getting along since he had read it in the newspaper; Adelman, Jr. told him that there was a lot of argument about a bond, and that the respondent claimed that there was no mention made about a bond, and the witness then volunteered the information 'I happened to tell him I was there at the time and I overheard what the people was talking about the bond, and he asked me if I would go and testify, and I told him I would help him, I would go up' (p. 242).

The Advisory Master, commenting on the testimony of these witnesses, says (p. 230), "The testimony of the witnesses, Messrs. Cohen and Schwartzberger, who were put upon the stand to corroborate the testimony of the Adelmans in regard to the bond, in my judgment is unreliable, and it will be unsafe to attribute much weight to it."

As opposed to this testimony we have the testimony of the following witnesses: *Mr. Jacob Granat*, Secretary of the respondent company, who says (p. 40) that there were present at the time of the execution of the agreement in question, Mr. Silverfelt, the agent, Mr. Lewine, the President of his Company, Messrs. Adelman, Jr. and Sr., and himself; that the transactions concerning the terms of the agreement and the writing of the document took up between 8 and 9 hours; that a great many terms were discussed, and doesn't recall ever having seen the memorandum, Exhibit D-3, but that young Mr. Adelman did make notes in his own handwriting from which the agreement was prepared.

P. 42:

"Q. There was talk at that time with respect to security, was there not?

A. Yes, sir.

Q. And there was talk of a bond, wasn't there?

A. No, sir.

By the Court:

Q. Wasn't there discussion as to the amount of cash that was to be deposited as security?

A. Yes, that was stipulated in the agreement."

Witness then proceeds to state that there was a difference of opinion between the parties as to the amount; Mr. Adelman wanted to fix six months' rent by way of cash security, but that "no word was mentioned about a bond of any kind during these discussions" (p. 43). The first that witness ever heard of a bond being mentioned was a few days after the agreement was signed, when he heard it from Mr. Lewine who received word to that effect over the telephone (p. 43). And he next heard of it at the home of Mr. Adelman on the 23rd or 24th of March, just prior to the time fixed for the closing (p. 44).

Being most anxious to secure the lease, and having heard that Mr. Adelman was now making demand for a bond, and Mr. Adelman, Jr. stating that he could secure a bond for them, Mr. Granat, Secretary of the respondent company, spoke to a representative of a bonding company suggested by Mr. Adelman, Jr. for the purpose of endeavoring to satisfy the Adelmans. The securing of the bond was of no concern to the respondent, but merely to satisfy Mr. Adelman's demand made after the agreement was signed (pp. 44-45). Before speaking to the representative of the bonding company, witness advised Mr. Adelman, Jr. that at no time was anything mentioned about a bond prior to the signing of the agreement (p. 45). In speaking to

the surety company representative, he was asked what the assets of the company were, and being informed \$22,000, he received a reply that if they had assets of \$100,000 the surety company would write a bond in the sum of \$25,000. This ended the negotiations (p. 45).

The bond Mr. Adelman wanted was to secure three years' rent (p. 46), and he informed Mr. Adelman that if he wanted a bond he should go ahead and get it, since it was no part of the agreement that such a bond was to be given (p. 47), (p. 52), (p. 55). When the witness was first informed concerning the demand for a bond, he talked with Mr. Adelman, Jr. (p. 55), who advised him that his father demanded a bond for \$75,000 to cover three years' rentals, "otherwise the lease would not be executed" (pp. 56-57).

There was no discussion concerning a bond in the presence of the witness Cohen (p. 266), and the witness Schwartzberger was never seen by this witness before he appeared in court (pp. 269-270).

Mr. Adelman, Jr. explained to the witness the meaning of the clause he inserted in the contract concerning further provisions to be inserted, above set out. Mr. Adelman, Jr. stated "If you will suggest something which will be agreeable to us and it is agreed upon we will enter it into this agreement; the same on the other hand, if they suggest anything. Otherwise it stands as it is."

"Q. Did he say that maybe they had left something out?

A. No, sir.

Q. You started off by telling us that Mr. Adelman stated 'Maybe we have left something out.'

A. Maybe, yes; but it has got to be agreed upon" (pp. 64, 65).

And, as *Mr. Lewine* puts it, on page 76, "The way Harry explained it to me there was absolutely nothing, because I asked Harry about that clause after the contract was read over before signing it, and Harry says, 'That is simply to cover small things which probably I will suggest to you that we shall agree upon, and if not, it is to go this way, or anything you might suggest to me that will be agreeable to me that I am willing should go in; if not, all right'; and then he said something about ice boxes."

Respondent prepared to deposit \$500 with the Adelmans, and asked for a receipt, but Adelman, Jr. said that he was a law student and he wanted everything understood between the parties beforehand, "So we can leave nothing out." Not a clause was put in the lease without thorough discussion between the parties; and he denies the statement of Mr. Adelman, Sr. to the effect that he didn't read the agreement over. "It was read over by the young man several times, and then the father read it over" (p. 272).

Mr. Sol Lewine, the President of the Company, testified that three or four days after the agreement was signed Mr. Adelman, Jr. telephoned him saying their lawyers had advised that they demand a bond for \$75,000; that the security provided in the agreement was not sufficient. This was the first they heard of a bond in connection with the transaction. Mr. Adelman was advised that a bond could not be obtained and that it was no part of their agreement, and young Mr. Adelman said he thought he could get a bond (pp. 72-73).

After it was learned that a bond was demanded the respondent engaged the services of Mr. Dippel, an attorney, and a conference was arranged at Mr. Adelman's home, at which there were present both

Messrs. Adelman, Mr. Dipple, Mr. Granat, Mr. Silverfelt, the agent, and the witness. Mr. Adelman, Sr. said he would not give a lease unless he got a bond for \$75,000. He was informed that that was no part of the agreement, and the statement was then made that no lease would be given unless the bond was forthcoming (pp. 74-75).

The agent, *Solomon Silverfelt*, who represented Mr. Adelman on a commission basis for the leasing of the property in question (p. 84), testifies (pp. 86-87) that a day or two after the agreement was signed he met Mr. Adelman, Jr., who informed him that he wanted a \$75,000 bond from the West Heights Corporation; that he was advised to ask for the bond, since he would not otherwise be sufficiently secured; he wanted it for three years' security. Witness informed Mr. Adelman that he was wrong in making this demand, since a bond was never asked for. During the negotiations no mention was ever made about a bond.

On page 88 witness said he had a further talk with Mr. Adelman, Sr., and he also demanded a \$75,000 bond to secure three years' rent, and he told Mr. Adelman, "You never asked that; we were there for hours and hours, and you never mentioned anything about a bond."

John Edward Dippel, a member of the Bar of this State, and who was called in to represent respondent after Mr. Adelman intimated that he would refuse to sign a lease unless a \$75,000 bond was given him, tells of arranging a conference at Mr. Adelman's home, and says (p. 100) Mr. Adelman at this conference said, "Since entering into this contract it dawned on him that the property might be damaged and that these people might take a whole lot of profit out of the property and that he would be the loser in the end, and he wanted the bond as se-

curity for the rent and to secure him against a possible breakdown of the boiler and the disappearance of some ice boxes, and so forth." He wanted a bond for the total of three years' rent, \$75,000. His clients would not consider the proposition at all, said it was no part of their agreement, and that no surety company would give such a bond anyhow—but for the purposes of adjustment they were willing to give an additional sum in cash above the deposit agreed upon in the contract. At no time, either at this conference or at a subsequent conference in Mr. Lane's office, did the Adelmans say that any provision concerning a bond was left out of the agreement (p. 104).

It is quite evident that the testimony of respondent's witnesses is of greater weight than that of the appellant's concerning the question as to whether a bond was agreed to be given to secure the performance of the lease, or any part of it. That it should have been left out by inadvertence, or otherwise, after all the alleged careful consideration given to that subject, and the making of a memorandum to the same effect from which the agreement was prepared, seems almost inconceivable; and that the "further agreement" clause, which young Mr. Adelman inserted toward the end of the agreement, was inserted for the purpose of taking care of the bond also seems inconceivable, in view of the many express provisions contained in the agreement which provide for the care of the property, and the provision for cash security to carry out the terms of the agreement. Further this clause was not inserted to take care of the bond since Adelman, Jr. says he left out the bond provision by mistake (pp. 149-150).

A mass of testimony was introduced by both parties concerning the conversations which took place

leading up to the making of the agreement, which, ordinarily, should have been excluded from consideration, since the effect of such testimony would be to vary the terms of a written instrument. But apparently both parties desired as much light thrown upon the subject as possible for the purpose of getting at the actual equities.

The clause in question, "Any further provisions, clauses, agreements to be made in addition to the above mentioned and later to be agreed upon, shall be incorporated in addition to the provisions herein contained in a lease to be made in the office of Gaede & Gaede, 91 Washington St. Hoboken, N. J., not later than March 24, 1920," which follows all the specific clauses, so carefully worked out in the agreement intended to be the binding obligation of the parties, surely was never intended to be one which would permit either of the parties to insist upon any additional provision being inserted, reasonable or unreasonable, and if not agreed upon, thus vitiate the entire contract. The only reasonable construction to be placed upon this clause is, we submit, that contended for by respondent, namely, that if any further provisions were mutually agreed upon between the parties, they were to be included in a lease to be executed, and if further provisions could not be mutually agreed upon, the agreement was to stand as written. This was the construction placed upon it by Mr. Adelman, Jr. before the agreement was signed, and he so informed Mr. Granat and Mr. Lewine.

The answer and counterclaim (Par. 3, p. 12) construes the clause in the following language:

"Defendant further shows that said instrument in writing contemplated that before any lease or agreement should be, in fact, executed

there should be a further agreement between the parties and terms to be inserted in said lease were to be agreed upon; that no such terms were agreed upon in writing as required by the Statute of Frauds, and no completed agreement in writing, or a memorandum of which is in writing has been made between the parties."

The Advisory Master (p. 324) in commenting upon this defense, says:

"It is argued that this paragraph of the contract provided that in addition to the numerous minute provisions contained therein the parties were to agree thereafter upon very important provisions, about which as the result demonstrates, they would be extremely liable to disagree. This construction of the clause under consideration of course emasculates the whole contract and renders it unenforcible either at law or in equity. The result would be that these men met and negotiated for nine hours continuously, had their agreement in regard to the lease, so far as they had reached any, not merely noted down for reference upon a further conference for the continuation of the negotiation, but put in the form of a solemn agreement in writing executed by them, and that all this labor was a nullity—that either party by failure to agree upon other terms to be discussed in the later proposed conference would have the absolute power to render null and void all that had taken so much time to negotiate and embody in a written contract."

Even assuming that appellant proceeds upon the theory that a mistake was made upon his part in

the preparation of the agreement, or that by inadvertence the alleged important clause making provision for the giving of a large bond was left out, the burden is upon him to establish his claim, beyond a reasonable doubt, by evidence clear and convincing.

Greene v. Stone, 54 N. J. Eq., 387;
Whelan v. Osgoodby, 62 N. J. Eq., 571;
Rowley v. Flannelly, 30 N. J. Eq. 612.

Under the facts, circumstances and provisions of the agreement, it was the intention of the parties to bind themselves, and not that the agreement was to be of no force or effect unless the lease was signed embodying any additional terms insisted upon by either of the parties.

Wharton v. Stoutenburgh, 35 N. J. Eq.
266;
Tansey v. Suchoneck, 98 N. J. Eq., 669;
Levine v. Lafayette Building Corporation,
105 N. J. Eq. 532.

We respectfully submit the contract in question is complete, certain and definite, and was intended to become effective as written.

POINT III.

Respondent was not guilty of laches.

The contract was made on March 9th, 1920. The lease was to be executed, according to the terms of the agreement, on March 25th, 1920. After the agreement was signed, the parties met on several occasions in the street, at Mr. Adelman's home and

at Mr. Lane's office, all for the purpose of endeavoring to talk the situation over to determine whether Mr. Adelman would carry out his agreement and execute a lease without insisting upon the giving of a bond of \$75,000.00, which he first demanded after the agreement was signed.

During the course of one of these conversations (p. 104) Mr. Dippel testifies:

“Q. Did you ever speak with him (referring to Mr. Adelman, Jr.) with a view to having him go on with the contract and execute the lease?

A. I told him that the West Heights were willing to go on, but it was useless, as it seemed they had made up their minds that the matter was going into the Court of Chancery and there was no hope of getting together.”

Further (p. 105):

“Q. Do you remember telling them that you would have to sue in the Circuit Court for damages?

A. Well, I knew better than that.

Q. Did you tell them that?

A. I did not—absolutely not.

Q. You didn't suggest at all that you were going to sue in the Circuit Court for damages?

A. No; we were not after damages; we were after the lease.”

During the conference looking toward a settlement at Mr. Lane's office, the witness (p. 106) says that at that time the understanding was that the parties would have to meet in the Court of Chancery.

Mr. Lewine (p. 77), referring to the conversation at Mr. Lane's office, also says that Mr. Lane said the parties would meet in the Court of Chancery.

The bill was filed April 28th, 1920, or about a month after the lease was to be executed. Appellant contends (Brief, p. 11) he assumed that the company had abandoned any idea of getting the lease. There is not a word of evidence in the case, so far as we have been able to ascertain, to indicate in the slightest degree that there was any intention on the part of the respondent to abandon its efforts in getting a lease. The contrary appears, as above indicated.

It is further contended (Brief, p. 12) that the intention of the company was to start a suit at law to recover damages. This is denied by Mr. Dippel, as above indicated. There is not a word of evidence in the records, so far as we have been able to find, to indicate that appellant, in the slightest degree, did anything in reliance upon the assumption that respondent intended to abandon all effort to obtain a lease or to sue at law for damages.

There was no unreasonable delay in bringing action and no prejudice resulted to the defendant. In *Mansfield v. Kraus*, 137 Atl. Rep. 440 this court said, at page 442:

“But laches involves something more than mere delay, mere lapse of time. There must be delay for a length of time, which unexplained and unexcused, is unreasonable under the circumstances, and which has been prejudicial to the defendant.”

To the same effect, *Massi v. Asbestos Brake Co.*, 95 N. J. Eq., 298 at 311, reversed on other grounds 96 N. J. Eq. 612.

In *Paterson v. J. D. Loiseau Lumber Company*, 92 N. J. Eq., 569, which case was reversed upon another point and reported in 93 N. J. Eq., 446 it was held that two months' delay by a purchaser in filing a bill for specific performance does not constitute laches.

Advisory Master Stevenson's conclusions (p. 319) indicate a very careful consideration of the entire record and the testimony is therein elaborately discussed.

We respectfully submit that the decree should be affirmed.

Respectfully submitted,

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Solicitors for Respondent.

JULIUS LICHTENSTEIN,
of Counsel.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

[50735]

