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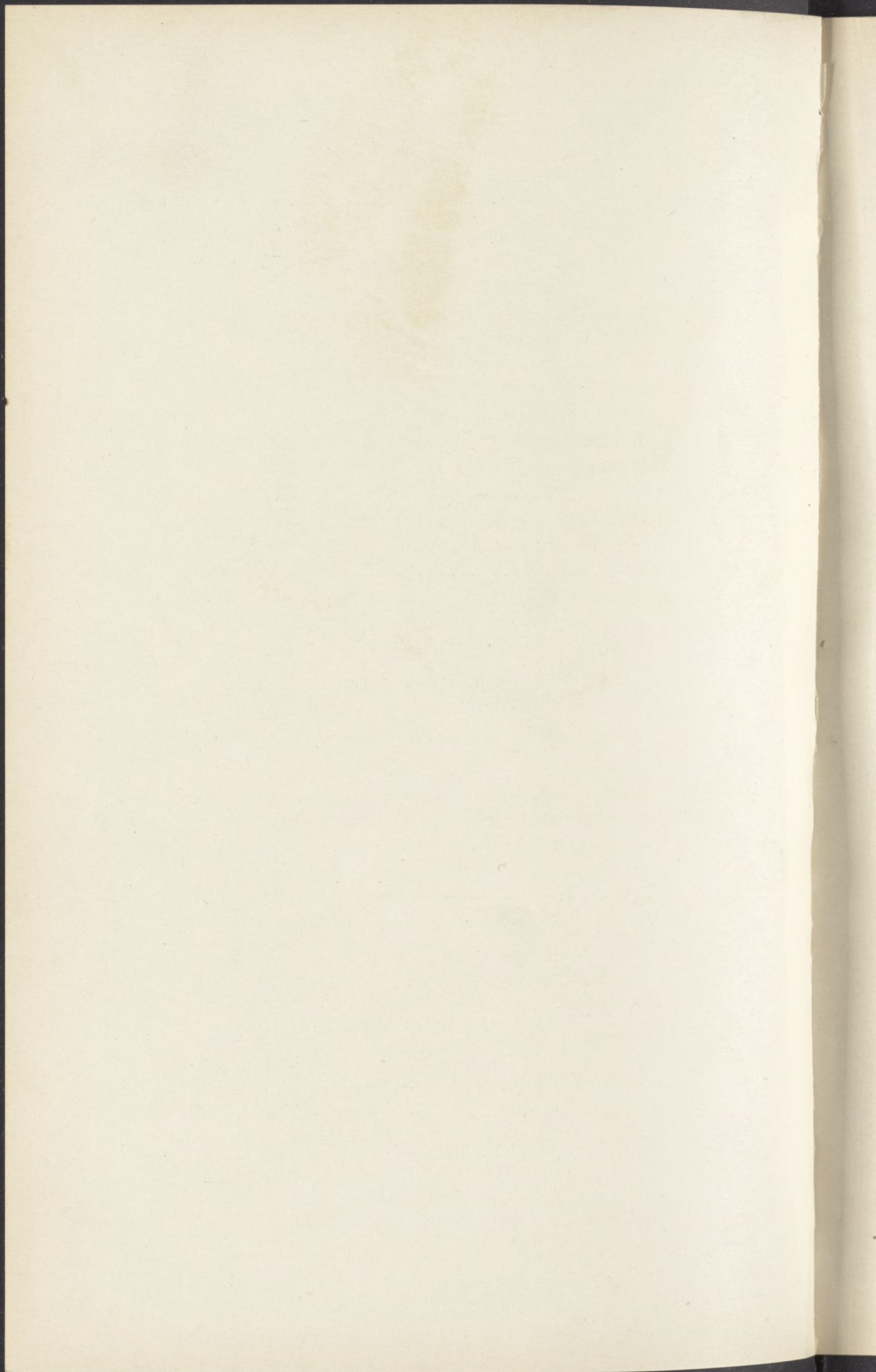
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BILL OF COMPLAINT.

Filed August 1, 1923.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chan- 10
cellor of the State of New Jersey:

The complainant, Union County Trust Com-
pany, a corporation of the State of New Jersey,
having its principal place of business in the
City of Elizabeth, New Jersey, Trustee, under
and by virtue of the provisions of the last will
and testament of John Voorhees, deceased, re-
spectfully shows that:

1. On or before April 20, 1910, John Voor- 20
hees was seized and possessed in fee of a certain
tract of land with a building then erected upon
the same, located in the City of Elizabeth, in the
County of Union, and State of New Jersey, and
described in a deed made on October 23, 1878,
as follows:

BEGINNING at a corner formed by the intersec-
tion of the west side of Broad street and the
north side of Jersey street; thence westerly
along the north side of Jersey street 140 feet 30
to line of James Glasby; thence northerly along
said Glasby's line 90 feet more or less to land
of Amos Clark, Jr., thence easterly along said
Clark's line 140 feet to the westerly line of
Broad street; thence southerly along Broad
street 80 feet to the place of beginning.

2. Being so seized and possessed thereof said
John Voorhees made and entered into a certain
agreement dated April 20, 1910, with The Goerke
Company, a corporation of the State of New Jer- 40

Bill of Complaint.

sey, whereby, among other things, said Voorhees, leased to said The Goerke Company, the premises above described for the term of forty years from April 1, 1912, and said Goerke Company agreed to pay to said Voorhees as rent therefor the sum of \$9,500. per annum, for the first ten years
10 of said term, and the sum of \$10,000. per annum for the remaining thirty years of said term; also to pay all taxes, water rents or charges and assessments levied against said premises during the term of said lease and keep the buildings on or thereafter erected upon said premises insured for the benefit of said Voorhees to the full insurable value thereof. Said Goerke Company thereby covenanted and agreed to preserve the said premises and to quit and surrender them at
20 the expiration of the term in as good condition as reasonable use and wear thereof will permit (damages by the elements excepted).

3. In and by said lease said Goerke Company agreed that immediately on the commencement of the term, it would remove the buildings on said premises and erect thereon a building at least three stories in height within 80 feet of Broad street and at least two stories in height elsewhere, with a basement, extending under the
30 sidewalk, which building as soon as completed, should become the property of said Voorhees.

4. In said lease it was expressly agreed that said Goerke Company should have the right to connect any building on the demised premises with any building upon the adjoining premises, and in case such connection should be made, the same should be removed, and the building restored to its original condition before the termination of the lease or of the renewal therein provided for.
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5. Said lease contained a provision for an option by the said Goerke Company to extend the same for a further period of twenty years upon certain terms therein provided.

6. A true copy of said lease is attached hereto and marked Exhibit "A".

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7. Immediately or shortly after the commencement of the term of said lease said Goerke Company, pursuant to the provisions thereof, removed the building then on said premises, and erected thereon a six-story brick building covering the entire tract of demised land, which building has been used and occupied for ten years past, and is now used and occupied, by the Goerke Company, or its assigns, as a department store, and said Goerke Company or its assigns, has paid said Voorhees and the complainant, rent for said building and land as provided in said lease.

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8. Complainant is recently informed that on April 22, 1912, said The Goerke Company assigned its right, title and interest under said lease, subject to all the provisions and limitations therein, to the Goerke-Kirch Company, a corporation of the State of New Jersey, and said Goerke-Kirch Company did thereby assume all the obligations of the Goerke Company contained therein or arising thereunder, and agreed to perform the same, including the payment of rent stipulated therein and the erection and maintenance of the buildings mentioned therein.

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9. On or about January 13, 1916, said John Voorhees departed this life, leaving a last will and testament dated March 21, 1913, and a codicil dated September 8, 1915, which will and codi-

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Bill of Complaint.

10 cil were duly admitted to probate by the Surrogate of the County of Union on the First day of February, 1916; that in and by said will said Voorhees did devise said premises described in paragraph 1 hereof, to the complainant Union County Trust Company as trustee, to hold in trust until 21 years after the death of said testator's last surviving grandchild, upon the terms and trusts therein particularly set forth; and did authorize and empower the complainant to compel the performance of any and all the covenants contained in the above-mentioned lease; and did appoint said Union County Trust Company as sole executor of and trustee under said will; and said Union County Trust Company did duly qualify as such executor and trustee and did
20 assume the burden of the execution thereof; and letters testamentary thereon and of trusteeship thereunder were duly issued to said Union County Trust Company by the Surrogate of said County of Union. And complainant avers that there are several grandchildren of said John Voorhees now living, and that said trust will continue for at least the period of twenty-one years subsequent to the date hereof, and may continue for the period of over fifty years from this date
30 as provided in said will, according to the facts and circumstances which may hereafter exist or occur, as anticipated by the terms of said will.

10. On December 12, 1921, one Albert C. Stein and Mary his wife, leased to said Goerke-Kirch Company, certain premises described as Nos. 108 & 110 Broad street, and Nos. 11 & 13 West Jersey street, in the City of Elizabeth, the same adjoining on two sides the premises hereinbefore described in paragraph 1, and by the terms of
40 said lease said Goerke-Kirch Company agreed

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to erect a new building on said premises, which should become the property of said Albert C. Stein.

11. On or about April 1, 1922, said Goerke-Kirch Company commenced the erection of a three-story brick building on the premises leased from said Stein, and in the course of said construction work and the completion thereof, trespassed upon the lands and premises of the complainant, in the following respects:

a. By laying foundations for eleven vertical steel columns constituting the framework of said new building on property of said Stein, said foundations encroaching over upon lands of the complainant to the extent of from two inches to twelve inches and in the case of the foundation for the column at the northwest corner of said complainant's building, said foundation encroaches upon land of the complainant about eighteen inches;

b. by cutting the foundation wall of the building of the complainant at the place of the location of each of said columns, to the extent of the encroachment of the new foundations supporting the columns of the building on property of said Stein;

c. by cutting out the north wall of the building of complainant for a height extending from the foundation to the ceiling of the third story, and for a width of about twenty-eight feet, and by inserting in said opening so created, on the property of complainant, a vertical steel column for the height of the basement and three stories, with horizontal iron girders attached thereto at the three floor levels, set also in the walls of the building of complainant;

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- 10 d. by attaching to said vertical column in the wall and on the property of complainant, three horizontal iron girders at the several floor and ceiling levels, extending into the building on the property of said Stein, and constituting part of the framework of the Stein building, and said girders or some of them, being supported on their southerly ends, vertically as well as horizontally, in whole or in part, by the column of the property of complainant, and said girders extending into the property of complainant, for about six inches;
- 20 e. by attaching to the wall of complainant's building, an iron support for an escalator apparatus constructed in the building on property of said Stein;
- 20 f. by connecting the water, gas and steam heating pipes of the building of complainant with the water, gas and steam-heating pipes respectively, of the building on property of said Stein, thereby overburdening and increasing the use, wear and tear on the said pipes belonging to complainant's building as well as the plumbing and heating system and boilers of the building of complainant;
- 30 g. by connecting sewer pipes of the building on property of said Stein with the sewer pipes and sewer system of the building of said complainant;
- h. by cutting the wall of the building of complainant and installing through the openings made by such cutting, a new heating boiler;
- 40 i. by utilizing the boilers and heating apparatus of the building of complainant in heating the building of said Stein, and overburdening and

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increasing the use and wear and tear on said boilers and heating apparatus;

j. by utilizing the exterior north and west walls of the building of complainant, as interior walls of the new building on property of said Stein, and by attaching thereto, plastering or other covering, decorations, mouldings, shelving and other fixtures, and by disfiguring the same; no sidewalls for the building on property of said Stein on the sides adjoining said building of complainant have been constructed, said building being supported on those sides by the vertical steel columns and framework herein mentioned; by the use of said walls of complainant's building as aforesaid, complainant has sustained irreparable damage, and said Goerke-Kirch Company has violated the terms of said lease with said John Voorhees by wilfully injuring complainant's building and failing to preserve the same, and said Goerke-Kirch Company will not be able to comply with the covenant in said lease on its part to leave, quit and surrender said premises at the expiration of the term in as good condition as reasonable wear thereof will permit (damages by the elements excepted); that said walls can never be restored to their original condition at the expiration of the term of said lease;

k. by connecting the roof of said building on property of said Stein with and into the walls of complainant's building;

l. by cutting holes and openings through the walls of complainant's building for the extension of pipes from said building to the other building on the Stein property;

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m. by connecting the water sprinkling system and pipes of the building of complainant with the water sprinkling pipes and system of the building on property of said Stein, and thereby overburdening and increasing the use, wear and tear of the sprinkling system and pipes of complainant's building, and also diminishing the fire protection afforded to complainant by its own system and pipes and exposing the building of complainant to the risk and hazard involved in the connection with and partial dependence upon the sprinkling system and pipes of the building on lands of said Stein; and also depriving complainant of full insurance protection against fire;

n. by connecting the electric wiring of the building of complainant with the electric wiring of the building on property of said Stein, and thereby overburdening and increasing the use, wear and tear on the wiring of complainant's building and exposing complainant to the risks and hazards of such connection;

o. by extending over the property of complainant certain iron beams or girders supporting a water tank on the building on lands of said Stein;

p. by attaching to the roof of complainant's building an iron ladder extending from the building on lands of said Stein;

12. Said trespasses were committed without any knowledge or consent of the complainant, and in many instances of said trespasses, complainant has learned or been informed of them shortly prior to the institution of this suit; that in the month of May, 1922, complainant learned of the trespass that had been committed as specified in

Bill of Complaint.

paragraph 11, subdivisions c and d of this complaint, and warned said Goerke Company and said Goerke-Kirch Company that the same constituted a trespass and encroachment, and subsequently, after correspondence and conferences, said Goerke-Kirch Company caused to be constructed by the side of the vertical steel column on the property of complainant another vertical steel column or succession of columns over each other, located on the property of the said Stein, and purporting to support the horizontal girders on the three floors extending through the building on the Stein property, but said girders remained attached to and supported by the vertical steel column on the property of complainant, for three or four months thereafter notwithstanding the protests of complainant, and then the bolts attaching said girders to said column were alleged to have been withdrawn and complainant on inspection, verified the fact as to two of said girders, but was unable to verify the fact as to the other girder, which was then so enclosed with plaster that a proper inspection could not be had, and would not be permitted by said Goerke-Kirch Company although demanded; but said girders on the three floor levels still extend into and trespass upon the property of complainant to the extent of about four inches, and said girders, and the building of said Stein derive and secure lateral support and protection from the said column in the wall of complainant's building, and from said building itself.

13. Complainant has instituted an action in ejectment in the Union County Circuit Court against said Albert C. Stein, to remove the trespasses and encroachments of the foundations under the steel columns on the property of said

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Bill of Complaint.

Stein, (as alleged in paragraph 11, subdivision a), from the property of complainant.

10 14. Upon the protest of complainant, the iron support set in the wall of the complainant's building as set forth in paragraph 11, subdivision e, was removed, but the escalator in the building of said Stein is located in the space that is required for the erection of a south wall for said building.

20 15. Complainant has frequently protested to the Goerke-Kirch Company and Albert C. Stein against the use of the exterior wall of complainant's building as an interior wall for the new building on property of said Stein, as alleged in paragraph 11, subdivision j, and numerous conferences were had with relation thereto and with relation to the making of an agreement concerning the same, and concerning other trespasses, but complainant was precluded from entering into any agreement upon the subject by objections made by persons interested in said property under the will of said John Voorhees; that notwithstanding complainant's protests, and while said conferences were being had, the work of construction of said building on property of said Stein continued and progressed without substantial interruption until the final completion thereof, whereupon said Goerke-Kirch Company went into actual occupation thereof, and has since occupied the same as part of one large department store, comprising the building of complainant and said new building of said Stein.

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40 16. During the course of the erection of said new building said Goerke-Kirch Company and said Stein made an agreement whereby for a consideration, said Stein released the said Go-

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erke-Kirch Company from the agreement for the construction of an independent southerly wall adjoining the property of complainant on the north and west, and accepted said new building as it had been constructed without such a wall, and appropriated for his benefit and use as part of his new building and as an interior wall thereof, the wall of the building of complainant, and has received and still receives as part of the rent or other consideration paid to him by said Goerke-Kirch Company, compensation for the service rendered and use made of the wall of complainant's building, and said Goerke-Kirch Company and said Stein have acquired the benefit, use, and the large rental value of the space about two feet wide by 230 feet long which would be occupied by a wall if constructed as it should be, for the building of said Stein, and which would, of necessity, have to be constructed if a building were not constructed on the property of complainant. Said Goerke-Kirch Company and said Stein have also avoided the expenditure of a large sum of money required in the construction of such a wall, and now receive the benefit of the interest and income earned upon said money. Said Stein has ratified and accepted the trespasses of the Goerke-Kirch Company, and has accepted the building as constructed under the terms of his agreement with said company, with all the profits and income arising therefrom and from his ownership thereof.

17. Complainant avers that the said several trespasses and encroachments are continuing trespasses and encroachments, of an extraordinary character, and constitute injuries to complainant which are continually recurring, and if not restrained or otherwise terminated, will oc-

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casation repeated suits and continued litigation, and subject complainant to the risk of acquirement of adverse rights against the complainant; that said trespasses, have occasioned complainant irreparable damage and injury, and if continued, will permanently impair the future enjoyment of said Voorhees property by complainant; that said Voorhees and the complainant, by the terms of said lease, are legally entitled to have said building continue as an independent building, complete in all of its equipment and appurtenances, without any attachment to or connection with any other building, except as provided in said lease, and without having any other building dependent in any way upon said complainant's building or any of its equipment or appurtenances; that said complainant is entitled to have its said building complete and independent of any other building in case, for non-payment of rent, dispossession, surrender, forfeiture of lease as provided therein, the said Goerke-Kirch Company shall terminate or have its rights in said property and the lease thereof terminated, by legal proceedings, or from any other cause; that complainant has no adequate remedy at law for said trespasses, except as to the trespasses alleged in paragraph 11, subdivision a, of which remedy complainant has taken advantage as alleged in paragraph 13; that it is difficult to establish in an action at law, the damages sustained by complainant, said damages being continuous as long as said trespasses continue, and will involve a multiplicity of suits to determine the damages sustained in the successive periods from the time of one suit to that of another, and complainant would be subject to the risk for a period of about fifty years as to the

Bill of Complaint.

financial responsibility of the Goerke Company, the Goerke-Kirch Company, and Albert C. Stein, for the payment of the successive judgments for damages which might be recovered during such probable period. Complainant therefore prays that the Goerke-Kirch Company and Albert C. Stein may be restrained and enjoined by the order, decree or writ of injunction issued out of this court, from the further continuance, maintenance and commission of said trespasses upon the property of complainant as hereinbefore alleged. 10

18. Complainant claims certain rights cognizable in this honorable court, to have the aforesaid trespasses restrained and enjoined, and to have other and further relief herein on account thereof; that said rights arise, in whole or in part, under and by virtue of the agreement of lease made between said John Voorhees, and the Goerke Company as alleged in paragraphs 2, 3, 4, 5 and 6 of this complaint and as attached hereto, and particularly that portion thereof whereby said Goerke Company agreed to preserve the said demised premises, and the provisions therein that said Goerke Company should have the right to connect any building on the demised premises with any building on the adjoining premises, and also the provisions relating to and providing for the forfeiture of said lease in case of any breach of any of the terms of conditions of said lease; and complainant hereby applies, as authorized by law, for the determination of any and all questions of construction of said lease, and in particular, the aforesaid provisions thereof, and whether, on account of the acts and doings of the lessee complainant is entitled to treat said lease as forfeited, or entitled 20 30 40

Bill of Complaint.

to take the action prescribed therein to have said lease forfeited, to the end that there may be no uncertainty about said rights on the part of either the complainant or the Goerke Company, or the Goerke-Kirch Company, and that the complainant or either of said parties may not be sub-
 10 ject to the risk of taking illegal action or proceeding. Complainant hereby gives notice of the breach of the provisions of said lease by the Goerke Company and the Goerke-Kirch Company in the several respects hereinbefore alleged, and requires the removal of all of the causes of such breach within the period of thirty days as specified in said lease, in order that this court may adjudicate and declare whether a forfeiture
 20 of this lease has accrued, without risk to the complainant, and may enforce said forfeiture, and also decree the specific performance of all the terms and provisions of said lease, which have not been performed by the lessee, or which have been violated by said lessee, as hereinbefore set forth.

Complainant applies for the determination of all questions of construction of said lease, in so far as the same affect said rights of the complainant, and for a declaration of the rights of
 30 the persons interested and the parties to this suit.

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

1. That the Goerke Company, a corporation, the Goerke-Kirch Company, a corporation, and Albert C. Stein, who are the defendants to this suit, may answer this bill of complaint and each
 40 statement therein.

Bill of Complaint.

2. That the defendants may be enjoined and restrained by the order, decree or writ of injunction of this court, from the further continuance, commission or maintenance of the aforesaid trespasses and encroachments.

3. That this court will ascertain and determine the amount of damages sustained by complainant, on account of said trespasses or encroachments and decree that said defendants or some one of them, shall pay this complainant the amount of said damages so determined. 10

4. That this court will determine any and all questions of construction of said lease, under which the rights of complainant arise with relation to the matters herein alleged, in so far as the same affect said rights; and will declare the rights of the persons interested and the parties to this suit including the right of forfeiture of said lease as herein referred to. 20

5. That this court will decree the specific performance of the provisions of said lease made between John Voorhees and the Goerke Company in respect of the matters herein set forth, so far as the same involve covenants and agreements contained in said lease.

6. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint, and to abide by such decree as this court may make in the premises. 30

C. McK. WHITTEMORE,
Solicitor for and of Counsel with
Complainant.

**JOINT AND SEVERAL ANSWERS OF
DEFENDANTS.**

Filed December 24, 1923.

IN CHANCERY OF NEW JERSEY.

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Between

UNION COUNTY TRUST COM-
PANY, a corporation, Trus-
tee under and by virtue of
the provisions of the Last
Will and Testament of John
Voorhees, deceased,
Complainant,

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and

THE GOERKE COMPANY, a cor-
poration, *et als.,*
Defendants.

*On Bill, &c.
Joint and
Several
Answers of
Defendants.*

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The defendants, The Goerke Company and Goerke-Kirch Company, corporations of the State of New Jersey, having their principal office in the City of Newark, County of Essex and State of New Jersey, and the defendant, Albert C. Stein, of the City of Elizabeth, County of Union and State of New Jersey, answering the complaint herein filed, say:

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1. They admit the allegations of paragraph 1 of the said complaint.

2. They admit the allegations of paragraph 2 of the said complaint so far as it relates to the making of the agreement dated April 20, 1910, between the Goerke Company and John Voorhees

Answers of Defendants.

but deny the balance of the allegations in the said paragraph and make reference to the said lease as to its terms.

3. They admit the existence of the lease referred to in paragraph 3 of the complaint but deny that the said lease makes provision in the manner and form alleged therein and hereby make reference to the said lease as to its terms. 10

4. They admit the existence of the lease referred to in paragraph 4 of the complaint but deny that the said lease makes provision in the manner and form alleged therein and hereby make reference to the said lease as to its terms.

5. They admit the existence of the lease referred to in paragraph 5 of the said complaint but deny that the said lease makes provision in the manner and form alleged therein and hereby make reference to the said lease as to its form. 20

6. They admit the allegations of paragraph 6 of the said complaint.

7. They admit each and every allegation of paragraph 7 of the said complaint but further aver that the rents due and owing from the said defendants to the complainant have been paid to the date of the filing of this answer, which rentals have been accepted by the complainant in the manner and form provided for in the said lease; and that the defendants have fully and completely performed all the obligations contained in the said lease on their part in this respect. 30

8. They admit the allegations of paragraph 8 of the said complaint.

9. They neither admit nor deny the allegations of paragraph 9 of the said complaint and have 40

Answers of Defendants.

no information within their possession regarding the same and leave the complainant to such proof thereof as it may be able to adduce at the trial of this cause.

10 10. They admit the allegations of paragraph 10 of the said complaint.

11. They admit that on or about April 1, 1922, the Goerke Company commenced the erection of a three-story building on the premises leased from the said Albert C. Stein but deny that they have trespassed upon the lands and premises of the complainant in any manner or form, and as to each of the subdivisions of the said paragraph 11, they allege as follows:

20 (A) Defendants admit the installation of foundations for steel columns upon which the frame work of the new building on the Stein property now rests but deny that such foundations encroach over upon the lands of the complainant in any manner whatsoever and deny that the foundations for the columns at the northwest corner of the complainant's building is encroached upon in any manner.

30 (B) Defendants deny that the foundation wall of complainant's building was cut for the purposes set forth in said paragraph.

(C) Defendants admit the allegations of subdivision c of paragraph 11 of said complaint, but aver that said work was done pursuant to the terms of the aforesaid leases with John Voorhees and Albert C. Stein.

40 (D) Defendants admit that vertical columns and horizontal iron girders were placed at the several floor ceiling levels in the Voorhees building where the openings occurred as set forth in subdivision d of paragraph 11 of the said com-

Answers of Defendants.

plaint, but deny that such columns or horizontal iron girders extended into the property of said Stein, and deny that said columns or iron girders constitute a part of the frame work of the Stein property; but defendants aver that said frame work was done in pursuance of the rights and privileges extended to the lessee by virtue of the two leases above mentioned. 10

(E) Defendants deny each and every allegation of subdivision e of paragraph 11 of the said complaint and aver the fact to be that the escalator is twenty-one and one-half (21½) inches from the wall and is supported on vertical columns wholly within the line of the property of Stein.

(F) Defendants deny the allegations of subdivision f of paragraph 11 of said complaint in the manner and form therein alleged but aver that each building has separate gas connections and separate water connections. The steam heating apparatus and pipes are connected but in such a manner as to properly heat both buildings. At the time of the erection of the Stein building the old cast iron boiler existing in the Voorhees building was replaced by a new tubular steam boiler with ample capacity for heating both buildings, together with new steam mains in the basement of the Voorhees building running through to the Stein building to supply heat adequately and without overburdening and increasing wear and tear to pipes of the complainant's building. Defendants aver that the pipes in the two buildings are entirely and absolutely independent and separate. Defendants deny generally that by reason of the allegations contained in subdivision f of paragraph 11 of the said complaint, that there has been an overburden- 20 30 40

Answers of Defendants.

ing of complainant's building and deny that the reasonable use, wear and tear of the equipment in complainant's building has been increased in any manner.

10 (G) Defendants deny each and every allegation of subdivision g of paragraph 11 of the said complaint and aver that each of the said buildings have independent sewer and water systems.

(H) Defendants admit, in order to instal the new boiler above referred to, it was necessary to cut out an opening in the wall of the boiler room of complainant's building but after the boiler was installed the wall was properly replaced in a workmanlike manner.

20 (I) Defendants deny the allegations of subdivision i of paragraph 11 of the said complaint in the manner and form therein alleged and repeat and make part hereof the averments of subdivision F of paragraph 11 of this answer.

30 (J) Defendants admit that in order to connect the building erected by the Goerke-Kirch Company on the Stein property with the complainant's building, in the manner and form provided for and contemplated by the said Voorhees lease dated April 20, 1910, it utilized the north and west walls of complainant's building and that it plastered the said wall with adamant plaster; and admit that the Stein building rests upon steel columns and framework in the manner heretofore alleged by the defendants; defendants, however, deny each and every other allegation contained in said paragraph and specifically deny that they have violated the terms of the said lease in any particular and deny that they have wilfully injured complainant's building or that they have failed to preserve the
40 same. Defendants further deny that the work

Answers of Defendants.

aforesaid has been constructed in any manner which constitutes irreparable damage to the complainant's building and deny that by reason of the erection of the said building in the manner aforesaid there has been created an inability on their part to comply fully and completely with all the covenants contained in the lease made with John Voorhees aforesaid; and deny further that the walls in question can never be restored to their original condition at the expiration of the term of the lease. 10

(K) Defendants admit the allegations of subdivision k of paragraph 11 of said complaint but aver that by reason thereof the building on complainant's property has been conserved and protected and further aver that said work was done pursuant to the rights of the defendants by virtue of the lease with John Voorhees aforesaid. 20

(L) Defendants deny the allegations of subdivision l of paragraph 11 of the said complaint, in the manner and form therein alleged but repeat and make part hereof the allegations of the defendants contained in subdivision (F), subdivision (G) and subdivision (I) aforesaid, of this answer.

(M) Defendants deny each and every allegation in subdivision m of paragraph 11 of this complaint in the manner and form therein alleged but aver that in constructing the Stein building they caused to be installed a separate water tower having a sufficient capacity to supply the sprinkler system in the Stein property irrespective and in addition to the water tower that was theretofore installed in the Voorhees property, and that during the progress of said construction, defendants caused to be installed separate 30 40

Answers of Defendants.

risers in the Stein property supplying all of the sprinklers that were installed in the Stein property; that both systems upon completion were approved by the Schedule Rating Bureau of the State of New Jersey. Defendants deny that by reason of acts on their part in connection with the said sprinkler system the use of complainant's building has been overburdened or its normal wear and tear increased, and deny that there has been created in any way a diminution in the fire protection which was afforded to complainant or that the complainant's building has been exposed to any further risk or hazard of any kind or that complainant has been deprived or can be deprived of such insurance as is specifically provided for by virtue of the terms of the lease with John Voorhees.

(N) Defendants deny all of the allegations of subdivision n of paragraph 11 of said complaint in the manner and form therein alleged and aver that the electric current of both buildings is controlled in each building on the various floors and that each building is independent of the other insofar as electric light is concerned; that all of the wiring in both buildings is of sufficient capacity to carry the load imposed in each building without overburdening complainant's building or increasing its necessary wear, tear and use.

(O) Defendants admits the construction of iron beams or girders supporting the water tank on the Stein property but aver that said construction was made by reason of the right to connect contained in the aforesaid lease of John Voorhees.

(P) Defendants admit the allegations of subdivision p of paragraph 11 of the said complaint.

Answers of Defendants.

12. Defendants deny the allegations of paragraph 12 of the complaint in the manner and form therein alleged and repeat the averments made by them in connection with each subdivision of paragraph 11; and further aver that complainant had complete knowledge of the methods used by the defendants in connection with the nature of the construction of the said work and of the labor and materials used in relation thereto and was cognizant of the rights of the defendants to connect the building on the Stein property with complainant's building in the manner and form in which such connection was made and aver that defendants complied with several requests which complainant made during the progress of the construction. 10

13. Defendants admit the institution of the suit referred to in paragraph 13 of the said complaint but deny the other allegations contained therein. 20

14. Defendants admit that portion of paragraph 14 of the said complaint which alleges the removal of the iron support set in the wall of complainant's building, but deny the balance of the allegations contained in said paragraph and repeat the allegations of the defendants set forth in this answer in subdivision (E) of paragraph 11. 30

15. Answering paragraph 15 of the said complaint defendants say that from time to time during the course of the construction of the said work on the Stein property, complainant protested with regard to some of the particulars of the construction and in numerous instances, defendants complied with the suggestions of the complainant and with regard to any protests on 40

Answers of Defendants.

the part of the complainant that there might be an encroachment, tendered the written release or deed of quit-claim of Albert C. Stein, whereby the complainant would have been relieved at law or in equity of any possibility of claim on the part of the said Stein or his successor in title, and offered to enter into an agreement whereby the complainant's beneficiaries would have been precluded against any loss, damage or liability by reason of any act performed by the defendants and, as alleged in paragraph 15 of the said complaint, defendants reached orally an agreement with the complainant's officers but the complainant was unable to reduce such oral arrangement to a written agreement due to the attitude of the said beneficiaries under the will of John Voorhees; that all during the progress of the construction of the work and during the conferences had in connection therewith, complainant recognized the rights of the defendants to connect the two buildings as provided in the lease of John Voorhees.

16. Answering paragraph 16 of the said complaint defendants admit that an agreement was entered into between them and Stein releasing them from the construction of an independent southerly wall, however, reserving to said Stein the right to have defendants build said wall at the termination of the lease between these defendants and said Stein as therein provided and to which lease these defendants refer for a greater certainty, but these defendants deny that said Stein receives or will receive any consideration by way of rental or other compensation for the service rendered and use made of complainant's wall by the defendants as alleged in said paragraph, or that the defendants by reason of

Answers of Defendants.

said agreement have acquired any benefit or use of the space about two feet by two hundred and thirty feet long occupied by said wall for which complainant did not originally in the lease made with John Voorhees provide for and reserve to itself the rental value thereof. Defendants further aver that the additional ground alleged to have enured to the benefit of the defendants was strictly within the embrace of the demise created by the lease with John Voorhees and the acts of the defendants are in accordance with the rights granted unto them by said lease. 10

17. Answering paragraph 17 of the said complaint defendants deny the matters and things therein set forth and for further answer they say that the alleged trespasses and encroachments therein mentioned and referred to are not trespasses and encroachments of a continuing nature or such as are cognizable in a court of equity or of such kind and nature as would entitle the complainant to relief by way of mandatory injunction and that such alleged trespasses are not of such an extraordinary character that they cannot be adequately compensated for by an action for damages in a court of law. Defendants further aver that the alleged trespasses have not occasioned any irreparable damage or injury and will not in any manner or form impair the future enjoyment of the Voorhees property by complainant. 20 30

18. Answering paragraph 18 of the said complaint defendants deny the existence of any rights in favor of the complainant in the manner and form alleged and deny that the complainant has a right to apply for the determination of the question referred to in the said complaint, and that the complainant is entitled to treat the said 40

Answers of Defendants.

lease as forfeited or that this Court may adjudicate whether a forfeiture has accrued or that the complainant is entitled to a specific performance of the terms of the lease in the manner set forth in said paragraph.

10 Defendants pray that the complaint filed herein be dismissed with costs.

FIRST AFFIRMATIVE DEFENSE.

1. The complainant, if the trespasses and encroachments set forth in the complaint actually exist, has a complete recovery at law by suit for damages and in ejectment, which complainant has recognized as set forth in paragraph 13 of the complaint, by the institution of the pending action
20 in ejectment in the Union County Circuit Court.

SECOND AFFIRMATIVE DEFENSE.

1. The trespasses referred to in the complaint are not continuing trespasses and of such extraordinary character that the same cannot be removed or be compensated for in an action at law.

2. The complainant is guilty of laches in per-
30 mitting the defendants to expend large sums of money on the building on the Stein property before the institution of an action and in acquiescing in the performance of the acts on the part of the defendants which are now alleged to be trespasses and encroachments.

3. That a mandatory injunction will not lie
40 in this case because the rights of the complainant are not certain and must first be settled at law; and because the defendants are not guilty of the breach of any affirmative covenant under the

Answers of Defendants.

lease; and because the complainant has, by its acts, waived any breach of the defendants by its failure to act promptly.

4. The complainant is not entitled to have the construction of the lease construed in the manner and form prayed for in the complaint.

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5. The complainant is not entitled to forfeit the lease because it has accepted rent from the defendants up to date of the filing of this answer and is still receiving said rents and has thereby waived any rights to forfeit said lease because of the alleged non-performance of the said lease by the said defendants, and further because the said complainant has not exercised the right to forfeit the said lease in the manner and form therein set forth, and because this Court is without jurisdiction to enforce a forfeiture of this nature.

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THIRD AFFIRMATIVE DEFENSE.

Defendants further reserve the right to apply to this Court at the trial of the case for the dismissal of the complaint filed herein for the reasons set forth in this answer and for the further reason that the matters and things therein set forth are not subjects of equitable relief.

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CROSS BILL.

These defendants by way of cross bill further say:

1. They repeat each and every allegation of the answer and make the same a part hereof.

2. That they have erected a building in accordance with the terms of the lease made with

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Answers of Defendants.

John Voorhees, dated April 20, 1910, which provides as follows:

10 "It is further expressly understood and agreed that at any time during the term of this lease, or the renewal thereof, if there be a renewal, the said party of the second part shall have the right to connect any building on the demised premises with any building upon any adjoining premises. In case such connection be made, however, the same is to be removed and the building restored to its original condition before the termination of this lease or of said renewal."

3. Notwithstanding the occurrence of the acts set forth in this answer and the full performance by the defendants of the terms, covenants and conditions contained in the said lease; the said complainant has instituted in the Union County Circuit Court an action in ejectment in the manner and form set forth in paragraph 13 of the complaint, against Albert C. Stein, the defendant lessor, and corporate defendants are bound to protect the said Albert C. Stein as their lessee by virtue of the statutes in such case made and provided and have been notified so to do, and are therefore liable in the said action in the same manner and form as though they were a party thereto.

4. Defendants further allege that notwithstanding the rights created under the said lease, the said complainant will from time to time harass the defendants by the institution of further suits for the recovery of damages and cause the defendants considerable costs and annoyance by such multiplicity of suits.

Answers of Defendants.

Defendants are without any remedy in the Courts of common law and therefore pray:

1. That the Union County Trust Company, a corporation of the State of New Jersey, complainant in the above action, may answer this cross complaint and each statement therein. 10
2. That it may be enjoined and restrained by the order, decree or writ of injunction of this Court from the prosecution of the said action in the Union County Circuit Court, or of any action in ejectment, or for damages which arise by reason of the erection of the said building on the property of Albert C. Stein, in the manner and form in which the same was constructed by these defendants.
3. That it may be decreed that the erection of the said building on the property belonging to complainant and the said Albert C. Stein was in accordance with the terms of the two leases held by the defendants. 20
4. That a writ of subpoena may issue demanding the complainant to answer this complaint and to abide by such decree as the Court may make in the premises.

ALFRED A. STEIN, 30
Solicitor for and of Counsel
with Defendants.

Consent is hereby given to the filing of the within answer as of in time.

C. McK. WHITTEMORE,
Attorney of Plaintiff.

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

Filed May 25, 1925.

IN CHANCERY OF NEW JERSEY.

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Between

UNION COUNTY TRUST COM-
PANY, a corporation, Trus-
tee,

Complainant,

and

THE GOERKE COMPANY, *et als.*,
Defendants.

*On Bill, &c.
Replication
and Answer
to Counter-
claim.*

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The complainant joins issue on the answer of the defendants, The Goerke Company, Goerke-Kirch Company, and Albert C. Stein.

As to the cross bill (counter-claim) contained in said answer, complainant says:

30 1. It denies so much of paragraph 1 which repeats each and every allegation of the answer of said defendants and makes the same a part thereof as controverts and denies the allegations in the bill of complaint.

2. It admits paragraph 2.

40 3. It admits the allegation in paragraph 3 that complainant has instituted in the Union County Circuit Court an action in ejectment in the manner and form set forth in paragraph 13 in the bill of complaint against Albert C. Stein and denies the remainder of said paragraph.

Replication and Answer to Counter-claim.

4. It has no knowledge or information sufficient to form a belief as to the statements in paragraph 4.

JOHN K. ENGLISH,
Solicitor for and of Counsel
with Complainant. 10

It is consented that the filing of this replication and answer to counter-claim on or before the 26th day of May, 1925, shall be considered as a filing in time.

ALFRED A. STEIN,
Solicitor for and of Counsel with the De-
fendants, The Goerke Company, Goerke-
Kirch Company and Albert C. Stein. 20

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AMENDMENT TO BILL OF COMPLAINT.

Filed May 25, 1925.

IN CHANCERY OF NEW JERSEY.

10 *Between*

UNION COUNTY TRUST COM-
PANY, a corporation, Trus-
tee,

Complainant,

and

THE GOERKE COMPANY, *et als.*,
Defendants.

On Bill, &c.

*Amendment
to Bill of
Complaint.*

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Complainant amends its bill of complaint in this cause by inserting after paragraph 17 therein two additional paragraphs as follows:

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17 A. The lease herein mentioned contains a covenant by the lessee, during the term of the lease, to keep the buildings on the leased premises at the time of the making of said lease or thereafter erected thereon insured for the benefit of the party of the first part thereto to the full insurable value thereof.

40

17 B. The fair and insurable value of the building upon said leased premises is the sum of \$325,000 and the amount for which the same is insured is the sum of \$225,000 whereby the risk of loss to this complainant in case of fire is much greater than is contemplated by the terms of said lease. Complainant has frequently requested the defendants, The Goerke Company and Goerke-Kirch Company, in a friendly manner to

Amendment to Bill of Complaint.

increase said insurance to the full insurable value of said building but said defendants have neglected and refused so to do.

JOHN K. ENGLISH,
Solicitor for and of Counsel
with Complainant. 10

Consent is hereby given to the making of above amendment.

ALFRED A. STEIN,
Solicitor for and of Counsel with Defendants,
The Georke Company, Goerke-Kirch Company and Albert C. Stein. 20

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**ANSWER TO AMENDED BILL OF
COMPLAINT.**

Filed November 16, 1925.

IN CHANCERY OF NEW JERSEY.

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Between

UNION COUNTY TRUST COM-
PANY, a corporation, Trus-
tee,

Complainant,

and

THE GOERKE COMPANY, *et als.*,
Defendants.

On Bill, &c.
Answer to
Amended
Bill of
Complaint.

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The defendants, The Goerke Company and Goerke-Kirch Company, corporations of the State of New Jersey, having their principal office in the City of Newark, County of Essex and State of New Jersey, and the defendant, Albert C. Stein, of the City of Elizabeth, County of Union and State of New Jersey, answering the amended bill of complaint herein filed, say:

30 1. They admit the allegations of paragraph 17 A.

2. Defendants deny the allegations of paragraph 17 B., except they admit that said building is insured for the sum of \$225,000.

ALFRED A. STEIN,
Solicitor for and of Counsel
with Defendants.

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Replication to Answer to Amended Bill of Complaint.

Consent is hereby given to the filing of this answer as of in time.

JOHN K. ENGLISH,
Solicitor for Complainant.

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**REPLICATION TO ANSWER TO AMENDED
BILL OF COMPLAINT.**

Filed November 19, 1925.

IN CHANCERY OF NEW JERSEY.

Between

UNION COUNTY TRUST COM-
PANY, a corporation, Trus-
tee,

Complainant,

and

THE GOERKE COMPANY, *et als.*,
Defendants.

On Bill, &c.

*Replication
to Answer to
Amended
Bill of
Complaint.*

20

The Complainant joins issue on the answer of the defendants, The Goerke Company, Goerke-Kirch Company and Albert C. Stein, to the amended bill of complaint in this cause.

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JOHN K. ENGLISH,
Solicitor for and of Counsel with Complainant.

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OPINION.

Filed June 28, 1926.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> UNION TRUST COMPANY, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> GOERKE COMPANY and ALFRED C. STEIN, <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>Opinion.</i>
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20 1. Equity will enjoin a tenant guilty of waste
to restore the demised premises.

2. A declaratory judgment of a legal right
cannot be had in equity.

For complainant, Messrs. Whittemore & Mc-
Lean.

For defendants, Mr. Saul Cohn and Mr. Alfred
A. Stein.

BACKES, *Vice-Chancellor*:

30 In 1910 John Voorhees, now deceased, leased
the northwest corner of Broad and Jersey streets,
Elizabeth, to the Goerke Company for forty
years, with a renewal right of twenty more years.
Demolishing an old structure then on the prem-
ises, the Goerke Company erected a six-story
brick building covering the entire lot, eighty feet
on Broad street and one hundred and forty feet
on Jersey street, as it had agreed to do. The
building became the property of the lessor under
40 the terms of the lease. Eleven years later the
Goerke-Kirch Company (assignee of the Goerke

Opinion of Vice-Chancellor.

Company) leased from one Stein, for a long term, his L-shaped lot adjoining on the north and west, facing Broad and Jersey streets, and, tearing down an old building, erected a three-story brick store covering the entire lot, as it had agreed to do, and this building became the property of Stein by the terms of the lease. In the Voorhees lease it was provided that the lessee "shall have the right to connect any building on the demised premises with any building upon any adjoining premises," and the Stein lease had a corresponding clause. The stores were connected by cutting openings through the north and west walls of the Voorhees building. There are no interior walls to the Stein building on the Voorhees side; the exterior of the north and west walls of the latter building, plaster finished, form the inside walls of the Stein building. The roof is fastened to the Voorhees building and the ceilings extend into it one to three inches, resting in slots supported by angle irons. Instead of resting on walls, the floors and roof are supported by thirteen steel columns, on concrete piers, seven and a half feet long and correspondingly wide and deep and flaring, and all but one or two of the piers are set in the concrete footing of the Voorhees foundation eight or more inches and, resting on center, the columns are flush with the walls. Either the concrete footing was chipped out down to the soil or only part way and rest in the footing. A column (No. 17) to support an opening in the northerly wall of the Voorhees building, rests on a combination concrete pier that also serves to support a column (17 A) in the Stein building.

The Stein building is heated by the boilers in the Voorhees building. The lighting system of

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Opinion of Vice-Chancellor.

the two buildings is a unit. A pipe of the sprinkler system of the Stein building extends through the basement wall of the Voorhees building, and a supporting beam of the sprinkler tank extends over the roof of the Voorhees building two feet.

- 10 The bill prays for the removal of the encroachments, and the restoration of the building: that the opening between the buildings be reduced to a reasonable size; that the covenants of the lease be construed and the rights of the parties declared; that it be determined whether the lease has been forfeited and that the lessee be compelled to perform its covenant to keep the premises insured.

- 20 The official plans of the Stein building show that it was designed to build without interior walls; to attached the roof, and to support the floors and roof by columns upon concrete piers set in the concrete footing in the Voorhees building, and it is not disputed that the plans were followed in all respects except as to the pier at the northwest corner of the Voorhees building. There, the acceptable testimony is, the column and the one next southerly along the west wall rest on a combination pier laid alongside the
- 30 building in the soil of the Stein lot. The combination pier upon which column 17 and 17 A rest extends across the property line. It is said to have been put in as a single pier, to accommodate column 17 in the Voorhees wall, and to have been enlarged and extended into the Stein lot to support column 17 A. How that was accomplished, if that was the way, is not explained. The probabilities are that column 17 originally rested on the footing of the Voorhees building and that the
- 40 combination pier was later inserted somehow,

Opinion of Vice-Chancellor.

maybe beneath the footing. Be that as it may, each column gets its share of soil support from its own property, and on that score the pier is unobjectionable, but having been constructed to accommodate column 17 A, the use of it by column 17 being incidental, so much as extends beyond the Stein line must be looked upon as an encroachment. No harm has come to the Voorhees building by reason of any of the pier encroachments. Its stability has not been impaired, nor is there any proof that any at all may come in the future. They all can be removed by chopping off at the division line and permitting the concrete to remain as part of the footing, or by chipping it out entirely, restoring the footing by new concrete.

The right to connect the building with one adjoining was not intended to be limited to passageways. The long term, the erection of the building at the tenant's cost, and the character of the business—a department store—all indicate the conception of the parties to have been, that if the tenant should extend its enterprise to the next door building the opening should be as well for the advantageous display of wares and to give the interior the appearance of a single store. That is common practice in cities, and it is fair to assume that the lessor was not without experience and for that reason did not limit the extent of the openings, save as to structural integrity, and so that the building would be restorable at the end of the term in compliance with the tenant's covenant to surrender in "as good condition as reasonable use and wear thereof will permit." In this view it cannot be said that the openings are unreasonably large. An aggregate of 38 feet of openings

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Opinion of Vice-Chancellor.

on each of the three floors in the 140 feet long north wall would seem to be well within moderation. The larger of the openings is adequately fortified by column 17, and the proof is that there is and can be no harm from this source. This cannot be said of the openings in the west
10 wall. Forty of the ninety feet of this wall (the lot is wider in the rear) on each of the three floors was removed for doorways, each twenty feet in width, and a remnant of the wall, four feet six inches wide, retained as a pier to support the upper three stories. It is the only support and is out of plumb. This is poor construction, so both sides say. The stress is too
20 great for the size of the pier. It has but a safety factor of five and should be double that in scientific construction. There are no present indications of weakness in the pier but there are cracks in the wall above and the proof is that collapse from overstress is sudden, without warning. The remedy is simple: suitable columns on either side of the openings resting on the basement wall. That wall is safe to carry the load, so the builders say.

The right to connect does not include the right to heat the Stein store from the boilers in the
30 Voorhees building. The landlord is entitled to a reversion of the boilers in as good a state as reasonable wear and tear will permit. The wear and tear on the boilers and pipe system in the contemplation of the parties are such as would come from heating the demised premises only. In this respect the tenant is incapacitating itself from performing the covenant of surrender. The unit electric system seems not open to the same objection. There is no wear and tear, at least
40 none is proven or apparent. The sprinkler

Opinion of Vice-Chancellor.

system, apparently, is not a unit operated from the Voorhees property. Each building has its own tank. But, a pipe of the Stein system improperly enters the Voorhees basement for about twenty feet before it again returns to the Stein store. The beam overhanging the Voorhees roof from the Stein tank is removable by sawing off. 10

The erection of an independent wall, to eliminate the encroachment of the roof and ceiling of the Stein building and the use of the exterior wall of the Voorhees building for the interior of the Stein store, seems inevitable.

None of the encroachments find justification in the right to "connect" the Voorhees building with the one adjoining. The right to connect is not to be conjured into a right to encroach. By fair intendment it is limited to openings, as already indicated. The encroachments were made to save the expense of an interior wall, upon agreement with Stein to omit it from his building, for the time, for compensation. They were deliberately made, covertly and under protest and no attempt at justification is admissible. The encroachments are waste by the tenant, aided and abetted by Stein. 20

Now, as to the form of relief. Can it be something short of restoration of the building at this time? The defendants protest, that they will remove the encroachments at the end of the term, cannot be entertained. Even had they offered security, it would be a matter for negotiation between the parties. If it were a court question the defendants would not be entitled to serious equitable consideration, because of their wilfulness. And, in the meanwhile, the marketability of the demised premises would be greatly impaired, to the detriment of the trustees, if it 30 40

Opinion of Vice-Chancellor.

has the power of sale, and to the *cestuis que trust* if they cared to part with their interest. There is nothing whatever in the conduct of the defendants that appeals to the Court to ease them of the complainant's right to an injunction restraining the continuance of the encroachments.

10 That will be the decree, and a mandate that the tenant support the openings in the west wall. *Klie v. Von Broock*, 56 N. J. Eq. 18; *Kirschberg v. Flusser*, 87 N. J. Eq. 588; *Krich v. Zemel*, 96 N. J. Eq. 208; *Capone v. Ranzulli*, 99 N. J. Eq. 627; *High on Inj. Sec.* 434; 27 R. C. L. Waste. Par. 38; *Kerr on Inj.* 231. The claim of the

20 defendants that the complainant is estopped because it offered no protest during the progress of the encroachments (which is not true) is met by the fact that the defendants knowingly trespassed, and at their peril.

The attack upon the Court's jurisdiction is without merit. The title to the premises is not in dispute; the encroachments are not denied, and the complainant's legal rights are not in doubt because the meaning of "connect" is debatable. It is the privilege and duty of this Court to determine the true construction.

30 The tenant covenanted to keep the building insured "to the full insurable value." The effected insurance is \$225,000. The proof is, and it is not controverted, that the building's value is \$286,548. The additional insurance will be ordered.

The request to pass upon the question whether the tenant has breached the covenant of the lease, so as to produce a forfeiture, is declined. The complainant is not entitled to a determination whether it shall or may sue to recover possession. If it feels that it has a cause of action

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Opinion of Vice-Chancellor.

on that score it may submit it to the law courts. It has not the right to demand a decision under the declaratory judgment act of 1924. A declaration of legal rights may be had in the law courts only. *Paterson v. Currier*, 98 N. J. Eq. 48.

The form of the decree will be settled upon notice. 10

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DECREE.

Filed December 17, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

UNION COUNTY TRUST COM-
 PANY, Trustees under the
 provisions of the Last Will
 and Testament of John
 Voorhees, deceased,
Complainant,

and

20 THE GOERKE COMPANY, *et al.*,
Defendants.

*Decree.**(D. 54,
page 162)*

This cause coming on to be heard in the pres-
 ence of Whittemore & McLean, solicitors of the
 complainant, and Alfred A. Stein and Saul
 Cohn, solicitors of the defendants;

30 And the Court having examined the pleadings
 and having taken proofs orally in open court,
 and having heard and considered the arguments
 of counsel thereon, and it appearing to the Court
 that the complainant is entitled to the relief
 prayed for in and by its bill to the extent herein-
 after set forth,

40 It is, on this 12th day of December, 1928,
 ORDERED, ADJUDGED and DECREED that within six
 months after the date of this decree the defend-
 ant, the Goerke-Kirch Company, detach and re-
 move all concrete piers and footings, whether
 for the exclusive or part maintenance of the
 Stein building, girders, roof, ceiling and angle

Decree.

irons supporting the same, and sprinkler system pipes (for greater particularity the things hereby enjoined are set forth in the bill of complaint) presently encroaching upon the building on the lands of the complainant described in the bill, extending from the building adjoining on the north and west and known as the Stein Building; and that the said defendant replace the walls of the building on said premises as they were before the said encroachments were made. 10

That said defendant, Goerke-Kirch Company, within the time aforesaid mentioned, at any point within the complainant's building, detach the heating and lighting system used in combination for the heating and lighting of the building on the land of the complainant and the Stein building, and thence desist and refrain from heating and lighting the Stein building by, through or with the heating and lighting system originating in the complainant's building. 20

That the said defendant, Goerke-Kirch Company, within the time aforementioned, remove from the exterior walls of the building on the complainant's land,—that portion which forms the interior wall of the Stein building—all plaster, decorations, moldings, fixtures, fire hose, screws, nails or any other attachment whatever, and that they restore the said walls to the condition they were in before such encroachments were made. 30

That the said defendant, Goerke-Kirch Company, within the time before mentioned erect and construct in a good workmanlike manner sufficient and adequate supports for the safely carrying of the west wall of the building on the complainant's land at the point of opening connecting the said building with the Stein building. 40

Decree.

This decree does not extend to connections at the point of openings between said two stores so as to give them an interior appearance of one structure.

10 And it is further ORDERED, ADJUDGED and DECREED that said Goerke Company and Goerke-Kirch Company forthwith specifically perform the provisions of said lease requiring the keeping of the building of the complainant's insured for the benefit of the complainant to the full insurable value thereof, which is hereby adjudged to be the sum of \$286,548. That the said insurance shall be written and insured by and through a duly incorporated stock insurance company or companies authorized to conduct an insurance business in the State of New Jersey.

20 And it is further ORDERED, ADJUDGED and DECREED that the defendant, Goerke-Kirch Company, pay to the complainant its costs of this suit to be taxed and that there shall be included in said costs and taxed as part thereof a counsel fee to the solicitor to the complainant of \$3,500. which is hereby allowed and taxed.

30 And it is further ordered that the parties hereto shall have leave to apply to this court for further and other relief in respect to any of the matters involved in this cause.

Respectfully advised,

JOHN H. BACKES,
V.-C.

ORDER.

11/13/28.

IN CHANCERY OF NEW JERSEY.

Between

UNION COUNTY TRUST COM-
PANY, Trustee under the
provisions of the Last Will
and Testament of John
Voorhees, deceased,

*Complainant,**and*

THE GOERKE COMPANY, *et al.*,
Defendants.

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*On Bill, &c.**Order.*

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This matter being opened to the Court by Alfred A. Stein and Saul Cohn, solicitors of the defendants, in the presence of Whittemore & McLean, solicitors of the complainant, and it appearing that a final decree has been entered in this cause restraining the defendants from doing certain acts and from maintaining their building in a certain manner as more particularly set forth in said final decree, and it appearing further that the defendants are about to appeal from said decree to the Court of Errors and Appeals and unless a stay of execution of said final decree is granted the whole effect of said appeal will be lost, and good cause, appearing for the entry of this order, it is on this 17th day of December, 1928, on motion of Alfred A. Stein and Saul Cohn, solicitors of the defendants,

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Order.

ORDERED that upon the filing of a notice of appeal from said final decree within the time limited by law and the rules of this court that execution of the final decree entered herein on the 12th day of December, 1928, be and the same is hereby stayed until the further and final disposition of the above matter by the Court of Errors and Appeals.

E. R. WALKER,
Chancellor.

Respectfully advised,

JOHN H. BACKES,
V.-C.

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30

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Frank D. Jacques, direct.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Wednesday, May 19, 1926.

UNION COUNTY TRUST COMPANY, a corporation, Trustee under and by virtue of the provi- sions of the Last Will and Testament of John Voorhees, deceased, <div style="text-align: right;"><i>Complainant,</i></div>	}	<i>On Bill, &c.</i>	10
<i>and</i>			
THE GOERKE COMPANY, a cor- poration, <i>et al.</i> , <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>Testimony.</i>	20

Before Hon. John H. Backes, *V.-C.*

John K. English for complainant.

Alfred A. Stein and Saul Cohn for defendants.

FRANK D. JACQUES, sworn in behalf of com-
 plainant.

Direct examination by Mr. English. 30

Q You hold an official position? A Yes.

Q What is it? A Assistant Deputy County
 Clerk of Union County.

Q Were you subpoenaed to bring a contract
 between Mr. Stein and the Goerke-Kirch Com-
 pany? A Yes.

Mr. Stein: We do not object to the con-
 tract being offered.

40

William T. Kaltenbach, direct.

Q You produced this this morning? A Yes.

Q And it is on file with the County Clerk? A Yes.

(Paper offered in evidence and marked Exhibit C. 1.)

10 Cross examination waived.

WILLIAM T. KALTENBACH, sworn in behalf of complainant.

Direct examination by Mr. English.

Q What is your official position? A Building inspector.

20 Q Where? A City of Elizabeth.

Q Were you subpoenaed to bring the plans for the so-called Stein building on Broad street?

A Yes.

Q Have you them with you? A Yes.

Q How do you identify them as the plans of the Stein building? A From the records in my office.

30 Mr. Stein: We will admit that those are the plans filed by the building inspector, but we will not admit that the building was built in accordance with the plans as filed.

(Plans offered in evidence and marked Exhibit C. 2.)

Alfred C. Stein, direct.

ALFRED C. STEIN, sworn in behalf of the complainant.

Direct examination by Mr. English.

Q Are you the defendant in this suit? A I presume so. 10

Q Were you subpoenaed as a witness by the complainant? A Yes.

Q And in that subpoena are you asked to bring your lease for the so-called Stein building with the defendants? A Yes.

Q Did you bring it? A Yes.

Q Is this it? A Yes.

(Lease offered in evidence and marked Exhibit C. 3.) 20

Q Were you also asked in that subpoena to bring a supplemental agreement?

The Court: Ask him whether he has it and put it in evidence.

Q After the making of that lease, was there another agreement between you and the other defendant? A No signed agreement; no, sir. 30

Q Was there any agreement? A Verbal agreement.

Q Was there a verbal agreement concerning the building of the southerly wall of your building? A The elimination of the wall for the time being.

Q What was that agreement? A That the wall was to be eliminated at this time and erected at the end of the lease.

Q Erected at the end of the lease? A Yes. 40

Alfred C. Stein, direct.

Q And what was the consideration of that agreement? A A certain allowance made at this time.

The Court: Who was the agreement with?

10 Mr. English: It was between Mr. Stein and the lessor of the two buildings.

Q Was there a money consideration?

Mr. Stein: I object to the question. This has no bearing in this case at all in any way, shape or form. The lease between Stein and Goerke provided originally for openings and archways.

20 The Court: That does not go to your objection.

Mr. Stein: Well, if you will allow me to state my objection.

The Court: Well, state it.

30 Mr. Stein: The lease originally provided for archways and openings on the southerly side. It still provides that. It provided for the building of an independent wall, as the lease will show, at the completion of the term. Now, if there was any other arrangement subsequent, verbal, for the postponement of the building of that southerly wall, it was simply a reiteration of what the lease itself shows.

The Court: The objection is overruled.

Q (Question read.) A Yes. The proposed cost of the wall.

40 Q You mean that when you agreed to allow them to defer the building of the wall they paid

Alfred C. Stein, direct.

you the cost of the wall? A They did not pay me, no; they were to make an allowance.

Q Well, what was the allowance? A \$5,500 was the allowance for the cost of that wall.

Q Well, do you mean to say they promised to pay you \$5,500 in money or \$5,500 a year, or what? A Practically, I held the collateral from the Goerke-Kirch Company and I was to take it from that. 10

Q Just what does that mean? Did they pay you more rent per year? A No, no difference in the lease whatever; in the rental.

Q Did they pay you a lump sum? A It was to be deducted from the collateral I am holding for Goerke-Kirch.

Q You mean so much of the collateral was taken for your own use just the same as if they gave you something? A I do not know if I understand you properly, but they paid me a certain sum to erect the building and I was to withhold out of the payment of that collateral the cost of this wall. That is all. 20

Q By the original lease they were to have built an entire building and put up a southerly wall? A Yes.

Q Now, what did you gain personally by allowing them to postpone building the southerly wall? A I do not know that I gained anything in particular. It was a convenience to them not to erect it at this time. 30

Q I know the convenience to them, but what was the consideration or benefit to you?

The Court: What difference does it make?

Mr. English: It means that we have a right—

C. Godfrey Poggi, direct.

The Court: What difference does it make?

Mr. English: To us?

The Court: Yes.

10 Mr. English: Well, it makes a great deal of difference to us whether they have the wall there or not.

The Court: Well, that is another thing.

Mr. English: We want to show that the original plan shows the intention of the lessors the same as we claim the intention of Mr. Voorhees.

The Court: Well, this preliminary investigation does not prove or disprove that. We will not go into that any further.

20 Q There was not any other lease before this one? A No.

Cross examination waived.

C. GODFREY POGGI, sworn in behalf of the complainant.

30 *Direct examination by Mr. English.*

Q What is your occupation? A Architect.

Q And have been for how long? A Twenty-nine years.

Q Are you familiar with the so-called Voorhees building and the Stein building? A Fairly.

Q Did you have experience in the erection of buildings of their nature and size? A Yes.

Q Very many? A Several.

40

C. Godfrey Poggi, direct.

Q Have you made an investigation of the situation of those two buildings in accordance with the allegations in this bill of complaint?

A Yes.

Q At the direction of Judge Whittemore? A Yes.

Q Are you familiar with the cutting of the footing of the Voorhees building to admit the concrete piers in the Stein building? A No. 10

Q Why not? A At the time I was asked to go down there, they had their footings apparently all built and covered.

Q Then you do not know about that encroachment? A No.

Q Do you know anything about the water, gas or steam pipes, or all of them? A There must be pipes passing through from one building to another through the dividing wall. 20

Q Well, are they connected; are the water pipes connected? A That I could not see. I think they are concealed, if there are any in there.

Q Are the gas pipes connected? A The same applies to the gas.

Q How about the steam pipes? A The steam pipes, I found a steam supply main from the boiler and the return line passing through the vault wall between the two vaults under the sidewalk. 30

Q Which would indicate what? A It would indicate that the Stein building is being heated by a boiler placed in the vault of the Voorhees building.

Q Sewer pipes, I think, you found were not connected. A There seemed to be two separate sewers, as far as I could see.

Q What do you know about the boilers? A There are two boilers there. 40

C. Godfrey Poggi, direct.

Q Where? A In the Voorhees building, in the vault.

Q And what are they used to heat? A One appears to be used for the purpose of heating the Voorhees building and the other the Stein building.

10 Q You could tell that by following the pipe?
A Following the lines, yes.

Q And they are in the same vault in the Voorhees building? A Yes.

Q In what part of the Voorhees building? A In the vault under the West Jersey street sidewalk.

Q That is the south side of the Voorhees building? A South side of the Voorhees building.

20 Q And the vault walled up and connected and being a part of the Voorhees building? A I don't understand that question.

Q Well, is that vault walled in? A It is bounded on one side by the wall of the Voorhees building; on the other side by a retaining wall under the grade of the street and on the top by the sidewalk.

Q And how about the other two sides? A Brick walls.

30 Q Do you know how that boiler was admitted in the vault? A No.

Q It is a projection under the sidewalk? A Yes. I did not observe closely as to that.

The Court: The boilers were taken in as a unit?

The Witness: Yes, I think so.

40 Q Well, taken through a wall or not? A Well, the proper course to pursue, if they pursued it—

C. Godfrey Poggi, direct.

The Court: You have somebody around to testify to it.

Q What indications did you find of the breaking of the wall to put the boilers in? A I did not find any. I did not look for it.

Q What have you to say about the roof of the Stein building? A In what regard? 10

Q Well, is it connected in any way with the Voorhees building? A The plasterings of the Voorhees building are run up—at least, the Stein building are run up on the Voorhees. On the side of the Voorhees building it is secured with nails driven into the brick building.

Q Into the mortar? A Into the mortar.

The Court: Otherwise flashed in? 20

The Witness: I did not see any evidence of the flashing going up. It seemed to be nailed and tarred first.

Q You found a flashing? A Yes.

Q And what was nailed to the Voorhees building? A The flashings.

Q Did you see any holes in any part of the Voorhees building, in the northerly or westerly walls? A A portion of the ceiling of the Stein building is carried into the Voorhees building on the west wall of the Voorhees building, all the way from an inch to three inches it extends in. It is a support supporting the ceiling. 30

The Court: I do not get that.

The Witness: The supports supporting the ceiling of the third floor of the Stein building are extended into the west wall of the Voorhees building for a distance of one to three inches. 40

C. Godfrey Poggi, direct.

The Court: By a joist?

The Witness: They are small channel irons carrying along the west wall of the Voorhees building.

10 Q How would that be done? Would it be necessary to break down the west wall of the Voorhees building to insert these channels?
A No. They would have to break holes out to extend these channels in.

Q And they extend about how far? A Into it three inches.

Q Each? A Yes.

Q From north to south? A From east to west. In a parallel line they are from north to south.

20 Q And how much space of the Voorhees building is taken up by them? A A distance along the wall perhaps fifty or sixty per cent of the wall.

Q That is north to south? A Yes.

Q Fifty per cent. of the distance from the south side of the Stein wing to the north side of the Stein wing, is that what you mean? A Yes.

The Court: Were they in a groove?

30 The Witness: No, just in slots, and in every place they laid on a beam which was not fireproof, a steel beam over some of the openings and these channels extended in and rested on the bottom flange of that beam?

The Court: And how far apart?

The Witness: About twelve inches.

40 Q Did you find any other openings, large or small? A Several.

C. Godfrey Poggi, direct.

Q In the Voorhees building wall? A Several.

Q What were they?

The Court: He means the exterior wall.

A Yes. The wall between the two buildings. Why they were openings for passage between the two stores. 10

Q You mean doorways? A You might call them doorways.

Q Well, outside of that did you find any openings in the walls for any pipes or anything to come through? A Oh, I noticed a six-inch pipe leading from the sprinkler system tank. It carried through the rear wall of the Voorhees building overhead.

The Court: The west wall, you mean? 20

The Witness: Yes.

Q Where was the sprinkler tank? A The sprinkler tank of the Stein building is above the Stein building; considerably above it.

The Court: There are two tanks?

The Witness: Two tanks, one above each building, Stein and Voorhees building, and from that is a six-inch pipe leading down into the basement of the Stein building. That pipe, at a point about three feet below the ceiling of the Voorhees building, extends through the walls of the two buildings into the Voorhees building and takes a turn to the left and goes back through the Voorhees building again, one tank supplying the sprinkler system of the Stein building, the other the sprinkler system of the Voorhees 30

C. Godfrey Poggi, direct.

10 building. The pipe leading from the tank over the Stein building extends down through the Stein building to its basement; thence, near the ceiling, runs eastward through the wall—a rear wall of the Voorhees building for a distance of several feet; thence northward, through the north wall of the Voorhees building and again into the Stein building.

The Court: That is in the cellar?

The Witness: In the basement.

Q What length of that pipe is in the Voorhees building? A I did not measure it.

Q About? A I should say about twenty to twenty-five feet.

20 The Court: Well, it is in the whole length of the Voorhees building.

The Witness: Not the entire length.

Q Did you find any other holes for any other pipes? A (Not answered.)

The Court: Where does it end in the Stein building; is it continued throughout the Stein building?

30 The Witness: Well, it distributes; it continues through the basement and distributes in various lines and up to the various floors again.

The Court: And back to the tank?

The Witness: I do not know that it goes back to the tank, but it continues up and supplies the shower hose to the various floors.

40 Q About twenty-five feet are in the Voorhees building? A I think so.

C. Godfrey Poggi, direct.

Q It extends in twelve and a half feet and turns north and goes out again? A That is the idea.

Q Do you know whether the wiring is connected in the two buildings?

The Court: Electric wiring? 10

The Witness: I didn't investigate that.

Q What do you know about the cutting of the walls of the Voorhees building, the north wall and the west wall? A There are several openings in both the north and west wall of the Voorhees building. They have been separated or cut through.

The Court: For doorways? 20

The Witness: For doorways.

Q And how many in the north wall? A I have some notes on that.

The Court: Is the building constructed according to plans so far as the opening of the doors?

Mr. English: Yes, sir.

Q You are familiar with these plans? A I 30
seen the plans in the building inspector's office.

Q And you have some notes. Where are those notes?

The Court: Why waste time on it?

Mr. Stein: If your Honor please, I did not object to these. There were some slight changes.

Mr. English: They were admitted with the distinct proviso—

C. Godfrey Poggi, direct.

The Court: Do not put any more on the record than you have to. Are there any questions you want to ask?

Mr. English: Yes. I want to ask this.

10 Q How many doorways are there on each floor of the northerly wall of the Voorhees building? A If you do not object, I would like to look at my notes instead of this plan, because it would be rather difficult to determine it.

Q All right. A There are six single openings and two double openings in the north wall.

Q How many on each floor? A The basement contains two openings in the north wall; the first floor, one single and two double openings; the second floor, one single and two double openings; 20 the third floor, two single openings.

Q Now, on the first floor, do you know the depth of the building, that is the length of the north wall of the Voorhees building? A 125 feet, is my recollection.

Q Now, how much of that is taken up by openings; I mean in lineal feet? A About thirty-eight feet, in lineal feet.

30 The Court: How much in the double openings?

The Witness: One is 14 feet six inches and the other is 11 feet 2 inches.

The Court: And the single.

The Witness: And the single is 11 feet 8 inches.

The Court: The single seems to be the widest door?

The Witness: Yes.

C. Godfrey Poggi, direct.

Q Now, on the second floor. A The second floor, 14 feet 6 inches and 12 feet are the sizes of the two openings at which column seventeen is located.

Q That is, those two added together make that double opening, is that what you mean? A Yes. 10

Q Give me that again, please. A 14 feet 6 inches and 12 feet.

Q And they, together, make a double opening? A Exactly.

Q And in the middle of that has been erected a column? A Yes.

Q And that is number seventeen? A Known as number seventeen on the plans.

Q And that is an iron column? A Steel column. 20

Q Plastered over? A Yes.

Q Now, what is the size of the other? A The single opening is twelve feet wide.

Q That makes thirty-eight feet altogether of openings? A (Not answered.)

The Court: What was the opening of the double on the first floor, what is in between?

The Witness: Just a column. 30

The Court: That is seventeen?

The Witness: That is column seventeen.

The Court: On the first and second floors?

The Witness: First and second floors.

Q Now, on the third floor, what openings are there? A There are two single openings on the north wall. 40

C. Godfrey Poggi, direct.

Q What size? A One is 11 feet 2 inches and the other is 12 feet in width.

Q What is the height of those openings? A Well, they vary from 7 feet 8 inches in the basement—

10 Q How far? A 7 feet and 8 inches in the basement to 14 feet high above the basement.

The Court: On all three floors?

The Witness: They seem to vary; some are 11 feet high.

The Court: Please give it.

The Witness: The first floor is 14 feet high.

The Court: That is the height of the ceiling?

20 The Witness: The ceiling height is 17 feet.

The Court: The second floor.

The Witness: The second floor, the ceiling is 13½ feet.

30 Q How high is the opening? A The opening at column seventeen, first floor, is 14 feet high; second floor is eleven feet high; third floor eleven feet high.

The Court: What is the height of the third floor ceiling?

The Witness: Eleven feet. The opening in that case is right to the ceiling.

The Court: Are these openings arches?

The Witness: They are square openings with steel construction over.

40 Q Is the Stein building erected with a south-erly wall or not? A The Stein building only

C. Godfrey Poggi, direct.

has a southerly wall along the street front. There is no southerly wall on the Stein building adjoining and parallel with the north wall of the Voorhees building.

Q Is there any southerly wall at all in the Stein building? A Along the West Jersey street front of the Stein building. 10

Q Oh, you mean the westerly wing? A Yes, the street wall.

Q What has been done, if anything, with the northerly wall of the Voorhees building? A Several openings cut through.

Q Outside of that is it changed in any way? A Why, they have plastered—applied the wall plaster of the Stein building on the outside of the north wall of the Voorhees building.

Q Making an inside wall for the Stein building? A Making an inside wall for the Stein building. 20

The Court: Throughout?

The Witness: Throughout.

Q All the way up from the basement to the top? A Yes.

Q And is there anything attached to that wall? A Well, there are several items, such as fire hose and items of that character fastened to the wall. 30

Q That is on the outside of the Voorhees wall? A Yes.

Q Anything driven into the walls? A Yes, screws and bolts and nails.

Q In many cases? A Not a great many.

Q In passing through the Voorhees building and on to the Stein building on the inside, is there any way of telling when you leave the 40

C. Godfrey Poggi, direct.

Voorhees building and when you arrive in the Stein building? A Yes, where these openings occur and do not extend to the ceiling, it is quite evident that there is a wall dividing the two buildings.

10 Q You would know, then? A I would, yes.

The Court: Are the ceiling heights in both buildings the same?

The Witness: Practically the same.

Q Now, along the west wall of the Voorhees building, are there any openings? A There are.

The Court: Give those door openings.

20 Q What size? A There are eight such openings. In the basement there are two openings six feet wide and seven feet three high each on the first floor there are two openings, one 20 feet 6 inches wide and the other 20 feet wide, and they are nine feet high; on the second floor there are two openings, each 20 feet wide, and the height is 12 feet 8 inches; on the third floor there are two openings, one 20 feet 6 inches wide and the other 20 feet 4 inches wide and both ten feet high.

30 Q And what is the lateral dimension of the wall; what is the length of the wall from Jersey street north? A I have not got the full figure here. I can probably tell that better from the plans.

Mr. Stein: About seventy-odd feet; seventy feet.

The Court: Is that agreeable?

40 Mr. English: I do not think it is as great as that.

C. Godfrey Poggi, direct.

The Court: All right.

The Witness: 110 feet.

The Court: How much?

The Witness: It must be 110 feet.

The Court: The west wall of the Voorhees building. 10

Mr. English: Extending from Jersey street north.

The Witness: That is what it scales.

Mr. English: Seventy-one ten, so the architect and superintendent say.

Q Now, how are those walls above the openings, the westerly walls, supported? A Supported by steel girders.

Q All along, at every place? A Each opening. 20

The Court: What are the steel girders supported by at the opening?

The Witness: The brick work at each side of the opening.

The Court: Just by the wall?

The Witness: Yes, sir.

Q In that westerly wall, are there any piers placed, steel piers? A There is a brick pier between the two openings on each floor. 30

Q How large is that brick pier? A That is an average of 4 feet 6 inches in width.

Q And do you know how that was built? A I recall at the time they were cutting the opening that they simply cut the wall. I saw this on the third floor when it was being done. They cut the wall out and left a portion of the wall standing in the center of the two openings. 40

C. Godfrey Poggi, direct.

Q To be used as a pier? A Yes.

Q And it was not a steel pier? A No.

The Court: Was the girder carried into—

The Witness: A little way on each side.

The Court: It did not carry all the way
10 across?

The Witness: No, sir.

Q Is that proper construction? A I would
not call it proper construction.

Q What have you to say about the effect of
these openings on the northerly and westerly side
of the Voorhees building, upon the Voorhees
building itself? A The effect would be to trans-
pose your loads, your wall load and you floor
loads to concentrated points rather than have
20 them distributed in the building as at first
planned.

Q And as that building now is would it have
any bad effect on the footings of the Voorhees
building?

The Court: Strike out the word footings
and let me have the opinion on the building.

Mr. English: All right.

The Court: Strike out the word "foot-
30 ings."

Mr. English: All right.

Q Would it have any effect on the Voorhees
building? A There is evidence at the present
time with regard—

The Court: You were asked your opinion.

The Witness: The question is would it
have any bad effect on the Voorhees build-
40 ing?

C. Godfrey Poggi, direct.

The Court: You have already told us that.

The Witness: Yes.

The Court: It is apparently my fault. When you put the footings in, you confused me again. I did not know what you were driving at. Where is the footing?

Mr. English: The footing is the lowest thing in the building. 10

The Court: Oh, a way down in the earth?

Mr. English: The footing is concrete, rough concrete.

The Court: Oh, I understand.

Q Now, I asked you what effect would this concentrated weight of the Voorhees building on the piers as they now exist on the northerly and westerly side have on the footing supports of the Voorhees building. 20

The Court: At that point?

Mr. English: Anywhere.

A The footing is naturally overloaded, if it was calculated in the first instance only to carry a certain distributed load.

The Court: It would sink? 30

The Witness: Naturally it should sink.

Q That is the footing should sink? A Yes.

Q Too much weight at a given point? A Yes.

The Court: The opinion that you are giving me now is limited to the effect made by the opening and the construction at the opening, is that right? You are confining your opinion to that? 40

C. Godfrey Poggi, direct.

The Witness: I am, yes.

Q Now, what effect, if any, would the fact that the weight of the building rests upon a portion of the wall instead of the whole wall as before have on the super-structure? A In the event of falling of your footing by reason of additional concentrated load, you would naturally have cracks in the super-structure of the building.

Q Suppose the building was plenty strong enough to bear the load as now distributed, would there be any further effect on the super-structure? A In the event that any piers between openings are not sufficiently large to carry the concentrated load, those piers might bend.

Q Do you know whether any of those piers have bent? A There is evidence that at least one pier has bent. That is between the opening of the west wall of the Voorhees building.

Q What kind of pier is that? A That is the brick pier.

Q Can you see any results, or probable results of the bending of that pier? A The plaster is cracked.

Q Where? A At a point where the adjoining steel column of the Stein building crosses in front of that pier on the Stein side. There is a crack in the plaster which surrounds that column.

Q What floor? A At the first, second and third floors.

Q Cracks all the way up? A Cracks all the way up.

The Court: Much of a crack?

The Witness: It is a crack that varies from an eighth to three-sixteenths.

The Court: Bear any relation to each other?

C. Godfrey Poggi, direct.

The Witness: Yes, sir.

The Court: What?

The Witness: With regard to the cracks it is continuous and there is a bend in the pier.

The Court: From the top to the bottom of the building? 10

The Witness: Yes, that is, in the plaster.

The Court: At the same point?

The Witness: At the same point.

The Court: At the same location?

The Witness: The same location.

Q That is one crack running up several floors? A That is the idea.

Q And you said from an eighth to three-sixteenths—do you mean in width? A That is the opening the crack shows. 20

Q The width of the crack? A Yes.

Q And in your opinion was that due to the bending of that brick pier? A I think so.

Q And in your opinion will the large openings on the north wall have any effect upon the upper part of the building, the super-structure?

A There is no evidence of it now.

The Court: As it is now constructed, what is your opinion as to the future? 30

The Witness: I think there might be in the future.

The Court: You have no opinion?

The Witness: That is my opinion.

The Court: There might be?

The Witness: There might be.

The Court: And might not be? 40

C. Godfrey Poggi, direct.

The Witness: And might not be.

The Court: Well, which is your opinion?

The Witness: Well, that is one of the difficult things to determine.

10 The Court: Well, then, you have no opinion of it.

The Witness: Well, my opinion is both ways. It might and it might not.

The Court: Now, tell us what is the remedy for the imperfection on the west wall that you just described?

The Witness: I would remove those piers between the opening and put in steel columns and steel construction right across.

The Court: All the way up?

20 The Witness: All the way up.

The Court: Steel columns all the way up?

The Witness: Yes, sir.

The Court: Connecting steel columns, one resting upon another?

30 The Witness: Well, one resting upon another and carrying up the height of the opening and girders across. It is immaterial the way you do it, but I would put a different construction in there.

The Court: But the perpendicular support not necessarily connected?

The Witness: Not necessarily, no.

The Court: The perpendicular girders not necessarily resting upon each other?

The Witness: No.

The Court: But on intermediate walls?

The Witness: That would be all right.

40

C. Godfrey Poggi, direct.

Q Do you think the wall of that building is safe with those holes cut in it of the size they are now? A No, I do not.

Q Do you think the northerly wall is safe with the holes cut in as they are now? A That I cannot say at this time. I would have to see as much evidence as I have seen in the westerly wall to determine it. 10

RECESS FROM ONE TO TWO.

AFTER RECESS.

Q Mr. Poggi, will you explain the construction of the northerly wall of the Voorhees building, including the footings, foundation and wall? What is the lowest thing in the wall? A The lowest thing in the wall is the footing, made of concrete. 20

Q And above that what? A Foundation wall, made of brick.

Q And above the foundation wall what? A Walls of the building, also brick.

Q What is the distinction between foundation walls and building walls? A A foundation wall is ordinarily understood to be that part of the building below the ground. 30

Q But aside from the fact it is below the ground, there is no difference between the foundation and building wall? A The same material.

Q And you cannot distinguish it in any way except that it is below the ground? A That is the idea.

Q What do the plans show in regard to footings and piers of the Stein building, if you know? A I have seen the plans; they show— 40

C. Godfrey Poggi, direct.

Q Do you want to look at them again? A I would like to, yes. It would be a good idea. They show concrete footings below steel columns and on which the steel columns are to rest. They also show that these concrete footings, a portion of them, are to be built south of the northerly property line of the Voorhees building. Here is the north property line right here. This designed encroachment varies from nine inches to three feet from that point to that. That three-foot encroachment being at column seventeen. At column twenty, the encroachment is indicated on this plan as sixteen inches, or thereabouts. That is about the extent of the variation, from nine inches to three feet, the encroachment bearing—

20 The Court: What point did you say was three feet?

The Witness: At column seventeen.

Q And that encroachment is an encroachment southerly from the line dividing the property? A Southerly and easterly.

Q That is on the north side of the Voorhees wall, it extends into the wall southerly in or under? A That is it.

30 Q Which is it, in or under? A The plan does not indicate.

Q And on the westerly side of the Voorhees wall the encroachment runs bearing east? A That is the idea.

Q What is the width of the encroachment? A They also vary, the width of the encroachment along the pier.

Q The width of the encroachment would be the width of the pier? A The pier or the footing.

40

C. Godfrey Poggi, direct.

Q And what is the width of the pier? A That averages approximately eight feet. To be exact, it scales seven and a half in a number of cases. This encroachment is broken, not continuous.

The Court: It is only at the piers? 10

The Witness: Just at the piers.

Q Just at the piers? A Yes.

The Court: What is the distance between the piers, approximately?

The Witness: Approximately—it varies from eight to ten feet on the north wall and from sixteen to eighteen feet on the west wall of the Voorhees building. 20

Q Does that plan encroachment indicate that a groove shall be cut in the Voorhees footings, or that it shall go in at an angle with the walls, an acute angle with the walls, or doesn't it show? A I was looking for a section on this sheet, but I do not find anything but a section on the opposite sheet, on the opposite side of the building.

Q If the plan is that the top of the pier encroaches over the line, would it be proper construction to have the bottom part of the pier not encroaching over the line? A No, sir; it would not. 30

Q Would the opposite be good construction for the top of the pier not to encroach, but the bottom of the pier to flare out and encroach? A I don't think it would.

The Court: That would not affect the adjoining building at all, then, would it? What 40

C. Godfrey Poggi, direct.

is the answer? If the top of the pier did not and the bottom did?

The Witness: I do not think it would seriously affect it.

10 Q Well, if the bottom of the pier was over on the adjoining property? A Yes.

Q If the top of the pier did not encroach on the adjoining property, but the bottom was wider than the top and it encroached on the adjoining property, would that add stability to the pier, giving it a broader base? A If the top of the pier was correctly calculated as to size and the base was broader than the top, it would add stability.

20 Q What would you say from an examination of those plans about the object of the encroachment of the pier over on the Voorhees property? A For the purpose of placing the columns as close to the Voorhees wall as possible and also in the center of gravity for the footings of piers.

Q And what changed the center of gravity at the footings? A There is no evidence from these plans of any change.

30 Q I mean to say, is the center of gravity of the footing piers in a different place when it was an encroachment from what it would be if the piers went flush with the Voorhees building? A Yes, there naturally would be a difference.

The Court: How so?

The Witness: Because in one case your center of gravity is on the center of the pier, where it should be, and in the other case, it would be on one side of the pier, creating a tilting condition.

40

C. Godfrey Poggi, direct.

Q Mr. Poggi, did you examine the escalator in the Stein building and its supports? A Yes.

Q What did you find? A Well, I found that there had been evidence of a beam having entered the wall of the Voorhees building at some time that had been cut off and supported by another beam.

10

Q Where did it enter the Voorhees building?

A Right at the north wall of the Voorhees building.

Q And what was that beam used for? A Just to support the escalator midway up.

Q Have you made any distinction between a beam and a girder? A Well, a beam is usually a small steel joist and a girder is a supporting joist, supporting a number of beams, as a rule.

Q But they all may be pieces of steel and they run in a horizontal direction? A Oh, yes.

20

Q And you say that the girder in the Voorhees wall had supported the escalator? A At some time in the past.

Q And what change was made? A Well, they ran a beam parallel with the wall between two columns and supported the end of the beam which formerly ran into the wall on the new beam.

Q And what did they do with the beam that had formerly run into the Voorhees wall? A I don't know; I do not recall just at this time what disposition was made of it.

30

Q Do you know anything about the ladder up on the roof? A There is a ladder extending from the top of the Voorhees building around the platform on the Stein building.

The Court: What distinction do you draw between a girder and beam?

40

C. Godfrey Poggi, direct.

The Witness: A girder is a beam of large dimensions which supports a series of other smaller beams.

Q What do you know about the beam from the tank over the roof of the Voorhees building? A
10 There is a projection there, the beam supporting the platform surrounding the tank, which extends beyond the line of the Voorhees building.

Q Goes over the Voorhees building? A Exactly.

Q To what length? A Not very great. I should not say over two feet. Approximately as shown on these plans.

Q That is not fastened to the Voorhees building? A No, the ladder is the only thing fastened. The tank above the Stein building is built
20 higher than the roof of the Voorhees building. The roof of the Voorhees building is at a high level and the roof of the Stein building low level, and this tank is built on stilts, very high, and from the platform which extends over the Voorhees building, which runs down.

The Court: How many stories is the Voorhees building?

30 The Witness: Six stories, and the Stein building three.

Q But the Stein building tank is higher than the Voorhees building itself? A Exactly.

Q And this ladder leads up? A The ladder leads from the Voorhees roof to the Stein tank.

Q When the plans mention a column of a good draft, that refers to a tier of columns? A As a rule.

40 Q That means one column above another through the series of stories? A Yes.

C. Godfrey Poggi, direct.

Q Do you know anything about a connection of the north and south girders of the Stein building with any columns in the Voorhees building?

A When my attention was first called to this matter, I went down and looked it over and I found that this column seventeen or at column seventeen on three floors the beams or girders supporting the floor of the Stein building were connected to a column known as seventeen, which was within the area of the north wall of the Voorhees building.

10

Q The north and south girders for the Stein building? A Yes. Well, it is the girders of the Stein building and, if I recall correctly, there was a girder from the Voorhees building also connecting to the same column. That is my recollection.

20

Q On the three floors? A Three floors.

Q Do you know whether or not the Stein building north and south girders were afterwards disconnected? A At the time I arrived there, I found that they had also placed another column known as seventeen A, three and a half inches north of the column of the—within the area of the Voorhees wall, and that column also existed at each story, extending from the floor beam of the floor below, to the beam of the floor above, and again from the top of that beam to the bottom of the beam above, all the way up, and I recall also that they had disconnected by a practice of burning with an acetylene torch the girders which connected formerly with column seventeen within the wall in the case of the first floor and the third floor and the roof, but I have never been able to determine fully whether a total disconnection had been made at the level of the second floor. At the time I visited it for

30

40

C. Godfrey Poggi, direct.

10 that purpose, my attention was called to it. They had plastered the building and they had attempted to accommodate me by cutting out a portion of plaster, but they had never cut enough plaster out so I could determine fully whether everything had been cut free and clear. I could see a portion of it, but not all through the opening that was given me to look through.

Q What did that column seventeen of the Voorhees wall rest on? A It sets on a five by five foot pier, according to this plan.

Q Do you know whether it does or not? A No.

Q Then, that was one pier that was disconnected at every floor but one, is that correct? A To my knowledge.

20 Q And its place taken by another column which was on the Stein property? A That is the idea.

Q Now, if these girders on the tier of column seventeen extended in so that they were connected with a column in the Voorhees wall, did the girders themselves extend into the Voorhees wall? A They did formerly, yes.

30 Q And do you know how they were cut off? A My recollection on that is not totally clear at this time, but I know they were cut off, because it is very clear in my mind that there was a clear cut in all of those cases.

Q Do you know whether the bolts were cut, or the girders? A If I remember rightly, there were girders cut and also rivets melted out, and I think others removed. The exact details I cannot recall at this time.

40 Q How are the columns now on the Stein property, the line of columns from east to west adjoining the north wall of the Voorhees build-

C. Godfrey Poggi, direct.

ing tied one to another? A There is no tie between columns along the line of the north wall of the Voorhees building in the center of the Stein building.

Q Is that good construction? A No, sir.

Q What effect would that have on the Voorhees building? A There is a tendency to depend on support east and west by means of friction on the part of the columns resting against the walls of the Voorhees building. 10

Q That is to say, the Stein building might sway? A Maybe there would be a possibility of that if the Voorhees building were ever removed.

Q What would be the effect on the Voorhees building as long as it is there? A I do not know of any serious effect. 20

The Court: More of a drag on the Stein building?

The Witness: I don't think so.

Q But if any girder, north or south girder of the Stein building projects into the wall of the Voorhees building and then the Stein building should sway east and west, what effect would it have? A There would not be any. 30

Q It would not have any drag, then? A No.

Q Where did you see cracks in the Voorhees building other than you have told, if any? A On the upper floors. Those that can be seen from within the Voorhees building are on the top floor.

Q Are there any that cannot be seen from within? A Yes, where there is—there are some places you see them more on the outside. 40

C. Godfrey Poggi, direct.

Q What do you see on the outside? A You see cracks from the windows like, for instance, diagonal cracks, assuming that pier was the center pier between these openings above this ceiling line or roof of the Stein building, there are three on the Goerke building, and from that
10 point up there are full cracks through these walls over these openings, which seems there is a settlement of some kind or another between those openings.

Q And that can be seen from the outside of the building? A From the outside and inside, and also from the Stein building on the inside.

The Court: Indicating that the openings are too wide without additional support—are too wide for the building.
20

The Witness: That is true, and also the fact that the center pier is not enough to carry this concentrated load.

The Court: If there were not any openings below, the wall itself would be sufficient to carry it?

The Witness: Yes.

The Court: Then, in your judgment, it must be due to these openings being too wide to carry the building without additional support?
30

The Witness: That is my feeling, and the fact that the pier is not really a pier. It is more of a wall than a pier.

The Court: That is this pier?

The Witness: No, the brick pier. We are talking now about the west wall of the Voorhees building. I think the attorney asked me if I saw further cracks than those I already
40 mentioned.

C. Godfrey Poggi, direct.

Q Yes. A And I quoted cracks in the west wall of the Voorhees building above the roof of the Stein building.

Q Now, when you speak of cracks outside, there would have to be cracks above the third floor? A They would have to be above the roof of the Stein building. 10

Q Because below the third floor it is all inside? A All inside.

Q Were you present when this westerly or rear wall of the Voorhees building was cut into? A They had just started to break openings through on the third floor of the Stein building when I was there.

Q And did you see the method of operation? A I did. 20

Q Was it a proper method? A It did not look good to me.

Q What was wrong with it? A It did not seem to me that they had the wall properly braced while they were tearing it out.

Q Can you tell more particularly what was wrong? A Well, they simply cut a long slit twenty feet long without bracing and depending on the natural arch condition of the brick work above to carry that. Later on they put some braces in, but at that time I saw that condition that it didn't look good. 30

The Court: You said they were breaking through the Stein wall?

The Witness: I should have said the Voorhees wall.

The Court: The Voorhees wall into the Stein building?

The Witness: Yes. 40

C. Godfrey Poggi, cross.

Cross examination by Mr. Cohn.

Q Are you a construction enigneer? A No, sir.

Q You have had no experience in the matter of measuring up engineering strength in connection with a building? A I don't go into that. I use engineers for that purpose.

Q You are just a registered architect? A A registered architect.

Q Do you understand anything about the subject of compressive strength? A I have superficial knowledge of those things.

Q Well, have you made any computation of the compressive strength which is involved to carry the load of the wall—the west wall that you have referred to? A My engineers did that.

Q But you have not personally? A Not personally.

Q You have no idea what the amount of that load is on the so-called piers? A I have been told what the load is. I do not recall it now.

Q And all your opinion on that subject, then, is not based upon any personal knowledge or computation that you have made? A Not that I have made personally, no.

The Court: Have you the capacity to make it?

The Witness: I think I could, if I were put to it.

Q You think you have the capacity? A I think I have, if I were put to it.

Q Well, will you tell me if that is so, assuming that there was a load—

C. Godfrey Poggi, cross.

The Court: He said he had the capacity, but not on the witness-stand. Am I correct?

The Witness: You are right.

Q You made frequent appearances on this property during the course of the construction? 10

A No, I didn't.

Q Well, can you remember on how many occasions you were there during the construction?

A During the construction I think I was there not over three times. It might have been four, but I think it was three times.

Q On these occasions, were you able to see if the changes in the construction of the building which had been agreed to between the principals, were carried out? A The first time that I visited that, I think, was in the first of August, 1922, and at the request of the Union County Trust Company, for the purpose of ascertaining—for the purpose of looking to see what connections existed in the beams and girders of the Stein building to the Voorhees building, and also if possible to see whether the footings encroached in any way on the Voorhees property. Those two things were the principle things I was sent there to look at. 20 30

Q Well, as the result of these instructions that you received from the Union County Trust Company, do you know whether the construction of the building was changed to meet the views of the Trust Company? A I returned there at the request of the—

The Court: Answer the question. Do you know?

C. Godfrey Poggi, cross.

The Witness: In regard to those two items, yes, with the exception of the connection at column seventeen, ceiling of the first floor, which I could not tell about.

10 Q Well, do you know of any instance where a request was made in your presence by the Trust Company regarding the subject of changing the construction so as to avoid these difficulties; do you know any instance of that character where the Goerke-Kirch Company did not carry out the proposed change? A Only insofar as the idea of the footings encroaching is concerned. I have not seen any evidence of any cutting being done.

20 The Court: What did the Union County Trust Company have to do?

Mr. Cohn: They are trustees under the Voorhees will.

Q Now, do you really know whether these footings encroached? A No, I don't.

30 Q Speaking about the pier that you referred to, the one which is a part of the masonry of the west wall, will you describe briefly just what that pier is, I mean as to its physical composition? A As I recall it, at the time they were cutting on the third floor, it was simply a brick wall and they were simply cutting right through it.

Q Isn't it cement and water? A I think it is cement and water; I think so.

The Court: Why did you say a brick wall?

40 The Witness: Well, it is not in the nature of a pier. They simply left a portion of

C. Godfrey Poggi, cross.

the brick wall and they are expecting that portion of wall to serve as a pier; in other words, to carry the load that a pier would carry. When these masons build a wall they build it continuously and it is not expected of them in carrying it all the way as they would in building a pier, and in that case it is bonded all around the pier. In this case they simply cut through and left the raw edges on the side without any bonding which would appear. 10

Q A pier solidly built of cement and water would be of considerably greater strength than a pier built out of brick? A No.

The Court: Well, such a pier would be stronger than the remnant of the wall that you found? 20

The Witness: A real pier properly bonded would be stronger than this remnant of wall built of brick.

Q You had no occasion to examine the construction of that remnant of the wall closely to see what its composition was? A I saw it was brick from where I was standing and that was not over ten or twelve feet away. 30

The Court: It was not cement. Which is it?

The Witness: Well, as I recall it, it was a brick wall.

The Court: Remnants of a brick wall?

The Witness: Yes, sir.

The Court: What was this remnant? 40

C. Godfrey Poggi, cross.

The Witness: This remnant was the remnant of a brick wall with the brick laid in cement and water as I saw it. Now, there might have been some lime in it but it looked like cement and water.

10 The Court: That was a little earlier construction?

The Witness: A little earlier construction.

Q Would you say that wall must have been very properly built to admit of a twenty foot opening without a brace? A Well, it has got to be good to stand what it is standing at the present time. It has got to be pretty good.

20 Q Now, you have spoken about the fact that these piers do not carry the load. You judge that entirely from the fact that this one pier is bending.

The Court: The wall remnant pier is bending?

Mr. Cohn: He only referred to one pier all throughout his testimony, this pier which is constituted of a remnant of the original wall.

30 The Court: I thought he was referring to a whole lot.

The Witness: Well, there is one above the other, a tier.

Q I should have said this tier. A What is the question?

40 Q Do you base your whole conclusion of the overloading situation on the fact that this one tier in the west wall is bending? A That is self evident, as I see it.

C. Godfrey Poggi, cross.

Q Then, I say, you base your whole conclusion on that? A With regard to that west wall.

Q Is that correct? A It must be correct.

Q How much of a bend is there? A I have plumbed it with a plumb line and it measures all the way from an eighth inch to a quarter inch. 10

The Court: Outward?

The Witness: No, it is bending in this way, bending in toward the Voorhees building at the present time.

The Court: Any sinking?

The Witness: No, there is no evidence of sinking that I can see below the floor of the first story.

The Court: How do you account for the cracks? 20

The Witness: The chief bend is in this pier or wall remnant, or at the end of it at the second story. That seems to be the point that is weakest.

The Court: If there is no evidence of sinking, how do you account for the crack?

The Witness: The bending itself would create a sinking itself.

The Court: You say there is no evidence? 30

The Witness: Below the first floor the load is distributed on a good thirty foot wall in the basement. I did not see anything down there that is wrong, no cracks, but the pier in the second story shows a bend.

The Court: Now, not outward but inward?

The Witness: Inward and that also indicates a reflection from above which would create cracks on the outside of this bending. 40

C. Godfrey Poggi, cross.

The Court: Which is not observable to the naked eye.

The Witness: Yes, it is, when you come up there.

10 The Court: I mean is the bending outward observable?

The Witness: It would be to probably anybody but a layman.

The Court: Did you notice any?

The Witness: I did. The bend is not outward. It is outward at the top. That is true. I testified to that before, that there is a deflection at the top of these openings, the very topmost opening shows it, but then there is another bend in the pier itself.

20 The Court. Inward?

The Witness: Inward, yes.

Q Haven't you ever known of a pier which was originally built with a slight bend? A Oh, I have seen such things.

The Court: Have you ever seen an absolutely straight one?

30 The Witness: Yes, I have seen some absolutely straight ones.

Q So that your hypotheses as to why this pier is bending might as well be due to the nature of its original construction as to any other cause? A I wouldn't say that.

Q I say it might be due. A It might be, except for these cracks, which shows that there is something wrong with that section of the wall.

40 Q Now, as to those cracks, did you notice there was a steel girder in close proximity on the

C. Godfrey Poggi, cross.

Stein side of the building? A There is a column girder.

Q Isn't it very reasonable and possible for the cracks to be due to the effect of that column?

A I don't know in what way.

Q Would you say it is not possible? A The column, as I measured it—

10

The Court: These are probabilities.

Q Would you say that the cracks are not due to the proximity of that column that immediately adjoins the brick work in question, or wall in question? A I do not see how the column could affect the wall in any way at all, excepting the footings might have been tampered with. If the footings were tampered with, of course, there might be some effect.

20

Q Would it not cause a settlement of the plaster to a sufficient extent to show the cracks which you have described? A No.

Q Now, if there were any inherent weakness to this one pier due to overloading, why wouldn't that apply to all the piers or remnants of walls?

A For the simple reason one remnant of wall might not be so well built as another.

Q Well, wouldn't the overloading have the effect of bending the whole construction of piers?

30

A Well, I think that would be governed very largely by the cracks of the wall, which I have not been able to determine fully.

Q Did you notice any sag in the floors around the piers? A No, I have not seen any sagging in the floors. There does not seem to be any especial sinkages so far as the beams are concerned. It appears to be more of a warping.

Q Is there any warping? A Well, there is quite a difference in the level.

40

C. Godfrey Poggi, cross.

Q Well, did you notice any warping? A I didn't notice any in particular.

Q What would you say as to the character of the general construction of these remaining walls, all of them that you saw?

10 The Court: I think you said a moment ago there was only one.

Mr. Cohn: There is only one he talks of as having been bent. I am speaking of one tier.

Q What would you say as to the general quality of the construction of these wall remnants, all of them? A As a general building construction, I consider the building of good construction.

20 Q Now, you referred to some beam end on the roof. Are those easier to cut off, on the water tank? A Yes, I think they can be cut off. They are simply projections.

Q And the ladder can be removed? A The ladder, I think, can be removed.

Q How do you know that any of these columns which you describe as being encroachments, are actual encroachments?

30 The Court: He makes no pretense, except from the plans.

Q You judge that entirely from the plans? A Yes.

Q Now, if, as a matter of fact, the building was not built strictly as per those plans, you would remove the entire basis of your idea of construction encroachments?

40 The Court: That is argument.

C. Godfrey Poggi, cross.

Q I mean if there was a lack of other than what is strictly shown on them, there would not be any encroachments, so far as you know.

The Court: That follows, as a matter of course.

10

Q Now, with regard to column seventeen, do you know whether that is entirely on the Voorhees property or not? A My recollection was that column seventeen was within the ebb wall area of the Voorhees property.

Q Except for the description which you gave of the Stein, building, so far as it adjoins the west wall, you gave a description of certain piers, is there anything in connection with the Stein building which you know, standing apart as a construction, which has the effect of overloading the Voorhees building? A No, I do not know of anything on the Stein property.

20

The Court: Is the Stein property a drag on the Voorhees building?

The Witness: I don't think so.

Q Referring to column seventeen, is it true, or, let me ask you this, what effect does column seventeen to sustain the load of the wall carry? A I do not quite understand that question.

30

The Court: What load of wall?

Mr. Cohn: I will withdraw that.

Q You have described in detail the double and single openings in the walls as bearing upon the question that there is an overloading by reason of these openings. Now, in that connection,

40

George B. Meeteer, direct.

how far does column seventeen relieve the overloading? A With relation to the total opening?

Q Yes, with relation to those double openings? A I would not want to say as to that. That is a matter of calculation.

Q Would you say it was at least two-thirds?
10 A No, I wouldn't say. That is a matter of calculation for an engineer.

Q You have not endeavored to make any calculation at all? A No.

GEORGE B. MEETEER, sworn in behalf of the complainant.

20 *Direct examination by Mr. English.*

Q What is your business? A Engineer, construction engineer.

Q What kind of an engineer? A Construction engineer.

Q How long have you been in that business or occupation? A Twenty-five years.

Q Where did you get your education? A Cooper Union.

30 Q Where do you practice? A Mostly New York State.

Q Have you made an examination of the Voorhees building and the Stein building mentioned in this suit? A Yes.

Q Have you seen the plans? A Yes.

Q And you are familiar with them? A Yes.

Q Do you know anything about this alleged encroachment? A Nothing below the basement.

40 The Court: The basement floor?

The Witness: The basement floor.

George B. Meeteer, direct.

Q The encroachment of the Stein piers appears in the Voorhees continuous footing, do you know whether that exists or not? A I do not.

Q When did you first examine the building?

A On October 27, 1922.

The Court: And with the aid of the plans? 10

The Witness: By personal observation.

The Court: And with the aid of the plans?

The Witness: I do not believe I saw the plans at that time.

Q And do you know anything about the cutting of the Voorhees footings to admit the Stein piers? A I do not.

Q Do you know about the water, gas and steam pipes of the two buildings? A I made no inspection of that part. 20

Q What about the boiler? A I made no inspection of that.

Q Do you know anything about the plastering of the outside walls of the Voorhees building? A I only know that it is plastered.

Q You only know that it is plastered? A It is plastered.

Q Do you know whether anything is attached to that outside wall of the Voorhees building? 30

The Court: The Stein building.

Mr. Cohn: There is nothing that we know of, outside of fire hose, I know of nothing.

Q Do you know any more things? A The only question may be column seventeen, which I was unable to see at one point, whether it was disconnected.

George B. Meeteer, direct.

Q Did you look at the openings in the northerly wall of the Voorhees building? A Yes.

Q Do you know their dimensions? A I have a record of it. I have it with me.

10 Q Are they dimensions the same as shown on the plans? A If I recollect, they were only scaled on the plans; they were not figured.

Q Well, did you scale them on the plans and ascertain whether they were built as the plans show? A I compared them with the building department and they are in approximately the same relative positions as shown.

Q Did you hear the testimony of Mr. Poggi as to their dimensions? A I did.

Q Was that correct? A As far as I remember, it was.

20 Q What have you to say of the effect on the Voorhees building of the large openings in the northerly wall? A In the northerly wall?

30 Q Yes. A The openings in the northerly wall, the percentage of opening both lineal and measured by area, is within safe limits, and there is no effect there, except the placing of column number seventeen. There it is a question as to how the footing was put under the wall at that point. According to the plans the footing they put at that point is of insufficient size to carry both the parts of the two buildings which it is supposed to support. The plans show one combined footing at that point and to me the load is mostly live load, that is, with people. If the building was ever loaded to that point, I question whether or not something would happen to that wall which is carried over column seventeen.

Q What do you mean by combined footing?

40 A According to these plans, if the footing was

George B. Meeteer, direct.

put in there the same size—there is one footing for column seventeen and seventeen-A, which carries part of both buildings.

Q Column seventeen being entirely on the Stein property and seventeen-A being on the Voorhees property? A That is right.

Q Well, now, the plans do not show column seventeen-A, do they? A No. It is shown with a red mark on here.

Q Do they show any footing for seventeen-A? A No.

Q What do you mean by the combined footing? I do not understand what you are referring to. A I mean a footing which would carry the combined weight of both columns, seventeen and seventeen-A.

Q But that is not shown there? A There is only one column as shown there.

Q Well, there cannot be a combined footing for one column? A Well, the footing shown here is encroaching on the Voorhees property here and it is supposed to carry both of those columns.

Q Well, there is only one column shown? A Only one shown.

Q And that is only a case of there being another column? A Well, that column is put in the building. We saw that.

Q It is not on the plan? A It is not on the plan.

Q Now, what have you to say about the width of the opening in the middle of which is column seventeen? What effect would that have on the Voorhees building? A Well, if—I cannot tell what this foundation is. I have no way of telling what foundation is under that column.

George B. Meeteer, direct.

The Court: Assuming it to be a sufficient foundation.

The Witness: It would be all right.

10 Q By foundation you mean footing? A Footing. It all depends on the size of that foundation.

Q That is, if the footing is strong enough, no other harm could be done? A No other harm.

Q How about the other openings in the north-erly wall? A Why, they are not of excessive area.

20 Q What about the west wall, the openings in it? A The conditions there are very bad. The brickwork is overloaded. I have a text book with me. The tier between the two openings at the second and third floors, the unit has a load per square foot, on that is approximately eighteen tons per square foot. Now, quoting from skid-der's, 1923 edition, which is an authority, piers of that character, that is proportions of walls used as piers, should not have over ten tons to the square foot, and the lineal or lateral percent-
30 age of openings in that area is excessive. The percentage of openings in that wall at the second and third floor measured horizontal is approxi-mately fifty-nine per cent. Now, if that pier was of good construction, the limit in any building code would be fifty per cent.

The Court: What is the remedy?

40 The Witness: The remedy is to replace that pier with proper construction, either with brick properly bonded and built either of increased thickness or proper thickness, or a steel column.

George B. Meeteer, direct.

The Court: A steel column run up from the footings to the roof?

The Witness: That would not be necessary. It could start from the first floor to the third floor.

The Court: How about the other floors above the third floor in the Voorhees building? 10

The Witness: Why, that is practically a blank wall in the Voorhees building, except for a few openings.

The Court: Well, if it is weak below, it is apt to crack above.

The Witness: It has cracked now. The wall is cracked.

The Court: And the thing to do would be to run a new tier from the first to the third floor? 20

The Witness: Yes, sir.

The Court: Is there any depression in the west wall above the third floor at this point at this time?

The Witness: Not a depression, there are cracks.

The Court: There is no depression in the wall, in the west wall at this point? 30

The Witness: It is not perceptible.

The Court: Readily remediable at this time?

The Witness: Yes.

Q How many openings did you find in the west wall? A Two openings in the basement, two at the first, second and third.

Q Now, isn't it in between those two openings that this brick tier exists? A Yes. 40

George B. Meeteer, direct.

Q Do you know whether that is a built tier or whether it is the remnant of a wall? A I only know that when I saw the ragged opening when they removed that portion, when I visited it in October, they exposed a small piece of brick work which they built into a pier. At that time it was
10 a portion of an old wall, and I do not see how it could be properly bonded together and form a pier unless it was increased in thickness and properly bonded.

Q Is that proper construction? A No. It is a violation of every code I can look up.

Q Do you know whether there is any defect now in that pier that we are speaking of? A That would be—that is impossible to say, except that from records, or from tests, brick piers fail
20 by bulging. The ultimate strength of the brick itself is never developed. The pier fails through the bond of the wall bulging. There is a movement lateral and the strength of brick piers is always dependent on their unsupported heights of their least dimensions.

Q What does that mean? A Compared to their least dimension it is a—

Q What is unsupported height? A The clear distance between floors.

30 Q That is what you call unsupported height? A Yes.

Q What is your ratio? A The least dimension of the piers.

The Court: Smallest part?

The Witness: Smallest part. For instance, in one case we have a sixteen inch wall. That is our least dimension.

George B. Meeteer, direct.

Q Then you mean the less the diameter, the smaller diameter in the piers, the weaker it is?

A Exactly.

Q And the higher it is the weaker it is to a given diameter? A Exactly.

Q Did you examine that pier recently to find out whether it is bulged or bent, or whether it leans? A I examined all of the piers along the westerly wall of that building and there are cracks or separation cracks between the steel columns and the plaster portion of the walls, from the first to the roof of the Stein building and the piers especially on the second floor appeared to be slightly bulged inward with reference to the Voorhees building. 10

Q Do you know how much they bulged? A I did not measure it. It was apparent to the naked eye. 20

Q Did you see any cracks on the outside of the Voorhees building wall above the third floor? A Yes.

Q In your opinion what are the outside cracks due to? A Four things. First, it may have been due to lack of proper shoring during the alteration, that is, cutting the openings; secondly the steel beams, carrying the walls above the opening— 30

The Court: You said maybe as to the first statement. Now, maybe is also to be applied in your second?

The Witness: I think we will have to apply that to the four things.

Q You mean it may be due to any one of four causes? A Exactly. 40

George B. Meeteer, direct.

Q What are those four causes? A First would be lack of proper shoring during alterations, through lack of shoring they may have cracked that wall; secondly, the steel beams carrying walls and floors above the openings are of insufficient strength.

10

The Court: Maybe?

The Witness: Maybe. The third can be due to the bulging or overloading the floors—to the overloading piers, the overloading piers at the second and third floors may cause settlement and may cause that crack above.

20

Q What else? A Fourth, there is a pier on the northwest corner of that building. There may be settlement at the corner of that footing under that pier.

Q Why do you refer to the pier at the northwest corner in particular? A In figuring up the weight at that portion of the building, I found that in cutting those openings the brick work at that corner was stressed up pretty high.

Q How high? A Thirteen tons to the square foot.

30

The Court: Can you think of any other cause it may be due to?

The Witness: No. I have a train of thought.

The Court: And it may be due to any one of them?

The Witness: Any one.

The Court: And it may be due to some other cause?

40

The Witness: No.

George B. Meeteer, direct.

The Court: It must be one of the four?

The Witness: Yes, sir.

Adjourned until tomorrow, Thursday, May 20, 1926, at ten o'clock, A. M.

SECOND DAY.

10

Thursday, May 20, 1926.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, John H. Backes, Vice-Chancellor, in the presence of counsel as before.

GEORGE B. MEETEER, sworn for complainant.

20

Direct examination by Mr. English.

Q What do the plans of the Stein building show in regard to the piers at or near the northwest corner of the Voorhees building? A The plans of the Stein building as filed in the Building Bureau show a building encroaching under the walls of the six-story building at the corner.

Q Under the north or west wall of the Voorhees building? A At the intersection of the north and west wall.

30

The Court: Both?

Q Both? A Both.

Q Diagonal piers, cutting the corner, is that it? A Cutting the corner.

Q Do you think that there was an overstress or too great weight at that corner, prior to the

40

George B. Meeteer, direct.

erection of this pier? A There was not, apparently.

Q Do you think that there is now, if the pier was built according to the plans? A I do.

10 Q How much too great is that weight, under those circumstances? A I could not determine that. I figured the weight coming from the six-story building after the openings were cut and found that there was a stress under the foundation of about four tons to the square foot, but if that—

Q (By the Court.) That is normal weight?

A Normal weight. It is a little bit higher than the rest of the building, but it is normal. But if there is an encroaching footing there, then at that corner the footing has been undermined and the
20 pressure is greater. How great is the pressure? A That I couldn't tell.

Q (By the Court.) How can you determine that? A Why, from the way the—I could see from the calculations how much the weight of the building at that portion was, but I had no difficulty—

By the Court.

30 Q And how much support it should have? A How much support it should have.

Q You are not telling me it should have more support than it really has at the present time, are you? A Oh, no, if that—

The Court: Please do not put the "if" in. It is confusing. If you follow it up with English probably I will be able to understand it.

George B. Meeteer, direct.

By Mr. English.

Q Why do you state that there is an over-stress at the northwest corner of the Voorhees building by reason of the encroachment of this pier? A For the reason that the pier encroaching has taken away the most valuable part of the support under that corner of the pier.

10

Q And what has it taken away? A The bearing power of the soil at that point.

Q Taken away dirt or taken away concrete? A If it is taken away, either, they have destroyed the bearing power of the soil at that point, they have undermined it.

Q Is the footing of the Voorhees building—the continuous footing needs the support of the earth under it; is that what you mean? A Yes.

20

The Court: Yes what? Now, what do you mean?

The Witness: The footing at that—the footing of the Voorhees building at that corner requires the soil for its entire length at that point.

The Court: For its support?

The Witness: For support.

30

Q And, if the soil has been dug up to insert the pier under, you say, it weakens the support of the building? A It weakens the support of the building.

Q To what extent, according to the plans, does that footing encroach, that pier footing, I mean? A I haven't measured that accurately.

Q (By the Court.) Well, can you approximate it? A I can get the plans and approximate it.

40

George B. Meeteer, direct.

Q (By the Court.) Will you? A It amounts to an encroachment of about between two and three square feet in area under the pier.

Q (By the Court.) What is the scale? A Quarter inch to the foot.

Q (By the Court.) Quarter inch to the foot?
10 A Yes, sir.

Examined by Mr. English.

Q And lineally how much is it? A About—

The Court: What do you mean?

Mr. English: How much does it stick into the Voorhees building?

The Witness: Two feet. Two feet approximately.
20

Q Goes in two feet? A Two feet.

The Court: From the corner?

The Witness: From the corner.

Q What is the thickness of the wall of the Voorhees building? A Two feet and four inches.

Q And what do you think the effect of this pier, if so constructed, would have, in the Voorhees building?
30

The Court: If properly constructed.

Mr. English: If constructed according to the plans.

The Court: If properly constructed according to the plans.

A Why, due to the original—

The Court: Is that your question; if properly constructed according to the plan?
40

George B. Meeteer, direct.

Mr. English: Yes, sir.

The Witness: Originally the footings—

The Court: Won't you answer?

Mr. English: Yes, your Honor.

The Court: I am telling him to answer you.

10

Mr. English: Yes.

The Witness: It would weaken the foundation at the point under the pier.

Q Yes. Now, what do you mean by the "foundation"?

The Court: It would weaken the supports.

The Witness: The supports.

Q What effect would the weakening of the supports probably have on the building itself? 20

A Causes a settlement of the west wall of the Voorhees building.

By the Court.

Q And the north wall? A And the north wall.

Q It would not settle one without the other, if the weakness was at the corner, would it? A 30
It is a question of how it was built, whether it was built in one continuous piece.

Q Well, if the corner goes down, both sides of the corner have got to go down, haven't they? It seems natural to me. I don't know what the architect thinks.

By Mr. English.

Q Isn't that true, Mr. Meeteer? A It is questionable.

40

George B. Meeteer, direct.

Q If the whole corner sinks down, both sides of it go down, the west wall, and the north wall, whether they are joined together or not? A It would be true if it were a homogeneous material, but there would be a settlement there. It gives and you cannot see it.

10

By the Court.

Q It gives and you cannot see it? A Not susceptible on the homogeneous mass.

Q Being not susceptible, what is the use of talking about it, eh? A Well, now—

Q I mean, from your viewpoint, from an architect's viewpoint. A It happens that that north wall is a very long wall without opening—

Q Well, please. If an equal settlement is
20 not susceptible, why take it into consideration as an architect? A Something can go on due to overloading it at a concentrated point in the wall, which, due to the enormous strength of that corner, which is a very heavy construction, an adjacent portion may be loaded and not show up until the breaking point is reached.

Q You mean, it would not be perceptible at once? A No.

Q But if you permit it to go on it becomes
30 perceptible? A Yes, sir.

The Court: I understand it.

By Mr. English.

Q What do you think would be the remedy for this situation at the northwest corner of the Voorhees building?

The Court: As you have described it?

40

Mr. English: As you have described it.

George B. Meeteer, direct.

A Provide additional support at the corner.

Q Well, just exactly what does that mean? A Increase the size of the footing under the corner pier.

Q On the Voorhees property? A The Voorhees property.

Q Now, how far do the other Stein piers—
(interrupted).

10

By the Court.

Q The remedy would not be to remove the Stein piers and replace it with dirt and footings under the Voorhees building? A I don't believe that would be practical because the soil when once disturbed you can never get the proper bearing power unless you go very deep in the foundation.

20

Q How would you remedy the situation if you took the Stein piers out? A Provide a new footing. It would have to be shored and the weight transmitted to the pier again, through the pier to the earth to a proper foundation or footing.

Q You would have to go very deep for that? A Yes; you would have to go deeper.

Q You would have to go down to the natural lay of the earth? A Yes, exactly.

30

Q Have you built any large building that way? A I have, yes.

Q You have. You have had experience in that line? A Positively.

By Mr. English.

Q Now, suppose the encroaching part of the Stein pier at that corner was taken off, would that have any ill effects on the Voorhees build-

40

George B. Meeteer, direct.

ing? A I don't think it would change the conditions at the point.

Q Just answer the questions, please. Would it have an ill effect on the Voorhees building?

Mr. Cohn: He has answered it.

10

A No.

Q Would it have an ill effect on the Stein building? A Yes.

Q Why? A The area of the footing of a column at that point—the column I refer to is the column in the Stein building—would be of insufficient area.

Q It would not have a broad enough base; is that what you mean? A Exactly.

20

The Court: I do not follow the witness, why it would not have an effect on the Voorhees building to remove the stone work from under the Stein building—the stone work on the Stein building under the Voorhees building, do you?

Mr. English: Yes, I think so.

The Court: Make it clear, will you?

30

Q Mr. Meeteer, in answer to the prior question, that there would be no bad effect on the Voorhees building if this encroachment were removed, what kind of removal did you contemplate? A I assume that you meant to leave the encroaching portion of the Stein building in there and cut it, just simply separate it by cutting it away.

40

Q (By the Court.) Well, would that remove—would that leave the Voorhees building intact, safely intact? A No. It is overloaded now, but it would simply separate them.

George B. Meeteer, direct.

Q But if they were separated by simply sawing off the encroachment, leaving the encroachment where it is, but not fastened to the Stein building, would that have a bad effect on the Voorhees building or not? A I don't believe that the soil condition would be affected materially by cutting the footing. 10

Q Well, would it have a bad effect on the Voorhees building or wouldn't it? A I don't think it would have any effect.

By the Court.

Q Then, if that is so, the present encroachment has no ill effect on the Voorhees building, the present encroachment as it now exists? A The soil pressure there is excessive as it exists, in my opinion. 20

Q And if the encroachment is cut off, square with the Voorhees building, it would not have; is that what you mean? A It would not be increased or decreased. It would still be overloaded.

By Mr. English.

Q Oh, the situation would be the same as now? 30

The Court: It would be unchanged?

A It would be unchanged.

Q It wouldn't be any worse and it wouldn't be any better? A Wouldn't be any worse and wouldn't be any better.

Q But there would still be an overloading? A Would still be an overloading.

Q Now—

George B. Meeteer, direct.

By the Court.

Q If the encroachment is securely put in the earth, where is the overloading, where does that come in? A Well, if the encroachment was securely put in the earth, the overloading would be that you are putting two loads on the same soil, part from the Stein column and part from the Voorhees wall.

The Court: I see. Go on.

By Mr. English.

Q Could the—

The Court: What I am seeking is, what is in your mind. I am not criticizing you. Do not get that impression.

Q Could the Stein column be removed at that corner and a new pier placed there?

The Court: New foundation put in, he has said so, by putting in new footings, going down to the natural lay of the earth. Is that correct?

The Witness: It is possible to be done.

Q That is piers, pier footings you are talking about? A Pier footings.

Q In the Stein building? A Stein building.

Q Now, what is the extent of the encroachment, according to the plans, of the other piers along that northerly Voorhees wall?

The Court: Nine inches, he says. He didn't say it with this reporter.

John Henry Voorhees, direct.

Mr. English: We have had three trials and I am not quite sure just what questions have been taken down.

The Witness: From the plans it appears there is one footing, which at one end encroaches approximately ten inches.

10

JOHN HENRY VOORHEES, sworn for the complainant.

Direct examination by Mr. English.

Q Mr. Voorhees, you are a son of the late John Voorhees? A Yes.

Q Who owned this building. Did you watch the Stein building in the course of construction?

20

A Yes.

The Court: Speak out.

Q Answer, please. A Yes, sir.

Q Did you notice the manner in which the concrete piers of the Stein building were erected?

A Yes; I saw them after they were in. They had filled them up, but the cellar floor had not been put in and I could see them for a height of about eight inches.

30

Q Was that adjoining the Voorhees building on the north or on the west? A On both sides.

Q And what did you see? A I saw where they had cut our wall out at an angle so I could see the whole top of the pier.

Q What do you mean?

Q (By the Court.) The piers were under your building? A Partly, from one to two

40

John Henry Voorhees, direct.

inches we could see there, some places, a little more than that on some of them.

Q Do you mean from one to two inches from the top down or into? A From the top into.

Q You mean the encroachment extended southerly into the Voorhees building one to two inches? A Yes.

Q That is on the north wall or west wall? A On both walls.

Q And how wide was that encroachment? A Why, I didn't measure it, but I should imagine about eighteen inches.

Q Well, was it whole or part of the width of the pier? A It was the top of the pier.

Q Well, was it the whole or part of the width of the pier? A It was the whole width of the whole top of the pier, yes.

Q (By the Court.) The length of the pier? A Length of the pier.

Q That dimension of the pier went right into the Voorhees building? A Yes, sir.

Q From one to two inches? A Yes.

Q And you say it went on a diagonal line? A Yes.

Q Making it appear somewhat in the shape of a pyramid at that point? A Well, I couldn't—
30 I could only see down about eight inches. I imagine that is what it was, because you can see a little flare.

Q Flare at that point? A Yes, a flare.

Q (By the Court.) Diagonally downward? A Yes, sir.

Q The pier getting larger as it went down? A Yes.

Q How many of the piers did you notice in that condition? A Why, I don't know exactly.
40 I think there were ten or twelve.

John Henry Voorhees, direct.

Q There are thirteen piers altogether, aren't there? A Yes.

Q Did you look at all of them? A I didn't look at the corner ones because they had been filled up. I didn't see those.

Q What corner do you mean? A The Broad street pier and the Jersey street pier. I just looked at the others inside. 10

Q Did you look at the one at the northwest corner of the Voorhees building? A Yes.

Q And how is that pier constructed? A Well, that was set diagonally, I might say, across.

Q (By the Court.) Across the corner? A Yes, across the corner.

Q And does that extend into the footings of the Voorhees building? A Yes. 20

Q Does that go on a slant or straight down? A that was on a slant, too, to the best of my recollection.

Q Could you tell how far in that extended? A That seemed to be—

Q (By the Court.) At the top— A Much greater than the others.

Q (By the Court.) At the top? A Yes.

Q (By the Court.) How much? A Oh, I should imagine, eight inches, maybe more. I didn't measure any of these things. I just went there and saw it— 30

Q You didn't know— A —and notified Mr. Whittemore.

Q You knew they were under your building? A Yes, sir.

Q (By the Court.) You knew also these piers were under your building? A You saw that? A Yes, sir.

Q You saw that? A Yes.

Q Do you know where pier 17 is? A Yes, sir. 40

John Henry Voorhees, direct.

Q Where is it? A It is the second pier in from Broad street.

Q Did you notice that one in particular? A Yes; that is entirely—that column is entirely in our wall.

10 Q What do you mean by “column”? A Upright column.

Q Iron? A Iron, yes.

Q What I am talking about is the piers, not the iron column. A I don't remember about that pier at all, that pier number 17.

(Discussion.)

Q That stone pier, concrete pier of the Stein building number 17? A Yes.

20 Q Did that encroach or not? A Well, now, I can't say to that at all. I don't remember that pier under 17 at all.

Q You don't remember any difference between that— A No; because the only thing I noticed there where they were cutting out the wall, I knew it was entirely in our wall.

Q What do you mean by— A And I didn't even look at that pier.

Q You don't remember any difference between that one and the others? A No; I do not.

30 Q You have heard the testimony of Mr. Page concerning these other connections with one building and the other? A Yes.

Q You know that is true? A Yes.

Q Various pipes extending through? A Yes.

Q And you have made that examination? A Yes.

Q It is true? A Yes.

The Court: I don't suppose the other side disputes it, physically.

(Discussion.)

John Henry Voorhees, cross.

Cross examination by Mr. Cohn.

Q What did you say as to the shape of these piers? A Why, they were oblong, as near as I can remember. They wasn't quite square. I should imagine, the tops of them were about 12 by 18, something like that. I didn't measure them. 10

Q And you say that they flared out? A You see, I could only see—they had put dirt around there, but the cellar floor had not been laid and they were up, I should imagine, about eight inches out of the ground. That is all I could see of them.

Q Then you don't know what shape they had below? A Yes; I could see the part of the floor, yes; in fact, eight inches; I could see where they flared out just a little bit in that eight inches, yes, from the top— 20

Q (By the Court.) How much would that flare out in the eight inches? A Oh, I should imagine, not much; probably an inch, not—maybe less.

Q Actually, you don't know what the physical shape of the pier is except that small portion you saw above the soil? 30

The Court: You couldn't see under the pier.

The Witness: I could only see down for eight inches, I admit that.

Q So that your statement that there was an encroaching into your wall of any given distance was based entirely on a conjecture. A No; it was there, because I saw where they cut out the wall and where the top of that pier was under our wall. 40

John Henry Voorhees, cross.

By the Court.

Q You mean, where it was under your footing? A All I could see where they had cut out the concrete in a diagonal, like this. This piece was in and if you looked at it you could see.

10 Q Actually became part of your foundation?
A They certainly did.

Q Was there any foundation under that part which they cut? A Any foundation under? Well, I couldn't see.

Q I know. I mean, of your building, was there any of your building left beneath where they cut? A Oh, yes, sir.

Q And they cut into your wall? A Cut into our wall.

20 Q They didn't cut under your wall? A I couldn't say whether they cut under or not. They cut down on a diagonal line, like that (indicating).

Q What they cut in was not bricks, but cement, I mean. A Yes.

By Mr. Cohn.

Q Concrete? A Yes.

30 Q You have referred to the northwest pier.
A That is the corner pier, yes.

Q You say that was diagonal? A I don't remember what the shape of that was. I know that it was across the corner of the building. I couldn't see one side of it, because it was under the wall too far.

By the Court.

40 Q Under which wall too far? A It was across the corner.

John Henry Voorhees, re-direct.

Q It was under the wall too far—which wall?

A Both walls. It was across the corner.

Q Of the Voorhees building? A Yes, sir.

Re-direct examination by Mr. English.

Q Mr. Voorhees, you said that the flare of these piers— 10

The Court: Extended out eight inches. The eight inches that he could observe impressed him that they flared out to the extent of an inch from the top to the bottom. That is his testimony.

Q You said that flare was an inch or possibly less, I think. A Yes, I couldn't tell how much it was in that distance. 20

Q Then why do you say the encroachment was as much as two inches? A I could see over the top. The top of the base I was talking about when I said the two inches. If you had looked down along our wall, two inches of the top of the base was in our wall.

Q Top of the pier, you mean? A Top of the pier.

Q Was into the wall. And then there was a flare some inches below that? A Yes. 30

Q Flare in addition to that, do you mean? A Yes.

The Court: Within the eight inches, that is what he said.

Q And what the flare is below the eight inches you don't know? A I don't know, no.

James Fischer, direct.

JAMES FISCHER, sworn for the complainant.

Direct examination by Mr. English.

Q Mr. Fischer, what is your occupation? A Attorney.

10 Q Of New Jersey? A Yes, sir.

Q An attorney of New Jersey. Did you see this Stein building in the course of construction?

A Yes, sir.

Q How many times? A Once.

Q Did you see the piers of the Stein building before the earth was filled up around them completely? A No, sir. Completely, you said?

Q Completely. A It was partly filled up. The piers appeared above the surface.

20 Q How far above the surface? A The surface was uneven on part of the pier. It might have been as much as eight inches, and over parts of the piers a smaller—four inches.

Q Did you notice anything particular about the north wall or northerly footing of the Voorhees building? A I noticed that, at the point where these piers were located, the wall or footing of the Voorhees building had been cut out.

30 Q (By the Court.) Chipped out? A Yes, sir.

Q (By the Court.) To admit the piers? A To admit the piers, yes.

Q And how wide, about, were those cuts? A I should think, three feet.

The Court: The length of the pier.

The Witness: How is that?

The Court: They were the length of the pier?

40

James Fischer, direct.

The Witness: The length of the pier, yes, sir.

Q They admitted the full dimension of the pier, didn't they? A Yes, sir.

Q And how deep were they?

10

The Court: How far in?

A Into the wall?

The Court: Into the wall.

The Witness: Well, I should say, as much as four inches.

Q Was the footing of the Voorhees building cut down in a straight line or at a slant? A At a slant. 20

Q And was the line—

By the Court.

Q A slant to what depth, eight inches? A No.

Q You could only see eight inches, couldn't you? You said you could see the piers eight inches above the surface? A Yes; the piers did not reach as far as the cut-out in the wall. 30

Q How deep were the cut-outs in the wall? A Oh, I should say—

Q From the earth's surface. A Yes. I should say they were from one to two feet.

By Mr. English.

Q Above the earth's surface? A Yes, sir.

Q And the shape of that side of the pier which faced the Voorhees Building was what? A Why, 40

James Fischer, direct.

I am not so positive about the shape of the pier below the top of the pier.

Q (By the Court.) What was the shape of the top? A The shape of the pier seemed square.

10 Q But you said that the cut in the Voorhees building was on a slant? A Yes, sir.

Q Now, I want to know whether the side of the piers towards the Voorhees building conformed with that slant or not? A Well, sir, I couldn't testify as to that.

Q Did it look as if the pier had been built in a mould and set in there? A It did.

Q Or had been thrown in wet. A Thrown in wet in a form, it looked like.

20 Q As if the cut in the Voorhees building constituted one side of the form; is that what you mean? A Well, I couldn't say as to that.

Q Well, did that side of the pier adhere closely to the cut in the Voorhees building, or was it something, apparently, built in a form and transported to the place? A No; it was built in the form, located in the hole dug out for it. That is the way it appeared to me.

30 The Court: Then, apparently, there was a space between the pier and the cut and the remaining part of the Voorhees building at the point of the cut.

The Witness: Some at the top.

Q Well, how about below? A Below? I couldn't see below the ground.

Q You said it was as if the cut were part of the form in which the stuff was thrown in wet; is that correct? A I couldn't say about that.

40 Q Well, you said it looked as if it were made in a form. A Made in a form.

J. Bradford Davis, direct.

Q Right there, and not transported? A Yes; that is the way it was, apparently.

Q Is there a stone cap on top of that pier?

A I think not.

Q When you saw it, I mean. A I think not.

Cross examination by Mr. Cohn.

10

Q Did you see it the same day that Mr. John Voorhees saw it? A No, sir.

Q Did you see it together with him at any time? A No, sir.

Mr. Cohn: That is all.

J. BRADFORD DAVIS, sworn for the complainant. 20

Direct examination by Mr. English.

Q Mr. Davis, where do you live? A Haverhill, Massachusetts.

Q What is your occupation? A Member of the Bar of Massachusetts, and State Senator.

Q And you are related in a way to the Voorhees family? A My wife is one of the granddaughters of the late John Voorhees. 30

Q Did you see the Stein building in the course of erection? A I did.

Q In whose company? A In company with Mr. John Voorhees and Mr. James Fischer and, I think, Mrs. George Taylor.

Q James Fischer, the last witness? A Yes.

Q Did you observe the method of the construction of the piers on the Stein building? A I did, yes, sir.

40

J. Bradford Davis, direct.

Q On which side? A On both sides, the west and the north.

Q Of the Voorhees building? A Yes, sir.

Q Now, what did you observe? A I observed the cutting in to the footing or foundation of the Voorhees property both on the north and the west sides where the foundations which supported the columns of the Stein building were put.

Q And what was the width of those cuts? A They were apparently chisled out places, cut out places in the Voorhees wall on both the north and the west, cut in, as I recall it, at a slant or at an angle to admit of the foundation, which was laid in the footing of the Voorhees wall.

Q To admit of what?

20

The Court: To admit of the—to accommodate the piers of the Stein wall.

The Witness: Yes, sir.

The Court: To accommodate the piers of the Stein building.

Q Yes. And then what would be the width of each of those cuttings into the Voorhees building? A I should judge about two feet.

30

Q Well, in relation to the pier?

The Court: Wide enough to accommodate the piers?

The Witness: Yes, your Honor.

The Court: What is the width of the piers, about two feet.

The Witness: About eighteen inches to two feet, I should judge, on the top.

40

J. Bradford Davis, direct.

Q What depth did you notice this cutting in to the Voorhees footings? A You mean into the footing?

Q Into the footing?

The Court: Into the wall.

A I should judge, from two to six or eight inches.

10

By the Court.

Q Beginning at the top? A At the top of the base.

Q At the top of the cutting? A At the top of the foundation.

Q No, at the top of the cutting and then a slant in? A The cutting, your Honor, slanted in and where the cutting was greatest the base was there. 20

Q Yes. A At that point, at the top of the foundation—

Q At the top of the piers of this Stein building— A I should judge—

Q —how deep was it there? A I should judge, about six inches.

Q And how far above the top of the Stein piers did the cutting begin? A I should judge, six or eight inches. 30

The Court: Yes.

By Mr. English.

Q Did the top of the Stein piers, the very top, encroach into the footings in the Voorhees building? A Yes, sir.

The Court: How much?

40

J. Bradford Davis, direct.

Q How much? A I should judge, about six inches.

Q And was the side of the piers toward the Voorhees building perpendicular or at a slant? A At a slant.

10 Q (By the Court.) Inward of the Voorhees building? A Yes, sir.

Q That is to say, there was a flare outward? A Yes.

Q Of the pier? A Slight.

Q Making the lower part wider than the top part? A Yes, sir.

Q Did that flare of the pier conform to the slant of the cutting around? A It did.

20 Q So did it look as if this pier had been built in a form and carted there or as if the material had been thrown in a semi-fluid state? A It appeared to me that the composition had been thrown in in a fluid state and that possibly a form had been used. I should judge possibly the foundation had been used as one side of the form running into the Voorhees building.

Q And then a box around the other three sides? A Yes.

30 Q How many piers did you examine? A I don't recall just how many.

Q (By the Court.) All of them? A I should judge that I made a circuit of the north and the west walls. The west wall is more—I recall the west wall more than I do the north.

Q Did you notice Pier 17 in particular, being the second one from Broad street? A No, sir; I did not.

40 Q Did you notice the one at the northwest corner of the Voorhees building? A I did not.

Mabel V. Taylor, direct.

Q You don't remember that? A I don't recall those two particular places.

Mr. Cohn: No questions.

MABEL V. TAYLOR, sworn for the complainant. 10

Direct examination by Mr. English.

Q You are a daughter of the late Mr. John Voorhees? A Yes.

Q Did you watch the Stein building in the course of erection? A I was there two or three times.

Q With whom? A One time with Mr. Fischer and Senator Davis and another time with my brother and alone. 20

Q Did you notice these Stein piers being constructed? A Yes, sir.

Q Did you see them before the dirt was filled up and completely around them? A Yes; when they were about—well, I don't know, of course, how much they extended down below, but we could see seven or eight inches.

Q The question is, did you see them before the pier was completely filled up around them? A Yes. 30

Q And what did you see, Mrs. Taylor? A I saw the footing on the Voorhees wall cut out to allow space for the pier of the column.

The Court: The piers.

The Witness: The piers of the column.

Q That is to the full width of each pier? A Yes. 40

Mabel V. Taylor, direct.

Q So that the whole pier could go in? A The whole—the length.

Q I mean the whole width of the pier? A Yes, uh-huh.

10 Q Could fit in? A Yes; there was enough under so that the whole column was flush against the Voorhees wall.

Q Now— A Above the pier.

Q Now, you are speaking of the column, what do you mean? What is it made of? A I mean the steel or iron upright.

The Court: The thing that stood on the pier, set on the pier?

The Witness: Yes.

20 Q The pier was set so far in the Voorhees building— A Yes.

Q —that the steel column upon the pier was flush with the Voorhees wall? A Absolutely flush.

Q And that is true in every case? A In every case except one where the wall was cut out the whole height.

The Court: On the west wall.

30 The Witness: Yes, sir.

Q The west wall? A Yes; where the brick was cut out to allow a column to be put further in that flush against the wall—no, it is the north wall for that.

Q You are referring now to the location of the second pier from Broad street, are you? A Uh-huh, yes.

40 The Court: 17.

Mabel V. Taylor, direct.

Q 17? A Yes.

Q That is where there is a steel column right in the wall? A Yes.

Q Now used to support the top of the doorway? A Yes.

Q And that doesn't fit on a column on the Stein property at all, does it? A No. 10

The Court: Sitting on a pier, you mean, that doesn't sit on a pier?

Mr. English: Doesn't sit on a pier of the Stein building.

Q Did you notice the construction at the north side of the Stein building piers?

The Court: That is what she was talking about. 20

Mr. English: No, your Honor.

The Witness: That was the north.

Mr. Cohn: That is right.

The Court: You don't mean that at all, do you?

Mr. English: I do.

The Court: The north side of the Stein building?

The Witness: I beg your pardon. I don't understand your question, no. 30

Q I mean, just at the northerly side of the Stein building? A Yes; I did. That would be next to the Kane building. The piers there were flush against that building, not the columns themselves, but the piers.

The Court: Flush against the Kane building? 40

Mabel V. Taylor, direct.

The Witness: Flush against the Kane building, the piers.

Q The north side— Now, where were the columns on that side? A Why, in the center of the bases, in the center of the piers.

10 Q How far away from the Kane building—

The Court: I am not interested.

The Witness: Can't answer that?

The Court: No.

Q Have you examined all of the piers, both north of the Voorhees building and west of the Voorhees building? A I went around, but, of course, I didn't take actual measurements.

20 Q But you examined them all? A Yes; I examined them.

Q Did you notice the one at the northwest corner particularly? A No; I didn't notice that particularly.

Q And you didn't notice 17 particularly except as to this steel column you have mentioned? A I noticed that because the bricks were all torn out of the wall.

30 Q I am talking about the encroachment there. Did you notice any particular encroachment there, that that pier was any different from any other pier? A Except that it was entirely under so that the column could be in the wall.

The Court: How much of the top of the pier did the column cover, all of it?

A Of the pier?

40 Q Yes, the top of the pier. How much of the column that set on the pier? A Which one of the piers?

Mabel V. Taylor, direct.

- Q Any of them? A Any of them.
 Q Did that cover the entire— A Oh, no.
 Q Did the column cover the entire top of the pier? A No.
 Q That stayed in the center? A That stayed in the center.
 Q To be used in the center? A Yes. 10

(Discussion.)

By Mr. English.

- Q Now, Mrs. Taylor, on the north side of the Stein building, you said the piers were flush up against the Kane building which is at the north?
 A Yes.
 Q Did they cut into the Kane building? A Not at all. 20
 Q And the columns are set where on the piers on that side? A In the center.
 Q How far were the columns away from the Kane building? A Well, so I could stand at the end and look all the way down.
 Q Well— A Whatever the width of the pier was, which I don't know.
 Q Whatever the width of half the pier was?
 A Half the pier, yes, because the column was in the center. 30
 Q And about what was that in inches? A I thought, around eighteen inches, but I don't— I didn't measure it.
 Q Eighteen inches away from the Kane building; as much as that? A Oh, no, no. I should say—

By the Court.

- Q How far were the piers? A The piers were flush. 40

Mabel V. Taylor, cross.

Q And the columns? A Well, how can I tell you when I don't know the dimensions? But, I should say, that distance (witness indicates with hands).

Q That would be about eighteen inches? A Would it?

10 Q Would it be more than a foot? A Yes.

By Mr. English.

Q Well— A This was four years ago.

Q It was several inches? A Yes.

Q That is as near as you care to make it? A As near as I care to make it.

Cross examination by Mr. Cohn.

20 Q Were you present on any occasion when the cut-out footings in the Voorhees building were replaced or refilled? A The cut-outs in the footings?

Q Yes. You described the openings in the Voorhees footings, which were made for the purpose of, as you described it, accommodating these piers on the Stein property. Now, did you ever see what was done with those openings—in the Voorhees footings? A I never knew that they

30 were changed. I never heard it.

Q Did you ever see the cut-outs in the Voorhees footings? A Why, yes, of course I saw them.

Q I am speaking of the footings now, not the wall. A The footings, yes.

Q Then, did you observe, while you were there as to the method which was used to refill those openings? A No; I never thought about that. I just knew the spaces were filled with the piers.

40

Mabel V. Taylor, cross.

Q Well, the piers on one side, the Stein property, but do you know what happened to the openings on the footings in the Voorhees property?

Q (By the Court.) These cuttings, were they ever filled in that you know of, the cuttings in the wall on the Voorhees building, were they ever filled in, that you know? A They were filled in with the piers, is that what you mean? 10

The Court: No.

Q You don't know whether they were filled in—

By the Court.

Q Whether they were replaced? A You mean— 20

Q The cuttings were replaced. You don't know anything about that? A Those piers removed?

Q No, no. When the cuttings were replaced. A I don't know what you mean at all.

Q There were cuttings in the Voorhees wall you have spoken of? A Why, yes, diagonally.

Q Yes, all right. Did you ever see that they were replaced, put back again? A Why, no. They couldn't have been unless the piers had been removed. 30

By Mr. Cohn.

Q When you say "cuttings" do you mean in the footings or in wall? A I mean the footings when we are talking about the piers.

Q Did you observe the method that was used to restore the openings that had been cut into 40

George B. Meeteer, recalled, direct.

the footing? A I didn't know that they had been restored. The footings were there.

Q How did you know those cuttings were still there? A Because the footings were there when I saw them and I never heard of their being removed. I think they are still there.

10

By the Court.

Q You mean, the piers are still there or the cuts of the footings, which do you mean? A I don't know.

Q What do you think is still there? A I think the bases are still—that the piers, the piers are still there as I saw them when I was there.

Q And the cuttings are still there? A I think the cuttings are still there.

20 Q You don't know any different? A I don't know. I have never heard of anything.

GEORGE B. MEETEER, recalled.

Direct examination by Mr. English.

30 Q Now, Mr. Meeteer, if there is an encroachment of the piers of the Stein building along the north and west walls of the Voorhees building for one or two inches, what effect would that have on the Voorhees building?

The Court: In your opinion?

40 Q In your opinion. A At Column 17 it is an encroachment exists and the columns, that one column carrying the Voorhees building, upper portion and the 17-A column, which carries the Stein building, a portion of it, if they are on the

George B. Meeteer, recalled, direct.

same footing, and the footing is built according to the plans—

The Court: It is of inadequate size, you mean, if they are—

The Witness: If—

The Court: Now, won't you answer the question? It is a very plain one. It would do me a whole lot of good if you would give me your opinion. Mr. English's question. 10

(Question read as follows: "Now, Mr. Meeteer, if there is an encroachment of the piers of the Stein building along the north and west walls of the Voorhees building for one or two inches, what effect would that have upon the Voorhees building in your opinion?") 20

A One or two inches encroachment would have practically no effect.

Q Suppose the encroachment were greater, what effect would it have—

The Court: Oh, you fix the inches for him, if it were greater. Greater would include all the way under.

Q Suppose six inches. 30

The Court: Four inches.

The Witness: Six inches, practically no effect.

Q What effect would that encroachment have on the stability of the piers of the Stein building? A If the encroachment of the Stein piers upon the Voorhees building were one or two 40

George B. Meeteer, recalled, direct.

inches and if the piers were fully loaded, the building load there would be a tendency for those piers to tip inwardly.

The Court: Please read the answer.

10 (Question and answer read as follows:
 "Question: What effect would that en-
 croachment have on the stability of the
 piers of the Stein building? Answer: If
 the encroachment of the Stein piers upon
 the Voorhees building were one or two inches
 and if the piers were fully loaded, the build-
 ing load, there would be a tendency for
 those piers to tip inwardly.")

20 Q Is that what you mean? A Tip—to be
 very—they would be really overloaded on the
 Voorhees side.

By the Court.

Q Why, if the piers of the Stein building
 were properly constructed and even though they
 encroached on the property of the Voorhees
 building, would the encroachment make any dif-
 ference? A Yes, the amount of encroachment
 would.

30 Q Why, if it were on solid ground? A Your
 Honor, say, here is the footing; if the column
 is on the center, it would be uniform pressure;
 if the column is on the edge, this footing will
 come up on one side and push towards the
 Voorhees building.

40 Q Assuming that to be in the center, assum-
 ing the column to set properly in the center or
 at the proper point in the pier of the Stein
 building, would it make any difference then? A

George B. Meeteer, recalled, direct.

If it were set properly, it wouldn't make any difference, but we know there is—

Q What? A We know the relation between the building line and the columns.

By the Court.

Q That has not been disclosed yet and the question does not embrace that. 10

By Mr. English.

Q How near to the wall of the Voorhees building are the columns of the Stein building? A The center of the columns of the Stein building are approximately nine inches from the face of the Voorhees wall.

Q I don't want the center of the columns. I want the edge of the columns. How far do they come—how near do they come to the brick wall of the Voorhees building? A Nominally, four inches. 20

Q They are not flush up against the building?
A No, sir.

By the Court.

Q Do those columns set in the center of the piers? A It all depends where the piers are placed, I can't tell you. 30

Q You can't tell me. If they did set in the center of the piers it would make no difference?
A Make no difference.

By Mr. English.

Q You are sure you understand what I mean with regard to the columns, the steel columns of the Stein building, the distance of the nearest 40

George B. Meeteer, recalled, direct.

space of those columns to the brick wall of the Voorhees building? A Four inches clear space.

Q You say there is a four-inch clear space? A That is neglecting the fireproof casing. I am talking about the relation of the face of the steel to the face of the brickwork.

10 Q Have you seen any columns there exposed?

A When I visited it, yes.

Q So you could ascertain that? A Yes, sir.

Q Where did you see it exposed? A Now, I think it was October.

Q Where? A At the first floor.

Q Which column? A I think I have seen nearly everyone at that time. I know one time I was there I saw them. I know that there was—
20 saw connections of the old columns there at one time.

Q You are not referring to column— A 17.

Q What is that? A Not referring to Column 17.

Q 17-A? A No; the full line of columns.

Q I didn't hear you. A The full line of columns.

Q Now, how near to the edge of the top of the pier are these iron columns, which is supported by the piers? A That I can't say.

30 Q Well, are they in the center? A According to how those footings were placed; according to the plans they were not.

Q (By the Court.) You don't know? A I don't know.

Q I am talking about the top of the pier, not the bottom.

The Court: He can't see them.

40 Q You didn't see them? A No, sir.

George B. Meeteer, recalled, direct.

The Court: Couldn't?

The Witness: Couldn't.

Q Do you know the approximate size of the piers? A The size of the piers, let us see, you are talking about the column enclosures?

Q The piers, the concrete piers in the Stein building. A Yes. As they were supposed to be built I know they— 10

The Court: No. As they are built.

The Witness: Oh, no.

Q Now, could the columns resting on those piers be in the center and still be as close to the Voorhees building as you say they are? A Let me understand your question. 20

Q (Question read as follows: "Now, could the columns resting on those piers be in the center and still be as close to the Voorhees building as you say they are?") A Yes. Providing the piers were built according to the plans.

Q Built what? A The—

The Court: Providing the piers were built according to the plans.

Q Now, what would be the effect of the widening of the base or the lower part of the pier at its southerly side encroaching on the Voorhees building? 30

The Court: Effect on what?

Q Effect on the stability of the pier.

The Court: It would be a better footing. That is perfectly obvious. It might have spread. 40

George B. Meeteer, recalled, direct.

The Witness: That is correct.

Q What is your answer? A It gives a better spread, a more uniform spread.

Q Does it make it more stable or not? A Makes it more stable.

10 Q And keeps it from tipping what way by the compass? A Southerly.

The Court: What? If it were spread all around the same way it wouldn't keep it from tipping, would it? I don't know what you are driving at.

(Discussion.)

Q When you were called away from the stand
20 you were mentioning the northwest corner of the Voorhees building and the pier under it. Do you remember it? A Yes.

Q If that pier encroaches, as has been testified, what would be the effect on the Voorhees building?

The Court: No. That doesn't help me any at all. I don't know whether the witness knows—conceives what has been testified to,
30 is my conception. You must state the fact to him. You see, it doesn't help me. He may think it is twelve inches or eighteen.

Q Suppose it encroaches as much as sixteen inches, as shown by the plans, what would be the effect on the Voorhees building? A Overload the soil under the portion of the wall.

The Court: You have already had that.
40 (Discussion.)

George B. Meeteer, recalled, direct.

Q Suppose the encroachment was only two or three inches, as one witness testified, at that corner, what would the effect be? A That would depend on the depth of the excavations for the footings of the Stein building, whether or not they went under the footing or against the footing of the six-story building. 10

Q All right. Suppose they went under, what would be the effect? A Why, they would have lessened the bearing power of the soil under that portion of the Voorhees building.

By the Court.

Q Six inches of an encroachment of a thirty-inch wall? A Say, here is your wall (indicating) and they are up against it; if this footing is below this wall, your bearing power is disturbed. 20

Q Here is your wall and under here six inches. A Yes.

Q Would that have any effect on the bearing power? A Yes, sir.

Q Of the six inches? A Yes. The soil is under pressure and tends to go outward.

Q On a thirty-inch depth wall, thirty-inch thickness wall? A Yes. It is not a continuous wall. It is only a short piece. 30

Q Mr. English is speaking of the wall of the Voorhees building. A The wall at that point is not a continuous wall.

By Mr. English.

Q What do you mean by that, by saying it is not a continuous wall? A Why, in this alteration they cut an opening approximately five feet from this corner that we are talking about. 40

George B. Meeteer, recalled, direct.

Q Cut an opening in what? A The basement wall of the Voorhees building.

Q A footing, you mean; when you say the basement wall, you mean the footing? A I mean the brick wall above the concrete footing.

Q Above the concrete footing? A Yes.

10 Q On which side? A On the west side.

Q And what is that opening used for? A Doorway.

The Court: That is another development.

Q Does that increase the load on that corner, cutting a doorway? A It tends to concentrate the pier load at that corner.

Q And the alleged encroachment of two or three inches would— A Aggravate it.

20 Q Increase it still more? A Yes.

Q Both would have the same effect? A Yes, sir.

Q Of increasing the stress at that corner? A Yes, sir.

By the Court.

Q That is, if the encroachment were under the wall, under the footing of the Voorhees building—is that what you mean—or in the side? A
30 The bearing power—

Q Please. Is your answer based on an assumed encroachment under these footings of the Voorhees building or in the side of the footings of the Voorhees building? A Both.

Q Both. Have the same effect? A And tend to overload it, your Honor.

Q What? A Tend to overload that portion of the load.

40 Q Tend to overload, but in a lesser degree in one case than in the other. Lesser degree if it

George B. Meeteer, recalled, direct.

were cut in the wall than if it were under the footing? A Yes, sir.

By Mr. English.

Q By reason of the cutting of these doorways, even without the encroachment, would there be an overload or stress at that corner? A It would not be overstressed. 10

Q You spoke about the doorway being cut. You said because of that doorway there would be some effect at that corner. Now, what is the effect? A That portion of the foundation of the—

Q (By the Court.) It threw the load that way? A It threw the load that way, exactly.

Q It would be an increase of stress, would it not, at that point? A Increase of stress, but not excessive stress. 20

Q (By the Court.) Would an encroachment of three inches on the edge or corner of that building cause an overloading, in combination with this increased loading caused by the doorway? A No.

Q (By the Court.) Well, that is what he wants. A Not a dangerous overloading—like to play safe.

Q Now, what do you mean by “safe,” danger of the building falling down or coming to harm? 30

The Court: Falling down or cracking?

The Witness: Cracks. I might state that, as far as I can see, that portion of the building is not overloaded at the bottom.

Q What, that corner? A That corner is not dangerously overloaded at the corner. I can't find it. 40

George B. Meeteer, recalled, direct.

Q I thought you said a moment ago that it was overloaded for two reasons, first, because the wall had been cut away for a doorway, and, secondly, because there was an encroachment. A There is a point of high stress there, but it is not dangerously overloaded.

10 Q Where is the point of high stress? A Due to cutting that doorway you have thrown a lot of the weight on the corner. Some of it is arching around the corner and I cannot tell whether it has gone down straight or not; there is arch action in there.

Q Now, at that corner what did you say was the tonnage pressure per square inch? A At the second and third floors—the pier width—

20 The Court: He is not asking the second. His mind is not on the second or third floors. We are at the footing.

Q I understood you to give yesterday the tonnage pressure at that corner. A That referred to the second and third floor.

Q Not to the foundation? A Not to the foundation.

30 Q Or footing. A I have it here for that portion, if you want it.

The Court: It would be at least equal to the second and third?

The Witness: The wall is thicker in the basement than up above and the unit pressure is less down there for that reason.

40 Q What would it be there? A 7.6 tons per square foot.

George B. Meeteer, recalled, direct.

Q Well, is that considered good for mechanical construction? A It all depends on the bonding of that brickwork.

Q What? A It all depends on how that brickwork is built. You see, it is a ragged opening.

Q You have got a— A It is a ragged opening. I won't admit there is a pier. It is simply a— 10

Q We are talking about the northwest corner. A There has been openings cut at all floors and that pier, which is known as a pier, consists of a piece of the wall which remains. It all depends on how that ragged opening was straightened up, what kind of brick.

The Court: We are talking of the northwest wall, not the west wall. 20

The Witness: That is the juncture.

The Court: The point you are speaking of has been testified as being in the west wall.

Mr. English: In the west wall of the Voorhees building?

The Court: Yes.

Mr. English: But we are now talking about the northwest corner of the Voorhees building. 30

The Court: That is not jagged, is it?

The Witness: That is undisturbed. That is good.

The Court: I thought so.

Q Now, if this encroachment were removed by cutting through and separating the encroachment from the main part of the pier— 40

George B. Meeteer, recalled, direct.

The Court: You mean the three inches encroaching?

Mr. English: Yes, sir.

10 Q What effect, if any, would that have upon the Voorhees building?

The Court: Restore its beauty, I should judge, would be his answer, because he said the encroachment had no effect.

The Witness: Immaterial.

The Court: Immaterial.

20 Q What effect would it have upon the Stein building, if the encroachment were removed? A That would depend upon the exact location of that footing, the footing under the Stein building column, the amount of encroachment it would have.

The Court: If there was enough base left it would not affect it?

The Witness: That is it exactly.

30 Q Have you any idea of the cost of removing these piers, all of them, and replacing them with piers which do not encroach?

The Court: You have an idea but it is only a guess.

A Yes; it is a guess. A contractor would go in there and they would have insurance and risk to contend with. The amount of work is small compared with the risk of the work to be done.

40 Q Have you any idea of what the cost would be?

George B. Meeteer, recalled, direct.

The Court: Have you got any figure, made any calculation?

The Witness: Tried to, I wouldn't guarantee it. It is approximately \$10,000.

Q About ten thousand dollars to replace these piers with other piers? A Yes. 10

Q That do not encroach? A That do not encroach.

Q Can you think of any other method or do you know of any other method of removing this encroachment besides replacing these piers with other piers? A There could be—walls could be built along the southerly side of the Stein building.

Q (By the Court.) What? A They could be replaced by walls. 20

Q (By the Court.) On the northerly side? A On the northerly side of the Voorhees building.

Q (By the Court.) Put in a false wall there? A If we are going to replace this footing condition we will have to use a bearing wall; it would be solid masonry.

Q Yes. If you were going to remove the Stein piers you would have to have something else to hold up the Stein building? A Exactly. 30

Q And that something else might be other piers and it might be a wall; is that what you are trying to say? A Yes, sir. If they put up other piers, they can put an enclosure of the Stein building up against the two sides of the Voorhees building and that enclosure to be what we call a false wall—

Q (By the Court.) As long as it didn't touch the Voorhees building it would be a false wall, would it not? A Yes, sir. 40

George B. Meeteer, recalled, direct.

Q Is there any practicable method of separating the encroachment from the piers without removing the piers? A Yes, sir.

Q How? A By placing an additional column in the basement alongside of the present column in the Stein building.

10 Q The present column? A Yes.

Q Now, we have always called columns something made of steel and piers something made of concrete. Let us be sure which you mean. A That is correct. I meant columns.

Q Well— A Then we take part of that load from the existing column and take it down through a new column so that we can spread it.

The Court: Spread it on a new pier?

20 The Witness: Partly on a new pier with a proper base, it could be done. We would have to go above the first floor.

The Court: The top floor.

Q Is that what you mean? A No; only in the basement.

Q In the basement. Now, I ask you: Do you mean by your method to remove the other columns or leave them where they are?

30

The Court: Why, the encroachment would remain, yes. Ask him about the removal of the columns so as to remove the encroachment.

Q Now, it is only the piers that encroach, isn't it? A Yes, sir; the columns do not encroach.

40 Q Now, answer me this question, please. You have stated that it is possible to remove those

George B. Meeteer, recalled, direct.

piers, first, placing other piers to support the Stein building or placing a footing while it supported the Stein building. That is correct? A Yes. Positively.

Q Can you remove this encroachment in any other way than putting in other piers or walls to take the place of the piers that you are to remove? A Yes; by shoring and putting in a whole new brick wall with buttresses at the point—(interrupted). 10

By the Court.

Q The replacement piers would be temporary, wouldn't they? A No; they could be put right in permanently.

Q Oh, yes, I know, but they wouldn't be under the columns of the upper story then? A You would have to shore right up through the building. 20

Q Yes. And take the present piers out and replace the present piers four inches away from the Voorhees building; that is the practical way, isn't it? A Well, they could be flush with the Voorhees building.

The Court: Or flush with the Voorhees building. 30

By Mr. English.

Q That is putting in new piers to take the place of these piers?

The Court: Yes, surely.

Q Is that it? A Yes, sir.

Q I ask you if there is any other way of doing it besides discarding these piers and re- 40

George B. Meeteer, recalled, direct.

placing them with other piers or walls. Is there any other way? A Without discarding these piers?

Q Without discarding these piers and substituting with other piers or walls? A It can be done without discarding the piers.

10 Q (By the Court.) Then you wouldn't get rid of the encroachment, would you? A We could add to the—

Q (By the Court.) You wouldn't get rid of the encroachment? A Yes, sir.

Q (By the Court.) If you didn't discard the present piers? A We could discard part of them, the encroachment part.

The Court: Or part of them.

20 Q All right. What would you do? A I would add to the piers on the Stein side of sufficient area to replace what I was cutting off on the Voorhees side.

By the Court.

Q You mean taking off four inches of the Voorhees side and add four inches to the other side? A It would amount to more than that.

30 Q That wouldn't be practical; you couldn't add four inches of concrete to an existing concrete base; you couldn't do that? A You couldn't do that.

Q You couldn't do that? A It amounts to—

The Court: That wouldn't be practical.

By Mr. English.

40 Q Could you add any concrete to a concrete base? A It could be done with a combination of steel.

George B. Meeteer, recalled, direct.

By the Court.

Q You mean tie it together? A Tie it together with steel. It could be done.

Q That wouldn't be a good job? A I could do it properly.

Q Would anyone else approve it, do you think? A Yes, positively; it could be done, positively. 10

By Mr. English.

Q And would four inches be enough? A I couldn't tell the amount until I excavated one of the footing tops to see what the relation of the centers of the footings were.

Q Now, if you did that how would you get rid of the encroachment? How would you cut it off of the piers? A I would have to get some kind of a drill that could work behind the column and cut it off. I would simply separate by cutting the projecting portion under the Voorhees building. 20

By the Court.

Q Then you would have a hole there. What would you do with the hole? What would you do with the hole after you took it out? A Grout it shut with cement. 30

Q If it is now grouted shut with cement, why take it apart and put it back again?

By Mr. English.

Q And if you did that, if you filled this hole up with cement, would it be bound in a solid mass with the present pier, the way the present encroachment is? A No; I would use a piece of 40

George B. Meeteer, recalled, direct.

metal or something, to separate so they wouldn't act together, so there would be a separation.

Q Put a piece of metal between them; is that what you said? A "Something." I used the word "metal" as an illustration. Put something between them so that one footing could settle independent of the other.

10

By the Court.

Q You mean you would put the piece of metal between the restored part and the proposed new pier under the Stein building; is that what you meant? A Either a piece of metal or something.

Q Yes, to separate the building, the Voorhees building, as restored? A Yes, sir.

Q From the proposed new or restored— A Footings.

20

Q —footings of the Stein building? A Yes, sir.

Q Stein piers. All right.

By Mr. English.

Q Mr. Meeteer, what do the plans show with regard to the columns of the Stein building in relation to the walls of the Voorhees building, how far away do the plans show they should be?

30

A The columns?

Q The steel columns of the Stein building?

40

Mr. Cohn: I might say, your Honor, it seems to me, before the question is answered, that the proper objection should be interposed, because this witness has stated as a fact what distance there is between this steel column and the Voorhees wall. He is now being asked to suppose what the distance is.

George B. Meeteer, recalled, cross.

The Court: I suppose if counsel knows how to—

Mr. Cohn: I offer an objection on the ground—

The Court: The objection is overruled. On the grounds stated, you mean?

The Witness: The plans here—

10

The Court: Is that your objection, on the grounds stated?

Mr. Cohn: My objection is that these plans speak for themselves.

The Court: Then he is trying to inform the Court what it is. I cannot read plans.

The Witness: These plans show the columns flush with the Voorhees building.

20

By the Court.

Q You say they are four inches away. That shows there has been a change in construction from the plans, doesn't it? A There is a detail—

Q I say, if the plans show them flush with the building and you have stated that they are four inches away, it shows a difference of construction from the plan? A Yes, sir.

30

The Court: Is that all, Mr. English?

Mr. English: That is all.

The Court: Any questions?

Mr. Cohn: I would like to ask him a few questions.

Cross examination by Mr. Cohn.

Q Mr. Meeteer, with reference to your testimony concerning the columns known as 17 and 40

George B. Meeteer, recalled, cross.

17-A, you testified that if there were one footing—(interrupted).

The Court: His testimony—his conclusions are predicated upon those two columns resting on the same footing.

10

Mr. Cohn: That is right.

The Court: Is that right?

The Witness: That is right.

Q Your whole testimony is based upon that. If, as a matter of fact, there is a sparate footing—

20

The Court: Oh, now, don't argue with the witness, "If as a matter of fact, they are separate," his testimony doesn't apply at all. Is that what you want?

Mr. Cohn: Yes.

The Court: That follows.

Mr. Cohn: Oh. I thought the record should contain the question. His opinion on the hypothesis on one column should be differentiated from his opinion upon the hypothesis of two columns.

30

The Court: I only know his opinion upon the hypothesis of one. That is all I am judging by.

Q You testified with reference to this wall—the pier in the west wall. When did you examine it? A The last time, I believe, was May 6th.

Q Of this year? A Of this year.

40

The Court: That is the old wall pier, Mr. Cohn?

George B. Meeteer, recalled, cross.

Mr. Cohn: Yes, sir. What we referred to, as the remnant.

The Court: Remnant, yes.

Q What is the composition of the wall? A I assume it to be cement and mortar.

Q You don't know? A I don't know. I give it the benefit of the best—(interrupted). 10

Q You are assuming?

The Court: You are giving it what?

The Witness: I assumed it was the best of—

The Court: Construction?

The Witness: Construction.

Q Now, assuming that it is cement and mortar and of good construction, what is the average ultimate strength of the brickwork? A The average ultimate— 20

Q Of a wall of this character? A You are talking about the ultimate strength of the brickwork or piers? There are two distinct things.

Q Of the piers composed of these materials, as you supposed them to be composed? A I haven't got the data at hand. 30

Q Would it be two thousand pounds to the square inch?

The Court: What, Mr. Cohn? I can't follow you. The present remnant?

Mr. Cohn: Yes. We are speaking of that same wall, sir.

The Court: Then that would depend entirely on how that remnant remained, wouldn't it? 40

George B. Meeteer, recalled, cross.

Mr. Cohn: Assuming the remnant is composed of certain material, which this witness supposes it is composed of, I am asking him of the strength, how the engineers attribute the strength of this class of construction.

10 The Court: Well, that depends on the construction. It must depend upon the immediate construction of this remnant pier.

Mr. Cohn: Yes. Well, he supposes and he is right in supposing it is made of cement and mortar and brickwork, you see—(interrupted).

The Court: That is the composition, that is not the construction.

20 Mr. Cohn: He knows the construction of that wall, he has testified to it, he has seen it, he testified to its construction.

The Court: Exterior.

The Witness: That is correct, not interior, exterior.

Mr. Cohn: Then I will ask him the hypothetical question.

The Court: "Assuming."

30 Q Assuming that it is a wall made of cement and mortar and brickwork, what would be the ultimate average strength of—

The Court: And constructed in a workmanlike manner.

40 Q (Continuing.) And constructed in a good and workmanlike manner? A Well, the ultimate strength of that pier would be ten times two hundred pounds per square inch, but that strength is reduced—the pier—the ultimate strength of that would be reduced, as I said yes-

George B. Meeteer, recalled, cross.

terday, according to how high and how you had—
how high the pier was and what was the least
dimension of the pier is also—

By the Court.

Q The least dimension of the pier and the
surrounding openings is also— A Yes. You
see, a short piece of brickwork in compression is
different than a long pier standing as a vertical
column. 10

Q Do you know these dimensions? A I have
them here.

Q Of the remnant? A But I don't know how
much was the remnant and how much was pointed
up with new brickwork.

Q Assuming that it was all remnant? A
That is what I have. 20

Q Assuming it was all remnant and that
which surrounded it was simply ornamentation—
A Which floor?

Q —that the building was properly—that
the wall initially was constructed in a workman-
like manner with proper material, then what
would be your answer? A Now, which floor
do you want the size of first? Was that the
question? 30

Mr. Cohn: Well, the floor where you de-
scribed the pier as having bulged.

The Witness: That consists of a pier four
feet four wide and twenty inches thick and
the distance between floors at that point is
thirteen feet six clear.

By Mr. Cohn.

Q Taking those figures into consideration
and assuming this wall is constructed in a work- 40

George B. Meeteer, recalled, cross.

manlike manner and of good material, what do you compute to be the average element of strength? A At that point there?

10 Q Yes. A Let us see. I compute it on the basis from Kidder's formulas. I believe there is ten tons per square foot and in masonry there is an allowance of a factor of safety for ten. That means the ultimate would be one hundred tons to the square foot.

By the Court.

Q Kidder also takes into consideration the openings beneath that point, doesn't he? A Openings beneath what?

20 Q Yes. You are speaking now of the second floor, aren't you? A Yes. That is where the point of the greatest stress is.

Q Well, openings of the same character directly beneath in the basement, the first and second floor? A That is true.

Q Are they taken into consideration? A The piers are much thicker there and the increase in the load is very slight below.

Q They are carried by the increase in the foundations in the wall— A Exactly.

30 Q —below. A Uh huh. This is the point of greatest stress.

The Court: Go on, Mr. Cohn. He said the openings beneath are taken care of by the increase in the size of the wall.

By Mr. Cohn.

40 Q Are you quite sure of this thirteen foot height or eleven foot height? A It was measured. I am not measuring the opening of

George B. Meeteer, recalled, cross.

the door opening, I take the clear distance between floors.

The Court: Floor and ceiling?

The Witness: Between floor and ceiling.

Q Well, you figured it one hundred tons and you find it is eighteen tons. That was your testimony? A That is what I found. 10

Q Would you consider that an overloading or an unsafe condition under the circumstances?

A Yes, sir.

Q A factor of approximately five and a fraction times? A Well, if that were true, for a point of argument—

Q No. I don't want to argue with you. I am just asking you a question? A I would consider it unsafe. 20

Q Why? A Why? The metal is a factor of safety in four, in masonry the factor of safety ten, for the reason that masonry is not a homogeneous material.

Q You consider that overloading would cause a failure of that pier? A Yes.

Q Referring to this bulge in the wall, you say it bulges. Just where does it bulge? A Approximately midway between the floor and ceiling. 30

Q Is there a corresponding bulge in the pier on the other side? A The light was from the southerly end. I didn't look the other way.

Q Well, now, are there any cracks in this pier itself? A Not in the pier itself, except there is a small piece on one corner; it may have been broken through trucking.

Q The cracks are entirely between the steel columns on the Stein property which is flush 40

George B. Meeteer, recalled, cross.

up against the wall of this pier—side of this pier? A Yes.

Q There are no cracks in the pier itself? A No.

Q Then the cracks that you did see, located where you have described it, is that horizontal or vertical? A I should say in a general vertical direction.

Q Well, now, if it is vertical, would you ascribe that crack to a weakness in the pier or to a natural settlement of the new work of this column on the Stein property being flush against the old work of the wall in question on the Voorhees property? A I would assign that to settlement in the Voorhees wall.

Q Wouldn't you ascribe it as well, or couldn't you ascribe it as well to the settlement that would be caused because you flush the new work against the old? A I would not, for the load on those new columns in the Stein building will probably never be wholly developed to cause settlement, mostly a live wall, or allowance for weight inside the building and I don't believe fifty per cent. of that load has ever been put on this Stein column, although there is a tank support on the roof which aggravates and shakes that part of the building.

By the Court.

Q I understand that at the point of this remnant in the cellar and first floor and second floor there is no overloading, because, as I understood you to say, the walls are thicker there and taking care of the load. Am I correct? A The second and third?

Q The place that is cracked, as you have put it here, is on the third floor. The place of the

George B. Meeteer, recalled, cross.

overloading you have stated, was the third floor, as I understood you? A The second floor.

Q Then limiting myself to the cellar and the first floor, isn't the increased thickness of the wall to take care of the load there and the first floor wall is not overloaded? A I didn't find it dangerously overloaded in the first. 10

Q What do you mean by "dangerously," apt to fall in; is that what you mean by "dangerously"? A Yes.

Q The construction was safe? A I will say it is safe.

Q Within the factors of safety of good building? A Fairly good, not the best of building.

Q What? A Not of good practice, no.

Q Not even on the first floor? A Not on the first floor. It is in the basement. 20

Q What? A It is in the basement, due to the increase in size, both of width and thickness, it spreads out.

Q The pier is all right in the basement? A Yes, sir.

Q Then why isn't it all right in the first floor? A Because of its dimension.

Q Isn't it just as wide on the first floor? A No.

Q Hasn't it just as much spread on the first floor as it has in the cellar? A No, it has not. We have very wide openings in the three floors, which is used in the stair— 30

Q But not in the cellar? A But not in the cellar, a small doorway in the cellar.

Q Well, wouldn't that heavy wall in the cellar, then, carry the first and second floor with it? A No; it has all been cut through with openings.

Q What? A It has been cut through with openings. 40

George B. Meeteer, recalled, cross.

Q I know, but at the point that pier— A It will in the cellar, yes.

Q Wouldn't that carry the first and second floor? A No.

Q Why? A Because you have got—

10 Q Where does the weakness come in in the pier in the first floor and how does it increase in the pier in the second and third floor? Explain that to me, will you? A The west wall of the Voorhees building consisted of practically one—before alteration—one piece of blank wall.

Q I understand that. A Starting from the top floor—

Q Starting from the cellar to go up? A Starting from the cellar they are twenty-eight inch thickness.

20 Q First floor? A First floor twenty-four-inch thickness.

Q Second? A Twenty-inch thickness.

Q Third? A Sixteen-inch thickness, and then twelve-inch for the rest of the way. That is in the upper portion where they attempted to carry across these openings the—practically forty feet of twelve-inch wall on these narrow piers. It happens in the third floor the pier is—

30 Q The pier on the third floor is sixteen inches? A Is sixteen inches.

Q And on the second floor? A Twenty inches.

Q And the first floor, twenty-four? A Twenty-four inch.

Q And the cellar, twenty-eight? A The cellar, twenty-eight.

Q Then the base of that pier is increasingly heavy as you go down? A That is correct.

40 Q Why then, doesn't it carry the whole wall in the proportion— A Well, I have figures to

George B. Meeteer, recalled, cross.

show all the way down that—I could perhaps read it—for instance, on the third floor—

Q No. You probably do not get to a limit. It would seem as if the bottom of your pier were sound and sufficient, let us say this one is, so far as the base is concerned, and it would gradually reduce as it went up, that the bottom would carry the upper part. Now, you say the real difficulty is in the second floor. Now, what is the weakness in the second floor; what relation has the weakness in the second floor to any support beneath it? A Why— 10

Q What relation does it bear? A Why, on the second floor and third floor they cut openings twenty feet wide and left the pier space between about four feet six in width. When they got down to the first floor they did the same thing. The pier width between those openings you have twenty-four-inch wall on the first floor, whereas on the upper floor you only have sixteen and twenty. 20

Q Each because of the different thicknesses on the different walls carries their proper proportion of weight as you go up? A I have an illustration of that to show you if you would like to see it. I don't know if it would be evidence. 30

The Court: Anything is evidence that will enlighten us.

The Witness: I think that would enlighten us on the whole question.

The Court: Go on, Mr. Cohn.

Mr. Cohn: Your Honor is doing much better than I can do.

The Court: No. I just wanted to get it in my own mind. 40

George B. Meeteer, recalled, cross.

By Mr. Cohn.

Q You ascribed four causes for the bulge in this second floor wall? A Yes, sir.

10 Q And you excluded every other hypothesis. Would it be reasonable to ascribe or could this bulge, if it exists, be due to the natural deflection of the steel girders? A If that was the case, I believe that the column would tend to bend and close those cracks at points; it would not be a continuous crack and if that was so you have got girders on the adjacent side, that is, over on the other north side of the Voorhees building, which are carrying a greater load, and there is no separation shows there in the plaster.

20 Q But there is an allowance made for natural deflection of the steel girder? A Oh, yes.

Q Are any of the damages that you claim exist in this west wall irreparable? A They all can be repaired, yes, made good.

Q Is there any condition there that you deem—

The Court: You mean, with reasonable expenditure, don't you?

Mr. Cohn: Well, he cannot—

30 The Court: I say, your question means with reasonable expenditure.

Mr. Cohn: Yes, with reasonable expenditure. (To witness): I think you put it at ten thousand dollars for the entire west wall?

The Witness: Oh, no; that only related to the column footing.

40 Q Oh, that was in the west—all the column footing? A Yes.

George B. Meeteer, recalled, cross.

The Court: Column and footing.

Q Now, what would you say would be the reasonable expense of putting this remnant on the second floor in such condition as you would like to see it? Just give us a very liberal, outside figure for a high-class contractor? A I should say, before you got through around there, it would be another ten thousand dollars. 10

Q Just for that one pier on the second floor?

A You would have to shore that portion of the building.

Q You mean the shoring? A Yes.

Q Ten thousand dollars for that one pier?

A For that one pier, to properly do it.

Q Could you remedy the situation by putting a steel column into the openings? A That could be done in the form of a buck. 20

Q (By the Court.) Form of a what? A Buck. That is, practically replace with steel what you have taken out by forming the openings.

Q How much would it cost to do that, approximately? A Well—

The Court: You ask the contractor whom you get to do it.

The Witness: That is a contractor's question. 30

Mr. Cohn: I want to ask Mr. Meeteer about the cracks which he spoke of as being above the third floor. (To witness): Where did you see those?

The Witness: On May the 6th.

The Court: Exterior walls?

Q Exterior walls? A Exterior walls. 40

George B. Meeteer, recalled, cross.

Q Exterior Voorhees wall? A I noticed first when I saw the building—

The Court: You said May 6th?

Q You said May 6th? A May 6th.

10 Q Now, what did you see? A Plaster cracks in the third—fourth and fifth floors of the Voorhees building and right through the brick wall where it was not plastered in the sixth floor of the Voorhees building.

Q Were these what are commonly known as air cracks? A No.

Q (By the Court.) You say you could see right through the wall on the sixth floor. Could you see daylight through them? A You could
20 in one spot.

Q Where did you see this, from the roof of the third floor? A Oh, no. We were inside the Voorhees building.

Q How wide were these cracks? A They varied from three-eighths of an inch to nothing, a maximum of three-eighths of an inch to nothing.

Q (By the Court.) The crack does not go to nothing, does it? A Yes. There are points
30 where it stopped.

Q (By the Court.) Go on. A Began at a point and stopped.

Q Where were they located as related to the new construction? A They were all above.

Q Well, where in location? A I should say around the existing openings in the—

By the Court.

40 Q The west wall? A —west wall.

George B. Meeteer, recalled, cross.

Q At this remnant pier? A Above the remnant.

Q Yes. At the point of the remnant pier and above; is that what you mean? A No, not at the remnant pier, above, the floors above.

By Mr. Cohn.

10

Q You say they were a continuation of the location of that remnant wall? A Yes.

Q (By the Court.) At the point of the remnant pier above, or above the point above the remnant pier? A Above the point of the remnant pier.

Q You say the cracks on the fourth and fifth floor were plaster cracks? A The building had been plastered previously at some time, I don't know when, probably when it was built, and I saw these cracks starting from the window openings going down toward the floor. 20

Q Where did you observe that, from the interior? A From the interior.

Q And you could see accurately from there the— A Yes.

Q —the top of the sixth floor? A Yes.

Q And you could measure that by the naked eye that in spots it was three-eighths of an inch? A That I wouldn't say. 30

Q What would you say? A I didn't put a rule on it. It was nominally three-eighths of an inch.

Q Those cracks due to—can they be ascribed to a natural settlement? A No.

The Court: By "natural settlement," do you mean settlement previous to alteration?

Mr. Cohn: Yes.

The Witness: No. Since the alteration. 40

George B. Meeteer, recalled, cross.

By the Court.

Q There is settlement in every building, isn't there? A Oh, yes; but in this case there was not an opening.

10 Q Is there settlement in every large building, resulting in cracks? A Not a well designed building.

Q No cracks at all? A I can produce a building without cracks.

Q (By Mr. Cohn.) Have you produced any without cracks?

Q Have you an idea now where there is such a building? A Yes, sir.

Q Where? A I have several in New York.

20 Q Oh, tell me one. I would like to see a building without cracks? A I am distinguishing between structural cracks and plaster cracks.

By Mr. Cohn.

Q You consider those walls that are cracked in a dangerous condition? A The wall above the third floor, I should say is in a dangerous condition.

By the Court.

30 Q Why? A Due to the overload of the pier and the fact that you have got that roof tank up there which is vibrating in the wind.

Q Roof tank on the Voorhees building? A On both buildings.

Q Well, they are not connected? A No, but each one—

40 Q Rocks its own building? A Rocks its own building and one of them is a one-legged tank, is directly over the weakened pier, what we claim to be the remnant pier.

George B. Meeteer, recalled, re-direct.

Q That is the tank of the Voorhees building?
A Yes, sir.

By Mr. Cohn.

Q Are you sure the tank is on the west wall at all? A Yes.

Q (By the Court.) The leg of it? A Yes, sir. 10

Re-direct examination by Mr. English.

Q What is that diagram? A Why, when I got into this thing there was so much controversy east, west, north and south—

Q What is the diagram?

The Court: He is telling you. 20

A The diagram is from a symetric view of the parts of the building in litigation.

Q (By the Court.) Airplane view? A Airplane view.

Q Drawn by whom? A Myself.

Q Is it drawn to scale? A Yes; from measurements.

Q It shows a view of the north and west walls? A Yes. 30

Q Showing the piers and locations? A Yes.

Q And the cracks? A Yes.

Mr. English: I offer it in evidence.

Mr. Cohn: I would like to see it.

The Court: Drawn from actual survey?

The Witness: Yes, sir.

The Court: Actual measurements?

The Witness: Yes, sir.

Mr. Cohn: I would like to ask him— 40

George B. Meeteer, recalled, re-direct.

The Court: Afterwards.

Mr. Cohn: I want to preserve the right to preliminary cross examination.

The Court: Afterwards. Let it in as an illustration.

10 (Diagram marked Exhibit C. 4.)

The Court: The Court admits this map for illustration anyhow.

Q Mr. Meeteer, what, in your opinion, would be the cost of building a southerly wall to the Stein building like the northerly wall? A The northerly wall, does that include the westerly portion of the Voorhees building? A Well, we will include both.

20 The Court: Building wall.

Q From both sides of the Voorhees building? A I should say, between twelve and fifteen thousand dollars.

Q (By the Court.) Suppose you just put a lath and plaster wall around there, that would protect the Stein building, wouldn't it? A Yes, sir.

30 Q (By the Court.) The Stein building is already protected by the adjoining building. It only needs—if you want to separate them— A A funnel.

The Court: Put a funnel in.

40 Q You mean, if the buildings were not coped from the roof, that the lath and plaster would protect the Stein building from rain and— A No. To protect it at the roof there should be a coped wall.

George B. Meeteer, recalled, re-cross.

Q (By the Court.) What do you mean by a coped wall? A Why, the wall should extend beyond the roof, the proposed wall of the Stein building should be coped to flush the roof.

Q You speak of a lath and plaster wall. I asked you—

10

The Court: That would be the interior. You have pointed out the shortcomings in my question.

Mr. English: All right.

The Court: That is all.

Re-cross examination by Mr. Cohn.

The Court: Did you want to examine him on that map?

20

Mr. Cohn: I want to examine him on that map.

Q How did you make that map, from what? A From the measurements taken of the building.

Q Use the plans? A After I took my measurements we compared them with the plans in the Elizabeth Building Department.

30

Q Did you personally take these measurements? A I did.

The Court: I had asked him that while you were talking.

Mr. Cohn: I am sorry.

The Court: Call your next.

Mr. English: I have given notice to the other side to produce certain letters. You haven't any of them, Judge Stein?

40

Russell W. Lewis, direct.

Mr. Stein: We haven't the letters asked for.

The Court: Put them in subject to correction.

Mr. Stein: I haven't compared them.

10 The Court: Put them in subject to correction.

Mr. English: I will offer them.

The Court: Let them be marked.

(Paper marked Exhibit C. 5.)

Mr. English: I offer certified copy of will of Mr. John Voorhees.

(Paper marked Exhibit C. 6.)

20 The Court: Complainants appointed trustees under that will or by the Court later on?

Mr. English: Under the will.

The Court: Anything else?

Mr. English: I would like to read—

The Court: I don't want you to read anything now. Put your testimony in.

Mr. English: You don't care to hear this?

30 The Court: No. We will read it on the argument.

RUSSELL W. LEWIS, sworn for the complainant.

Direct examination by Mr. English.

40 Q Your occupation, Mr. Lewis? A I am the vice-president of the Union County Trust Company, Elizabeth.

Russell W. Lewis, direct.

Q Did you see the so-called Stein building on Broad street in the course of erection? A I did.

Q Did you see the concrete pillars along the wall of the Stein building where it adjoins the two sides of the Voorhees building, north and west?

10

The Court: The piers, you mean?

Q The piers. A The piers on which the pillars rested, I did.

Q Columns rested? A On which the columns rested.

The Court: After you have been in this case long enough you will be technical, too.

The Witness: I didn't get just what he meant. I saw that, yes.

20

Q Did you see the condition of the north side of the footing of the Voorhees building? A I did.

Q Do you know what I mean by "the footing"? A The bases on which the columns were supported.

Q Yes. The concrete footing—

30

The Court: Oh, no; the foundation wall, we call it the foundation wall of the Voorhees building.

The Witness: The foundation wall of the Voorhees building, yes.

Q The concrete—the lowest thing in the Voorhees building? A Yes, yes.

Q What did you see? A I saw the columns in the new building which rested flush against

40

Russell W. Lewis, direct.

the wall of the Voorhees building supported by the footing; the footings projected in under the wall—

The Court: The piers projected in under the wall?

10 The Witness: Under the wall of the old Voorhees building.

Q Yes. Now, did it come under the wall or into the wall or both? A They went under the wall.

Q Did you see whether they went into the wall or not? A I don't recall whether they went into the wall.

20 *By the Court.*

Q How do you know? A That is my recollection of what I saw.

Q You couldn't see all the way down to the bottom, could you? A I was there when there was nothing up.

Q Yes. But the Voorhees building was up? A The Voorhees building was up, but you could see—

30 The Court: Mr. English wants to know whether it went beneath the foundation wall of the Voorhees building, whether the piers went beneath the foundation wall of the Voorhees building.

The Witness: It is my recollection that you could see where these piers went in there under the foundation wall of the Voorhees building.

40 Q Not into it, underneath? A Underneath, yes.

Russell W. Lewis, direct.

By Mr. English.

Q Were the piers set in holes that had been dug, or trenches? A I don't recall any trenches. They must have been set in holes.

Q Do you recall any holes? A Well, they were set below the level of the ground; they must have been in holes. 10

Q And had the holes been partially filled up?

The Court: When you saw it.

A I don't think so.

Q How much of the piers were sticking out of the ground, that you could see? A I would say that I saw all those piers exposed, without any filling around them.

Q Do you remember clearly whether you did or not? A Well, as true as you can expect your recollection to be after four years. I would say that is the way I saw those piers. 20

Q (By the Court.) Can you see from around the piers clean to the bottom? A Yes, sir.

Q What held them in place then? A Well, they were resting on the ground.

Q Of course, you wouldn't know whether you saw the bottom or not, but you saw some distance? A I saw down to where they joined the earth and which I took to be the bottoms of these piers. 30

Q Did you see any cutting away of the Voorhees wall or not? A Of the brickwork or of the concrete of the footing?

Q Of the concrete? A I would say that was chipped off to permit these broadening piers to go in there.

The Court: To let in the piers?

The Witness: To let in the piers. 40

Russell W. Lewis, direct.

Q To about what depth?

The Court: In, depth in.

A Depth in, distance in?

10 The Court: Distance into the wall.

Q Distance into the wall? A Three, four or five inches.

Q And what width?

The Court: The length of the pier?

A Well, they were square piers, as I recall it.

20 Q Well, did it let the whole pier in or part of the pier? A Part of the pier.

Q You have a square pier? A Yes.

Q And that is let into this footing?

The Court: Let in four inches. You couldn't let in a twelve-inch pier.

Mr. English: No, I know that.

30 The Court: Let in at most four inches. Would let in to the extent of four inches of the pier and the entire length of the pier.

Mr. English: Yes, but he has not said that.

The Court: Well, that is what would follow: If I got a hole there and they were let in, it must be let in the entire pier to the depth of four inches.

40 Mr. English: If it was a smooth side and was put in diagonally, that would necessarily follow of course.

John Henry Voorhees—J. Bradford Davis—recalled.

The Witness: The projection of the pier over the sides of the pillars, that much of it over the sides of the column, that much went in under the wall of the Voorhees building.

(Cross examination waived.)

10

JOHN HENRY VOORHEES, recalled.

By Mr. English.

Q Mr. Voorhees, how far are the steel columns of the Stein building from the north wall in the Voorhees building? A Every one of them flush with the building, flush with the wall.

Q And the same on the west? A The same 20
on the west.

J. BRADFORD DAVIS, recalled.

By Mr. English.

Q Do you know how—

The Court: Don't ask him whether he 30
knows. Ask him the same question as the
other.

Q How close are the steel columns on the Stein building to the north wall?

The Court: To the wall, to the wall of
the Voorhees building.

A Flush on both the north and the west walls.

40

James Fischer, recalled.

Cross examination by Mr. Cohn.

Q How do you know? A That is the way I saw them.

Q How near, at what point of distance did you see them? A You mean, how near was I
10 when I saw them?

Q Yes. A As I recall it, I walked along both the north and the west sides.

The Court: Right alongside of them?

The Witness: Why, I must have been quite near them.

Q Do you know what was on the outside of those columns when you saw them; did you see
20 them in the steel condition? A I believe there were columns on the foundations when I saw them.

Q (By the Court.) Were they open? A Yes, that is, they were not plastered.

Q And at that time when you saw them they were flush up against the wall? A Yes, sir.

30 JAMES FISCHER, recalled.

By Mr. English.

Q Mr. Fischer, how near do the columns of the Stein building come to the north and west walls of the Voorhees building? A The north wall, specially, flush with it.

Q And how about the other side? A I cannot testify as to the west wall.

Q Why? A I cannot testify as to the west
40 wall.

Clark McKay Whittemore, direct.

Q Why? A I did not particularly examine it.

The Court: A very good reason.

Q Why do you remember the north wall particularly? A I examined that more particularly, especially the pier. I don't mean the pier, I mean the column next to Broad street, where the wall of the Voorhees building was uneven, they had chiseled it off so it would fit good and proper the walls. 10

Cross examination by Mr. Cohn.

Q When you saw those walls, those columns, Mr. Fischer, were they covered or in the original state? A They were exposed. 20

CLARK MCKAY WHITTEMORE, sworn for the complainant.

Direct examination by Mr. English.

Mr. English: Your Honor said you would admit these letters subject to correction. They have been submitted to the other side. 30

The Court: Any time later on, any time before the final argument, you can raise any question you want to. They are in.

Mr. English: All right. Then I need not prove the sending. These are the copies.

The Court: No, you need not bother about it. Judge Stein may say there should be a semicolon instead of a comma and we will put it in. 40

John J. Byrnes, direct.

Mr. English: But I mean the proof of sending.

The Court: We have admitted it.

Q You are president of the Union County Trust Company, complainant, trustee? A Yes, 10 sir.

Q In this case? A I have been since 1923.

Q And during 1922, what was your position?

A I was vice-president.

The Court: This is going into some facts on the insurance?

Mr. English: No, in remonstrances against what the defendants were doing.

The Court: We are through. I thought 20 you said you had some evidence as to value. (Discussion.)

(Adjourned to November 4, 1926.)

THIRD DAY.

June 30, 1927.

30 Continuation of hearing pursuant to adjournment in the presence of Clark McK. Whittemore, for complainant, and Alfred A. Stein and Saul and Joseph E. Cohn for defendant.

JOHN J. BYRNES, sworn for complainant.

Direct examination by Mr. Whittemore.

Q What is your business? A Building contractor. 40

John J. Byrnes, direct.

Q How long have you been in that business?

A Twenty-six years.

Q And what is the name of your firm? A

M. Byrnes Building Company.

Q Do you know how long that firm has been in business building in Elizabeth? A It was incorporated in 1904. My father started about fifty years ago.

10

Q What character of building work do you undertake—any particular trade or the whole contract? A We take the whole contract, general contractor.

Q Can you give the Court any idea of the extent of the building operations in which you have been engaged in Elizabeth and vicinity?

A We built a good many of the public schools in Elizabeth; a number of the principal buildings. I have a list here if you would like to have some of them.

20

Q What amount of contracts have you undertaken, individually? A I guess the largest was the Daily Journal, around \$400,000.

The Court: That is enough.

Q You have made an examination of the plans of the building of the estate of John Voorhees occupied by the Goerke Company as a department store? A The building on the corner I examined in 1924.

30

Q Corner of West Jersey and Broad streets?

A Yes, sir.

Q Elizabeth. For what purpose did you make that examination? A To give the Union County Trust Company a valuation at that time for insurance purposes.

Q What value did you find as representing the cost of that building? A I gave two valuations.

40

John J. Byrnes, direct.

The Court: As of what time?

Mr. Whittemore: 1924.

Defendant's Counsel: I object on the ground that it is too far remote in time.

The Court: Objection overruled.

10 The Witness: I gave two valuations. If I can refer to my notes I can give you the amount.

Q If there is no objection you may refer to your notes.

Defendant's Counsel: Same objection.

20 The Witness: I gave a replacement value of \$331,266; that included the work below the first floor level, the foundation work. I gave a separate value on that, which was included.

Q You can give those figures. What was the value of the work below the ground floor level?
A \$25,397, which was included in the \$331,266.

Q Did you make an estimate of the rate of depreciation on that building? A I did, in the same estimate, yes, sir.

30 Q What rate of depreciation did you calculate as fair to apply to that building? A I put a depreciation on it of one and one-eighth per cent. a year. The building is in very good shape and it was well built.

The Court: You have not been asked that.

Q What would that leave as the sound or replacement value as of April, 1924? A \$286,545.09.

40 Q Did your figure include any item for architect's and engineers' fees? A No, sir.

John J. Byrnes, cross.

Q Since 1924 will you state whether there has been an increase or decrease in building costs?

A There has.

Q Has what? A There has been an increase.

Q An increase? A Yes, sir.

Q Can you state the approximate percentage of increase according to your experience?

10

Defendant's Counsel: I object.

The Court: Go on. Objection overruled.

The Witness: In my judgment the increase of the cost of that building would just about take up the amount of depreciation.

Q Can you give that in terms of per cent? What per cent. in building cost has taken place since 1924, April? A I should say there would be an increase now of about five per cent.

20

Cross examination by defendant's counsel.

Q Did you examine the plans, Mr. Byrnes, or the building? A Both.

Q Did you estimate the cost of building this building originally under the plans? A Yes, sir.

30

Q What was the estimate you made? A Originally?

Q Yes. A I do not recall.

Q You have no notes? A Not of that—not of the original—I have some of the items of the original cost, but not all.

Q Well, have you enough items there to formulate an expert opinion of the original cost? A No; I wouldn't want to say that.

40

John J. Byrnes, cross.

Q You wouldn't venture to give an approximate amount of what that cost is or was? A No, I didn't go into that.

10 Q Did you figure the sound value of this building? A The sound value would be arrived at by taking the replacement value less depreciation.

Q That would give you a new building at this cost? A It gave us a replacement value as of April, 1924.

Q The effect of that method of computation would be to give you a new building at this gross cost less the depreciation? A Yes, sir.

Q Did you make any estimate of the value of the building as it stands? A The building as it stands is \$286,545.09.

20 Q That is not the value of the building as it stands. As I understand you that is the value—the money it would take to replace this building? A No.

The Court: Less depreciation, is that right?

30 The Witness: Yes, sir. The money that it would take to replace the building was over \$300,000. The value of the building as it stood in April, 1924, was some \$286,000.

Q On what do you base the schedule of one and one-eighth per cent. for depreciation? A I took Tiffany's rule of depreciation, which is used by the Government and a building—brick building—occupied by the owner depreciates from one to one and one-quarter per cent. per year, and I took the average on this particular building.

40 Q Isn't it a fact that the Federal Government has established a two per cent. depreciation for

John J. Byrnes, cross.

brick buildings and three per cent. for frame buildings? A It depends upon the condition. The Government uses various items of depreciation. They do in our particular case. If they want to reduce their invested capital they use more depreciation.

Q You have known of two per cent. being freely and customarily taken for the purpose of depreciation? A I have known of one per cent.—of two per cent., rather. 10

Q Do you know of more instances in your own experience of two per cent. than one and one-eighth per cent? A Well, I used the average.

Q What is your personal experience? A One to one and a half per cent. on brick buildings. More used than two per cent.

Q Does that apply to other brick buildings, whether it is—(interrupted). 20

The Witness: I didn't apply it to this one, your Honor.

The Court: I mean does that rule apply to all buildings whether store or mercantile or anything?

The Witness: The rule says, brick buildings, it doesn't include whether it is mercantile or bank. 30

Q There is a greater and more rapid depreciation on store buildings of this type than there would be on a residence? A There is a different depreciation used in residences.

Q What book are you referring to when you say "Tiffany"? A Tiffany's rule of depreciation. It is Cooper's book.

Q Does your replacement value include elevators? A Yes, sir. 40

John J. Byrnes, cross.

Q Foundation and excavation? A The original price gave that, but I understood they were not insured.

Q Gas and plumbing fixtures, mechanical equipment? A Heating and plumbing, yes, sir.

10 Q In your experience do you take one and one-eighth per cent. on elevators for depreciation? A No; entire building.

Q Did you in arriving at that depreciation schedule that you computed \$25,397—did you take one and one-eighth of the whole cost as you figured it? A The whole cost, yes, sir.

Q You didn't make any separate depreciation schedules for the elevator?

20 The Court: That is an element. The elevators are part and parcel of the whole; maybe ten per cent. on the elevators and a fraction of one per cent. on something else, making the amount average what he has given.

Mr. Cohn: That's what I want to find out.

The Court: It is perfectly plain.

30 Q In arriving at this computation did you take one and one-eighth flat or did you take various rates of depreciation? A One and one-eighth on the entire amount.

Q Would you say that is a fair rate of depreciation of elevators?

The Court: No. Taking the elevators into consideration and the entire building, then flat on the entire building.

40 Q One and one-eighth, is that it? A Yes, sir; some items last forever, steel, parts of the brickwork, floor beams.

C. Godfrey Poggi, recalled, direct—cross.

Q You estimated this value for insurable purposes? That is, you estimated as purely a replacement value? A That is the only way I knew to arrive at it, was the replacement value and depreciation, for insurance purposes.

10

C. GODFREY POGGI, recalled.

Direct examination by Mr. Whittemore.

Q Will you give us what is the rate—standard rate—of architect's fees—standard and customary rate of architect's fees in Elizabeth and engineer's fees for the erection of a building of the type such as the Goerke-Kirch Company, owned by the Voorhees estate? A Six per cent.

20

Q Supervision? A Including supervision; yes, sir.

Q Mr. Poggi, since you last testified, have you, at my request, made a total estimate of the cost of the erection of an independent brick wall on the south side of the Stein building adjoining the Goerke-Kirch Company building and along the west wall of the Voorhees building where there is no wall at the present time? Have you estimated that cost? A I have.

30

Q Will you please tell us what would be the present cost of the erection of such a wall under present conditions, with which you are familiar? A I estimate the cost under present conditions at \$22,000.

Cross examination by Mr. Cohn.

Q How did you arrive at that? A By detailing the estimate—estimating various quantities.

40

C. Godfrey Poggi, re-called, cross.

Q You made a quantative analysis? A Yes, sir.

Q Have you it in front of you or with you?
A Yes, sir. Can I testify from it to refresh my memory?

10 The Court: Are you ready to put the wall in at that price?

The Witness: Your Honor, I am not a builder.

The Court: I mean, are you ready to?

The Witness: I can't say—no, sir; I wouldn't say I was ready to.

The Court: Does that include profit?

The Witness: I believe so.

20 The Court: Do you think you could get somebody to do it at that price?

The Witness: I don't know that I could get anybody to do it for that price, your Honor, because of the conditions which surround the work. They might take it on the basis of cost plus and use that as an upset price.

30 Q Let us have the analysis, how you arrived at the figure. A The brick work I estimated 238,161 brick at sixty-two and a half dollars a thousand.

Q Sixty two and a half? A Laid, yes, sir.

Q Laid? A Yes, sir, \$14,885.

40 Q Where do you get the figure of sixty-two and a half dollars to lay brick even today? A The cost—ordinary cost of laying brick where there is no interference is naturally less than that.

C. Godfrey Poggi, re-called, cross.

Q How much less? A Probably five dollars.

Q Would you say from your experience that it would be hard for you to get brick laid today under ordinary circumstances, any type of brick, for forty-eight dollars a thousand? A It all depends upon the location, sir.

10

The Court: Does that price include the article itself?

The Witness: Material, yes, sir; furnished and laid.

Q What is your experience, actually, recently, on the subject? Do you know of any construction that has gone on under your own supervision where there was a price of sixty-two dollars and a half? A I can't recall definitely just at this time, but I do recall we have had cases, that we call alteration jobs, such as this would be, to do, where the unit of cost of brick work has been much more than this.

20

Q What are the other items? A Steel lintels, sixteen and a half tons at a hundred and ten dollars, furnished and laid, set in place, eighteen hundred and fifteen dollars, concrete footings, twenty cubic yards at twenty dollars, four hundred dollars; allowance for contingencies of eight hundred and fifty-eight dollars.

30

Q How do you arrive at that? A We arrive at that by this means, as a rule, and that rule has been applied here, where the total sum estimate at an odd figure within a few hundred dollars of an even figure, the difference is put down for contingencies. Temporary partition \$1,265., cutting and repairing \$1,000., three-coat plastering 1185 yards at \$1.50, \$1,777., the total is \$22,000.

40

C. Godfrey Poggi, re-called, cross.

Q You are making no provisions in those figures for any opening or archways from one of the buildings into the other? A That is all taken into account, sir.

Q Are you providing a solid wall without any openings or are you providing for openings?
10 A In making an estimate you allow half the opening.

Q What are you allowing? A I allowed half the openings because of the extra work attached to building the opening.

Q What opening did you provide for on the side—on the south side of the Stein property?
A Just in line with what is there now, sir.

Q I see. And you provided—you did not provide for any opening in the west wall?
20 Just what I saw there at the present time.

Q There is no wall there? A There is no wall at the present time.

Q Is there a west wall in existence now? A Of which building do you refer—to which building do you refer?

Q The Voorhees building. A Westerly wall and northerly wall to the Voorhees building?

Q No westerly wall in the Stein building today; you are estimating in your computation the cost of putting the westerly wall on the Stein building.
30 A I am estimating to put an easterly wall and southerly wall on the Stein building.

Q And have calculated on the size of the present openings? A Yes, sir.

Mr. Whittemore: I want to offer in evidence lease made between Dorothy Stein and Larkey Company dated September 17,
40 1923.

(Paper marked Exhibit P. 1 of this date.)

C. Godfrey Poggi, re-called, cross.

Mr. Whittemore: I offer in evidence lease made by Dorothy Stein to F. H. Gross & Company, dated April 28, 1922.

Mr. Cohn: I want to enter an objection.

The Court: Objection overruled.

(Paper marked Exhibit P. 2 of this date.)

10

Mr. Whittemore: I offer in evidence lease between John W. Clark and the Roessler Furniture Company dated July 20, 1926.

Mr. Cohn: I object.

(Paper marked Exhibit P. 3 of this date.)

Mr. Whittemore: I offer in evidence lease between Frank K. Whittemore and Daniel H. McLean and Harry Wolper dated March 2, 1925.

(Paper marked Exhibit C. 4 of this date.)

20

Mr. Whittemore: I offer in evidence copy of lease made by Louis F. Hirsch to John Sutules, without date, but it was dated within my own knowledge in the month of March or April, 1927.

(Paper marked Exhibit P. 5.)

Adjourned until October 21, 1927.

30

40

Edmund Goerke, direct.

FOURTH DAY.

October 31, 1927.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

EDMUND GOERKE, sworn for defendant.

Direct examination by Mr. Cohn.

Q What is your name? A Edmund Goerke.

Q And your occupation—you were superintendent of the Goerke-Kirsch store in Elizabeth?

A I was.

20 Q During what period? A From 1916 until 1926.

Q Were you present during the progress of the construction of the building on the Stein plot? A I was.

Q Were you daily present? A Yes, sir; every day but Sundays and holidays.

Q Are you familiar with the location of the steel columns in the building? A Yes, sir.

30 Q And have you any familiarity with the plans? A Well, I knew when the building was being built, of course I watched the plans.

Q Do you remember the location of column 17 and 17A? A I do.

Q Approximately where was that location? A Column in the center opening about—a short distance back from the entrance of the store.

40 Q On the north side of the building that led to the Voorhees building? A On the north side—wait a minute, yes, on the north side of the building.

Edmund Goerke, direct.

Q Do you remember the occasion when the two columns were installed? A Yes, sir.

Q What was done, to your personal knowledge, in connection with the footings under those columns? A Well, there was—those columns—the footings at the time, why were made larger under those two columns.

10

The Court: What did you say?

The Witness: The footings were made larger.

The Court: Larger than what?

The Witness: Than the rest of the footings under those same columns along that same side.

Q Have you looked at the north wall of the Voorhees building from the roof of the Stein building? A I have.

20

Q What did you observe there with reference to a crack? A Well, there were two or three minor cracks on that wall.

Q Two or three cracks? A Yes, sir; two or three cracks on that wall.

Q What have you to say with reference to how long those cracks have existed? A It existed, I would say, a few years after the store was opened. We always had trouble with the water coming through, the dampness, and we painted it once or twice to try to stop it and that is how I noticed the cracks were there.

30

Q When was the store opened? A 1913.

Q The Voorhees building was built in 1912? A Yes, sir; opened in 1913.

Q When was the opening through into the Stein store? A In 1923.

40

Edmund Goerke, cross.

Q You noticed it before? A Yes, sir; six or seven years before.

Q Now what did you notice? A I noticed we had these cracks in that wall, and the dampness came through and we painted it once with tar and two or three times with paint in order
10 to keep the dampness from coming through into the store.

The Court: That is directly over the opening between the two stores?

The Witness: No, sir; it is not anywhere near. It is at least thirty or forty feet away from the opening.

Q Are any of these cracks of which you testify that appear in the north wall, directly over
20 any of the new openings? A Not a one.

Q Now, Mr. Goerke, did you examine the west wall of the Voorhees building? A I did.

Q And what did you find on the exterior of the west wall in relation to the tracks? A Nothing on the outside of the building at all; couldn't find a thing.

Q Do you find something on the interior? A Inside the fourth and fifth floors the plaster
30 was cracked.

Cross examination by Mr. Whittemore.

Q The cracks to which you referred the first time were on the north wall? A On the north wall; yes, sir.

Q On what story? A About on the fifth and sixth floors.

Q That is the top floor? A Yes, sir; the
40 sixth floor is the top floor.

Edmund Goerke, cross.

Q Can you tell us how far away from Broad street they were? A I would judge the first one was about—oh, fifteen or twenty feet from Broad street, and there is another one right by—half-way the building—half-way down the side of the building.

Q How far is the opening from Broad street? 10

A I would judge about thirty-five feet.

The Court: How long is the building?

The Witness: A hundred and forty feet.

The Court: The Broad street end?

The Witness: Yes, sir, the building is about a hundred feet.

Q Do you happen to know the distance of the columns apart? A Yes, sir; within a few inches. 20

Q Well, that is enough. How far apart are they? A Fifteen feet—fifteen to sixteen feet.

Q Don't you know that the opening commences at the location of the first column from Broad street? A I don't understand that.

Q Doesn't the opening between the two buildings commence at the location of the first column from Broad street? A Well, there is a window first and then comes a column and then another column; it is the second column before the opening starts. 30

Q Don't you think you are mistaken about that, Mr. Goerke? A I don't think so.

Q Let me show you this plan and show you the opening indicated at the first column from Broad street? A No; here is a column right here (indicating) that is a column and here is a column.

The Court: The first column is right in the wall. 40

Edmund Goerke, cross.

Mr. Whittemore: It is at the edge of the opening, the first column from Broad street.

The Court: That is right at the Broad street wall practically.

10 Mr. Whittemore: No; I am speaking about the first column after Broad street, not the column at Broad street.

The Witness: No; it is the second column.

The Court: In the opening?

Mr. Whittemore: No, there is a column in the opening besides, that would be the third column from Broad street.

Q Does this show, where it says the word "opening," the correct location of the opening?

20 A Yes; that is the correct location.

Q Isn't it, as a matter of fact, seventeen feet from North Broad street—from Broad street? I don't know why I say North Broad street. A The window is about eight feet—I would judge about seventeen feet.

Q Then the crack was almost directly over that opening, isn't it? A No, sir; it is not.

Q You said fifteen feet from Broad street. There is just two feet difference, isn't there? A I didn't measure it. I think it is about fifteen. I still think so.

30 Q When you said it was not over the opening you are not exactly correct, were you? A Yes, sir; it is not over the opening.

Q It is only two feet of being over the opening? A That is two or three feet and I may be a foot off one way or the other. I didn't measure it.

Q The opening extends up three stories? A
40 That is right.

Edmund Goerke, cross.

Q And this crack was on the fifth story? A On the fifth story.

Q Now, with reference to the west wall. You say there are no cracks visible from the exterior?

A No, sir.

Q From what point did you look? A The roof of the third floor.

10

Q Of the Stein building? A Yes, sir.

Q There are windows in the Voorhees building above the third floor of the Stein building, are there not? A There are.

Q These windows are shown on this map or plot that I show you? A That is right.

Q Are you in a position to say that the lines marked "cracks" here on the fourth, fifth and sixth stories do not exist? A No, sir; I do not say that.

20

Q Can you fix the time when you went there to look? A Yes, sir; I went there Friday afternoon about four-thirty.

Q Last Friday? A Yes, sir; this last Friday again.

Q You say "again." What was the first time? A Well, I have often looked at the wall on account of the last testimony here they said it was cracked and we tried to find them. I took a party with me to help to find them.

30

Q To your knowledge have any of the cracks there been filled in? A No, sir.

Q Did you look for these cracks inside, too? A On the inside, too, yes, sir.

Q Does it show the cracks as shown on this map on the inside? A It shows some plaster cracks along these windows on the inside.

Q Can you at places, look through those cracks and see the light outside? A Absolutely no.

40

Edmund Goerke, cross.

Q Cannot? A No.

Q Has any work been done on the interior wall since this case has been commenced? A Yes, sir; we kept our building up. If we painted that wall—if that wall was painted I don't know. We paint the walls as they are needed.

10 Q Any plastering been done? A No plastering whatsoever.

Q And when walls are painted I suppose they point up the cracks before they are painted? A I suppose so, if they were there.

Q When did you look on the interior of the building? A I looked yesterday.

Q Did you ever look before yesterday? A Often.

Q And on no occasion did you ever find that—
20 (interrupted)? A Yes; the plaster is cracked on the inside. The plaster is cracked.

Q Right from each of the windows? A Around the windows as a rule, yes, sir.

The Court: Much?

The Witness: No; not much.

Q How large would you say the cracks were?

A Eighth of an inch or—just a plaster crack,
30 like building a building it cracks lots of places a sixteenth of an inch.

Q When did you first observe those cracks?

A As far as I know the cracks have always been there. I don't remember when. It was years ago; lots of cracks throughout the building like that.

Q Is that conjecture on your part or have you any positive recollection as to when you first saw them? A I have no positive recollec-
40 tion.

Rudolph Kruger, direct.

The Court: No positive recollection as to what?

The Witness: As to when these cracks appeared.

10

RUDOLPH KRUGER, sworn for the defendant.

Direct examination by Mr. Cohn.

Q What is your business? A Architect.

Q Under the laws of New Jersey, are you registered as such? A Since 1919.

Q And what connection did you have with the erection of the building on what is known as the Stein plot adjacent to the Goerke-Kirsch store in Elizabeth? A I supervised the building construction for the architect.

20

Q Did you give it a daily supervision? A Yes, sir.

Q Was that continuous? I mean during the progress of the work, did you stay there the whole day? A That was half a day every day during the construction.

Q Approximately when did that construction begin and end? A I do not recollect the date, but I think it was in 1922.

30

Q It began? A I think so.

Q And ended when? A About six months later.

Q Are you familiar with the plans? A I am.

Mr. Cohn: The original plans are not here, are they, judge?

40

William T. Kaltenbach, direct.

Mr. Whittemore: The building inspector brought them here under subpoena and took them away with him. The originals are filed in the office.

The Court: Not the working plans.

10 Mr. Whittemore: No; they were the public records. I suppose the defendants have their own plans.

The Court: You may put the copy in and unless you call my attention to something wrong, they will be admitted. Is it in the testimony that the construction was strictly according to the plans?

20 Mr. Whittemore: Not with regard to column 17A. There was a change there. There was an extra column put in not shown on the plan.

Mr. Cohn: I would like to withdraw the witness and put the Building Inspector of Elizabeth on for a minute.

WILLIAM T. KALTENBACH, recalled for defendant.

30 *Direct examination by Mr. Cohn.*

Q Mr. Kaltenbach, you live in Elizabeth? A Yes, sir.

Q You are the Building Inspector? A Yes, sir.

Q For Elizabeth? And how long have you been in that office?

40 The Court: We have all that, haven't we?

William T. Kaltenbach, direct.

Mr. Cohn: I think we have; yes, sir.

Q Before you were Building Inspector what was your occupation? A Assistant to the Building Inspector; builder and carpenter, before I was Building Inspector. I was assistant to Mr. , deceased, Building Inspector. 10
He is now dead.

The Court: What did you say about builder and carpenter?

The Witness: Before that I was a carpenter working for the M. Byrnes Building Company as a carpenter.

The Court: Were they the builders of this Stein building?

The Witness: No, sir. 20

Q Did you recently visit the property where the Goerke-Kirch store is in Elizabeth? A Yes, sir.

Q When? A Friday afternoon.

Q Last Friday? A Yes, sir.

Q Did you make an inspection of the exterior walls of the building? A Yes, sir.

Q What did you find with reference to their being cracked? A Didn't find any cracks on the exterior of the building. 30

Q Did you find any cracks in the exterior of the north wall? A No.

Q Did you look at the north wall from the roof of the Stein building? A Yes, sir.

Q What cracks did you find on the interior? A Why, three or four cracks in different places on the plaster in the angle, one place, and various places around throughout. 40

William T. Kaltenbach, direct.

Q What was the general appearance of these cracks?

The Court: What was the appearance of them?

10 Q The nature of them? A Why, they were plaster cracks.

Q Describe them, if you can, briefly.

The Court: What do you mean by plaster cracks?

The Witness: Well, they were just about—probably—oh, a hair to a sixteenth of an inch running here and there. One crack was in the angle, I think, of the third floor, if I recall, and just as all other cracks—(interrupted).

20

The Court: Were they plaster cracks or structural cracks?

The Witness: I can say only plaster cracks. There was no brick cracks that I could see on the outside, on the exterior.

The Court: You mean on the exterior behind these very cracks.

The Witness: I didn't see them; no, sir.

30 The Court: Did you look for them?

The Witness: Yes, sir.

The Court: Were they there?

The Witness: No, sir.

Rudolph Kruger, further direct.

RUDOLPH KRUGER, resumes the stand for further

Direct examination by Mr. Cohn.

Q You are familiar with the plans which were laid out by Lehman as architect in connection with this property? A I am. 10

Q Do you remember the installation and location of what has been referred to as Column 17 and 17A? A I do.

Q Will you tell us what those columns are? A Column 17 is the column in the wall of the Voorhees building upon which was carried lintels for the opening when the wall—portion of the wall was taken out of the Voorhees building. 20

Q You installed that column, in other words, when you took out the wall? A We installed it before we took out the wall, then we put our lintels in and then took the wall; after that we installed Column 17A. The plan shows this Column 17 in the wall, and if I recollect at that time there was a question as to the—an encroachment of Column 17 in that wall, and we designed a new column, 17A, to carry a steel beam which carries the floor to the Stein building, and in designing the footings of 17 and 17A we increased the size of the footing to take care of that additional column, 17A. 30

Q Would there be any difficulty about the removal of Column 17 of the Voorhees building and replacement of the wall? A There is no need of taking it out. All you got to do is to brick up the opening and you have got the original condition if you properly shimmy them up. 40

Rudolph Kruger, further direct.

The Court: You mean as to appearance as well?

The Witness: As to structural strength.

The Court: Not appearance.

The Witness: Appearance also.

10 The Court: The column to take the place of the brick before.

The Witness: The column is in the brick wall. If you put your brick wall in you hide the column.

The Court: If you let the column remain you haven't got the old brick wall.

20 The Witness: Fill the brick wall in between the openings. The openings are not all the way up. They are only part of the way on each floor.

The Court: As I understand you, if your testimony is to be understood, it is that you could restore the old wall by leaving the column in.

The Witness: It would not be necessary to remove that column. If you wanted to take that column out, you could take it out and put the wall back in again the way it originally was.

30 The Court: Let us have that.

The Witness: Well, that could be done—That column could be removed and brickwork put in its place, carried out.

The Court: Foundation and all?

The Witness: Foundation and all; yes, sir.

The Court: With what labor?

40 The Witness: Ordinary labor, masons ripping up the wall and labor putting in

Rudolph Kruger, further direct.

your footings, any shoring or anything required.

The Court: Would that be an ordinary job?

The Witness: Ordinary job of bricking up a wall.

10

Q 17A extends under the Voorhees wall, doesn't it—over the Voorhees line? A The footing is a combined footing carrying both columns.

Q 17A footing extends into the Voorhees wall? A Well, there is really no wall there. The footing was built underneath the wall in the Voorhees property.

Q That is what I mean. It extends over the Voorhees line four or five inches, as I understand it. A Yes, sir.

20

Q If you remove Column 17 you also have to remove 17A in order to put the wall back? A No.

Q How would that be accomplished? A 17A is independent of the Voorhees wall. It is about four inches from the wall.

Q 17A footing extends under? A Oh, I see. You are referring to the footing.

30

Q Yes. A In that case we could underpin and build an independent footing for 17A, very similar—(interrupted).

Q And withdraw whatever projecting—(interrupted)? A Anything that projects into the Voorhees property.

Q Withdraw that. A Just cut the footing off at the building line.

Q And take it out? A No; just cut it off, separate it, one from the other.

40

Rudolph Kruger, further direct.

Q What would you do with the part that lays over in the Voorhees line? A Leave it there. It wouldn't affect the building any.

Q Affect the foundation, wouldn't it? A No, it would not. In building the foundation for that wall you have a new foundation right underneath the building—you have these two openings right next to each other and before we brick them up we put a concrete footing underneath that portion of it and then start bricking up.

Q You would have the broken part of the footing under—the broken off part of the footing of 17A under the Voorhees line, wouldn't you? A Yes; the footing of 17 and 17A extend quite a bit into the Voorhees line. It is one large footing. If we took off that portion to divide it there would be no material effect on the foundation of the Voorhees wall.

Q Assuming that you restore the Voorhees wall by removing 17 altogether, footings and everything? A Yes, sir.

Q Then if you detach so much of the footing of 17A as extends under the Voorhees line, you would have a piece of cement—detached piece of cement under there? A We could remove that, if we wanted to, remove the footing and column and all.

Q Would that be anything extraordinary in masonry? A No, sir; absolutely not.

Q So you could go right down to the foundation such as was there before you put in column 17 and you would repair the old foundation? A Restore the old foundation in the same condition that it was before the building was put up—the Stein building.

Q That would be an ordinary undertaking? A No—it would be an ordinary foundation undertaking.

Rudolph Kruger, further direct.

Q Anything unusual? A No, sir.

Q These columns 17 and 17A, how far apart are they? A At what point?

Q In their relation of—in their vertical relationship to each other?

The Court: At what point? They are 10
joined in the footing, I am told.

Mr. Cohn: I am not going into that.

The Court: At what point do you mean?

Mr. Cohn: Of course, if they are together, it is the same vertical point all the way through.

The Court: I did not so understand it. I understood they were much wider at the bottom than in the store—in the opening.

Mr. Cohn: These two steel vertical columns rest on a concrete footing, and evidently, from what I have learned, they are not joined at the footing, but they stand, because of certain natural forces of weight, apart. Now they are not together; they are apart; one of them is on one side of the line, the other is on the other side of the line. It is only the footings which, because it is combined to it, that can be said to be over the line at all, but each of these columns separately carry their respective walls. The two columns are simply bricked over and then plastered and they are together when you look at the plaster, but you do not know what is on the interior, but naturally there is a little furring of brick under the plaster and then there are two steel columns. What I want to show is that each of these two columns stand on the respective lines, and the removal of one of the columns and brick- 20
30
40

Rudolph Kruger, further direct.

ing up that wall on the Stein property could be done. There is a complete independency to the two structures except so far as the footings are concerned.

10 The Court: That is not disputed. They say there is no dispute as to that. I didn't understand there was. I understand it all relates to the footing. You are trespassing by the footing.

Mr. Cohn: And a question of solidity. I was addressing myself now to that.

Q Now, you testified that the footing was enlarged. Will you tell us in detail just what was done and what effect it would have on the steel columns?

20 The Court: Enlarged over what? Over the drawing?

30 The Witness: The original footing called for a five foot five by two foot deep, and it was enlarged to take that column 17A, which—17A does not appear on the plan—and we had to take care of it by a footing. It is logical construction. You see, we planned—by the original plan we only designed for column 17, no mention being made of 17A and a footing was designed for that column. When we discovered we had to put 17A in, we would not rest 17A and 17 on the same column called for 17.

The Court: On the same column or same footing?

40 The Witness: We would not design a footing for two columns the way we would for one. When we realized we had two columns to go in we designed a footing to take care

Rudolph Kruger, further direct.

of both columns. That is, by enlarging the footing to take care of 17A.

Q With reference to the title line—(interrupted)? A At the line of the building, I presume, of the Voorhees property.

Q Where is the line of demarcation in the footing as respects the title line of each of these properties? A Why, there there is no line that I know of excepting the—except the imaginary building line that you would draw through there. 10

Q You put the footings in the dividing line between the two? A At the time we put the footings in we did not take—(interrupted).

Q Where is the dividing line or center line between the two footings for column 17 and 17A? A There are not two footings. It is one footing for both columns; what we call a combined footing. Now the footing so enlarged took care of 17A, the plan calling originally for but five by five by two footing for 17. 20

Q The other one you made double? A We made a combined footing to take care of two columns. When the column came down this way we had a square footing. We inserted this column alongside of it and we had to pull the footing out to take care of it. 30

Q Was that done on the Stein property? A That was done on the Stein property.

Q The pulling out? A The enlarged footing on the Stein property.

Q Then does the footing, as you understand it—does the footing of 17A extend into the Voorhees line? A Only so far as I can say that the footing of 17A is also the footing of 17, being only one footing it must therefore extend in that line, being one footing. 40

Rudolph Kruger, further direct.

Q Could you divide that combined footing in the event of closing up the wall? A In the event of closing up the wall, what we would do would be to cut the footing on the dividing line between the Stein and Voorhees properties and design a new footing for column 17A and place it
10 under 17A, making an independent footing. It would have to be designed differently than we design a footing for both columns.

Q If you cut off so much of the combined footing that is now within the Voorhees line and restored the foundation as it was before the opening, would you then have a sufficient footing for 17A or would you have to reconstruct it? A Reconstruct it. I would put a new footing under
20 17A at the same time we were restoring the footings of the property of Voorhees.

Q Will you describe the pier or wall at the northwest corner of the Voorhees building? A Well, that wall at the northwest corner of the Voorhees building is—we took the openings on the west wall, and we left a portion of that wall, about twenty-five or twenty-six inches, I think it is, abutting the northerly wall of the Voorhees building, making the two walls come at right angles, acting as a sort of buttress instead
30 of a pier.

Q You say the west wall? A Yes, sir.

Q You opened that west wall up to a point within two or three feet of where it meets the north wall of the Voorhees building? A That is correct.

Q So that what you left at the northwest corner squares off with the north wall? A That is right.

Q And is a part of the continuous masonry. At the square angle—at the square angle it be-
40 comes a part of the continuous masonry.

Rudolph Kruger, further direct.

The Court: What angle?

Mr. Cohn: At the square angle. The right angle of the west wall with the north wall. This remnant in the west wall becomes a continuous piece of masonry all the way out to Broad street. In other words, it is not an isolated pier or pilaster such as it might appear to be from the testimony thus far. You have got to see it to understand what I mean. 10

Q I want you to describe in simple language, not as an architect, but your language just how this northwest corner appears today. A Taking it from the north wall of the Voorhees building, the north wall running in a northerly direction and that pier—(interrupted). 20

The Court: The north wall runs in an easterly and westerly direction.

The Witness: Well, easterly and westerly; I haven't got the points—and the other wall, the west wall, abuts the north wall at that point. Now, we cut the opening in the west wall, leaving a part of the west wall, still joined to the north wall of that corner and at this particular point it would act as a buttress and not as an isolated pier. 30

Q Now, in front of that buttress did you erect any other form of construction? A Well, there is a steel column placed in front of the buttress to carry some super-structures.

Q What have you to say as to the stress, if any, that was placed on to the northwest corner as a result of the opening? A Why, the brickwork there is stressed to about, I think, a stress of twelve tons to the square foot. 40

Rudolph Kruger, further direct.

Q And how does that compare with proper practice? A Why, in my opinion it is good practice. It may be—yes; it would appear as good practice. Of course, we allow a higher stress on a buttress and wall of that type than we do on isolated piers.

10 Q With regard to the matter of the footings under this corner—this northwest corner—was anything done at the time of the making of the openings relating to those footings? A I do not just get your question.

Q I will withdraw it. At the time of the making of the opening in the west wall did you install any other further footings under this northwest corner? A I did not.

20 Q Wasn't there a continuous footing installed from that corner to the next column? A No. The footing was put under the column at that corner to the column in the northwesterly direction at the end of the Stein line.

The Court: What?

The Witness: There was a combined footing placed between the column at the wall of the northwest corner of the building—(interrupted).

30 Q Point out on this sketch to the Court just what you did as to that northwesterly corner as to steel columns and footings. A You see, we have a steel column at number 20 and steel column at number 12 as shown on this plan and the other plan. Now this is the—what I call the buttress where the west and north walls connect, at this corner (indicating).

Q That is the old wall? A Old wall.

40 The Court: Old foundation?

Rudolph Kruger, further direct.

The Witness: Old foundation. To my recollection at the time we built this we put a combined footing for these two columns (indicating).

Q That is the column at the northwest corner— A Yes, sir. 10

Q —and where? A And column number 12 (indicating).

Q In the Stein wall? A In the Stein wall.

Q How about the footings at that point? A We designed, if my recollection serves me right—we put a footing in between those two columns.

Q In the Stein wall? A In the Stein wall. So we did not go under the corner of it.

Q The northwest corner of the—(interrupted). A Voorhees building. 20

Q In your opinion has there been any weakening of the foundation under the northwest corner as a result of all the operations with regard to it?

The Court: That is a question for me to decide. Has he made a recent examination?

Mr. Cohn: Yes.

The Court: It has not developed that he has. 30

Q Have you made any recent examination of the property under consideration? A I have.

Q As recent as what? A Yesterday morning.

Q Any time before that? A Yes, sir; at the time of the last hearing—before the last hearing.

Q What did your examination consist of with reference to this northwest wall? A Making 40

Rudolph Kruger, further direct.

careful inspection of the brickwork on the exterior to see if there were any cracks in the wall and examination of the interior to see if there were any cracks in the wall, to see whether or not the effect—(interrupted).

10 The Court: To see if there had been any settling?

The Witness: Any settling; and then we made some calculation to determine the actual load at that particular point to determine whether or not the bearing capacity of that buttress or that corner was sufficient to take the load thrust upon it.

20 Q And as a result of those examinations and calculations what opinion have you arrived at?

A That there is no stresses in the buttress that have any detrimental effect upon the building whatsoever.

Q In other words, the foundation is strong enough to carry the superstructure, is that what you mean? A Yes, sir.

Q Any margin of safety? A Yes, sir; the margin of safety of ten.

Q There is now? A Yes, sir.

30 Q From your calculation? A Yes, sir.

Q Now, what is the condition of the west wall with reference to the remnant of the wall or isolated pier? I mean, how does that—describe the appearance of that west wall today. A Well, in examining that west wall, and taking at the openings, I carefully examined the pier itself both exterior and interior to see whether or not there were any cracks developing that may be due to the pier being weak as has been testified. I also made calculations—(interrupted).

40

Rudolph Kruger, further direct.

The Court: Which pier?

The Witness: We are speaking of the pier between the two openings in the west wall.

The Court: Between twelve and—(interrupted).

The Witness: No; between the two openings.

10

Q Will you point it out to the Court on that little sketch? A You see, there are two openings.

The Court: In the west wall.

The Witness: Yes, sir; here and here (indicating). We are considering now this brick remnant of a wall (indicating).

The Court: Not at the northwest corner.

20

The Witness: Not at the northwest corner.

The Court: I was trying to follow you at the northwest corner.

Mr. Cohn: We are now in the center of that west wall. Most of the testimony is on that subject.

The Court: That is the pier next southerly from the northwest corner.

30

The Witness: That is correct.

Mr. Cohn: That pier is what was the old wall—that portion of the west wall which was allowed to stand after the openings were made.

The Witness: Yes, sir; that is the pier I have reference to.

Q And it is somewhere towards the center of what the old west wall was before this new oper-

40

Rudolph Kruger, further direct.

ation began? A I wouldn't call it the center; it is about the third point of the west wall near the southerly side of the Voorhees wall.

10 Q Now describe these openings that adjoin this pier from the bottom up—I mean describe the openings from the bottom up in relation to this pier. A Well, at the basement there are two openings there about six feet wide and they begin at—they begin fifteen feet from the center of that pier to the first part of the opening on each side—in other words there is an opening on each end of the basement wall fifteen feet from the center of the pier.

20 Q Opening on either side of the pier? A On either side of the pier beginning fifteen feet from the center of the pier. Your pier is here (indicating) this opening begins fifteen feet at the side of the pier and the same on the other side. In other words the openings aren't anywhere near the pier. On the first, second and third floors the opening—(interrupted).

Q In other words, the pier does not extend down through the basement? A No; it—(interrupted).

30 Q It begins at the basement ceiling? A It begins at the top of the basement wall.

Q And then it extends upwards from the first to the second floor, from the second to the third and from the third right on up to the roof? A Well, not—that is correct, yes, sir.

The Court: What, the opening?

The Witness: This pier.

The Court: Do you mean that?

40 Mr. Cohn: Yes, sir; I believe so. Isn't that correct, Judge?

Rudolph Kruger, further direct.

Mr. Stein: Up to the roof of the Stein building.

The Court: When you said all the way up to the sixth floor I could not follow you.

Q What does that pier consist of above the basement to the roof of the Stein building? A 10
It is a brick pier—solid brick.

The Court: You do not mean that the old wall formed that.

The Witness: This was a remnant of the old wall.

Q The pier itself, is that something new put in? A No; that remained in as part of the wall. In other words the whole wall was not cut out. 20

Q Why do you call it a pier then? That extends to the third story of the Stein building, the old wall? A The old wall.

Q Why do you call it a pier? A Because it has become a pier.

Q Because of the cutting out? A Yes, sir.

Q Now, so far as the basement is concerned, you say the openings are only six feet wide? A That is right.

Q And approximately how wide are the openings above the basement ceiling? A I don't know the exact opening here. 30

Q They are much wider? A They are much wider. They are probably fifteen or more than that. I can scale them if you want me to.

Q You have examined these piers? A Yes, sir.

Q This pier as it goes up from the first floor? A Yes, sir.

Q What do you find its condition to be as of your last examination which I understand was 40

Rudolph Kruger, further direct.

yesterday, the thirtieth of October? A I found the pier in very good condition as far as the pier itself is concerned. I also investigated the question of a bulge in the pier as testified on the stand. It is impossible that a pier—a brick pier will have any bulging due to overloading or loading of any kind. The action of a pier is what we call a cumulative action. If the pier would bulge a quarter of an inch and the load remain, it would bulge a little further and further and finally give, but that condition actually does not exist in the pier. If a pier is going to bulge at all the pier is going to fail immediately—press right out—snapping off as if you snapped a stick. Any bulging whatsoever of a brick pier is never perceptible by the eye. In making tests of brick piers they have to use very sensitive instruments to determine the exact amount that this particular pier would move, in any particular direction, due to the loading, and it could never be seen by the eye.

Q I understand you to say that the pier is the remnant of the old wall? A Yes, sir.

Q And the old wall was put in without these holes or openings in it and that wall was put in for the purpose of supporting the superstructure, wasn't it? A Yes, sir.

Q And the question of safety? A Factor of safety of brickwork.

Q Plus the factor of safety that remains with the opening in? A The factor of safety remains regardless of what happens.

Q Is it diminished—diminished greatly? A It might be diminished, yes, sir.

Q By these openings? A Yes, sir.

Q In connection with the making of these openings were any further supports installed in the west wall?

Rudolph Kruger, further direct.

The Court: Reinforcement to the remnant of the wall that you call a pier.

The Witness: No.

Q Didn't you install steel beams in the west wall? A Oh, we installed lintels over the tops of the openings, if that is what you refer to.

10

Q What effect would that have? A It would stabilize the pier to quite an extent.

Q Help to carry the load? A Yes, sir.

The Court: You can throw the load of the building over the lintels, in a measure, on the pier, wouldn't you?

The Witness: That is right.

The Court: How would that stabilize the pier then by adding to the load of the pier?

The Witness: Well, the question of adding to the load depends on how you figure it. In this particular case if you take out openings, like this window here, you get a certain arch action over the opening.

20

The Court: It is fair to assume when they put up that building that they put the walls without the openings in for the purpose of carrying the superstructure.

The Witness: That is right.

The Court: And in ordinary practice not with a view to openings.

30

The Witness: Yes, sir; that is probably true.

The Court: So necessarily these piers, if my assumption is correct—these piers being a remnant of the wall, they are carrying a greater load than the immediate portion of the wall, now piers, were intended originally to carry.

40

Rudolph Kruger, further direct.

The Witness: Yes, sir; that is true.

The Court: Now, was anything supplied in reinforcement, in aid of the remnant?

The Witness: There was no reinforcing there to reinforce the remnant at all.

10 The Court: To help carry what is added to the pier by reason of the opening.

The Witness: No, sir.

The Court: Nothing.

The Witness: Nothing to reinforce it. I made a calculation of the strength of that particular pier and we figured that the brick work at that point would carry two hundred and fifty pounds, according to the New York code, per square inch, figuring on a twenty-
20 four inch wall.

The Court: Is this twenty-four?

The Witness: It varies, but they take that as a standard, twenty-four, and then reduce and increase as you go up.

The Court: I mean the foundation.

The Witness: The foundation—this is
30 twenty-four inches—twenty-eight inches, as a matter of fact, in this particular building, and I have found in examining the pier and calculating the stresses on the pier, I found that the pier is slightly overstressed due to this additional load, but I do not find it dangerously so.

The Court: When would the danger arise?

The Witness: Never. The only time you
40 possibly could get any danger point is if you took the floor around that particular pier and loaded it up solid to the extent of one

Rudolph Kruger, further direct.

hundred points per square foot which we figured the live load of that particular type of building.

The Court: And ten times that?

The Witness: No; and we figure, in calculating panel loads like this, of that particular type of building, one hundred pounds per square foot of floor area, and if you loaded that whole floor around that point solid one hundred pounds per square foot—(interrupted). 10

The Court: Then what?

The Witness: Then you reach the danger point. You might possibly; but we figure the steel work and floor beams four times—factor of safety of four, so you would have to load it four times that amount—twenty-four hundred pounds per square foot, before you would actually reach the breaking point. Of course, that is very difficult to determine. 20

The Court: How is the factor measured, ten units or a hundred units?

The Witness: No, as a co-efficient itself. If we figure, in making actual tests upon a pier—upon any steel work—we figure it will carry before breaking sixty-five thousand pounds to the square inch and we only design for one-quarter of that, about eighteen thousand pounds to the square inch, so, before you actually reach the breaking point you would have to have four times the actual load which you figure, which you would never get in any condition. 30

The Court: This building is right near the main line of the Pennsylvania Railroad?

The Witness: Yes, sir. 40

Rudolph Kruger, further direct.

The Court: And necessarily there is vibration?

The Witness: Yes, sir.

The Court: In the operation of the trains?

10 The Witness: Possibly.

The Court: What effect would that have upon this pier?

20 The Witness: It wouldn't have any effect. It wouldn't have effect upon the pier. It might have effect on the footings. In that particular case the footings haven't been touched along the west wall. The footings are intact as the building was originally built. Your vibration of the building will begin at the bottom and work up, not from the top and down, because your vibration naturally comes from the ground; that is, the vibration from the trains is through the ground first and through the footings of the building, and then it may affect upwards.

The Court: The upper part would shake more than the lower?

30 The Witness: Yes, sir, possibly; but where the footings are intact I don't think it would have any effect upon that pier whatsoever.

Q The immediate openings over the footings, two six-foot openings? A They are practically negligible. You have got a twenty-eight inch wall thirty feet between the two openings and the footings were never disturbed in the course of construction.

40 Q What did you find in connection with this pier—what did you find with relation to cracks?

Rudolph Kruger, further direct.

A I did find a plaster crack on the second and third floor of this building alongside of the steel columns and the brick pier, and an absolutely vertical crack as would occur, right down where that white line is.

The Court: You are speaking of a steel pier? 10

The Witness: There is a steel column.

The Court: In the center of this pier?

The Witness: No. The steel column is near the pier carrying the superstructure of the Stein building. It is alongside of the brick pier of the Voorhees building.

The Court: There is no steel column forming part of this remnant of the wall. 20

The Witness: No; that is independent of the steel column.

Q There is, in fact, no steel column forming part of the pier? A No; there is not.

Q A steel pier is joined by plaster to the brick pier? A Oh, yes. In plastering we plaster against a brick wall and the steel column is covered with two inches of probably hollow tile or plaster blocks and then plastered against that to form a corner. 30

Q And you found these cracks where the vertical joints are between the steel column and the pier? A That is correct.

The Court: That would be exterior of the Voorhees building and interior of the Stein building?

The Witness: Yes, sir; interior of Stein and exterior of Voorhees. 40

Rudolph Kruger, further direct.

The Court: He was asking about the interior of the Voorhees building.

Mr. Cohn: That is another subject. There was testimony that there were cracks in this particular pier. I want to show, if I can, the location of these cracks.

10

Q What are these cracks due to that you found? A The cracks were due to two things. One is due to the difference of contraction and expansion of the two elements. The steel might—steel expands and contracts from time to time due to the weather—temperature.

Q You say they are plaster cracks? A Yes, sir.

Q Not tile cracks? A No; in the plaster.

20

Q Not extending to the hollow tile? A No.

Q Just plaster cracks? A Plaster cracks; and consequently it is due to the Stein building being a new building and is bound to settle—every building will settle, no matter how it is built unless it is built on solid rock—that is the only possibility you have of a building not settling.

30

The Court: And then you will find cracks?

The Witness: Possibly you will.

The Court: If there is expansion and contraction in the material.

Q With relation to this pier do you find any cracks at any other point in the pier? A There are no—you mean structural cracks or plaster cracks?

40

Q Any kind? A There are no cracks in that pier on the Voorhees side or on the Stein side, excepting the crack to which I just testified.

Rudolph Kruger, further direct.

The Court: No structural cracks?

The Witness: No structural cracks whatsoever.

Q Now, in relation to cracks in the interior of the building. You made an inspection as well—(interrupted)? 10

The Court: Who was the witness who told me about these cracks?

Mr. Cohn: Their engineer.

The Court: Why don't you get them together and go over it? Here are two sets of men telling divergent stories on which there is an honest mistake.

Mr. Cohn: If your Honor would like to make an inspection it would be apparent to the naked eye. 20

The Court: I cannot put myself up as an expert on structural and plaster cracks. If they could get together they probably could agree on what it is. After the testimony is in I may go to the property and look it over.

Mr. Cohn: We want to arrive at the real engineering truth for our own purposes as well as for the complainant. 30

Q With relation to the exterior of the Voorhees building you made an inspection—did you make any special inspection to ascertain whether there were cracks, on your recent visit? A I did.

The Court: The west wall?

Mr. Cohn: North wall. 40

Rudolph Kruger, further direct.

Q Now, what did you find? A I found two cracks in the north wall.

Q Exterior? A Exterior.

Q One about fifteen feet or so from Broad street. It is very hard to get. It is way up. It is only about the fifth and sixth floor. The
10 other—(interrupted).

Q How long was the crack? A From the coping possibly down to the fifth floor; that is about two stories.

Q Approximately how many feet? A Maybe twenty feet.

Q What width? A From a hair line to about a sixteenth, to about an eighth of an inch, getting wider as it goes up towards the top.

Q From a hair line, you say, to—(inter-
20 rupted)? A To about a sixteenth to an eighth of an inch.

The Court: Irregular line?

The Witness: Yes, sir; the width varies as it goes upwards.

The Court: Irregular?

The Witness: Irregular?

The Court: Between the bricks?

30 The Witness: No; it cuts right straight through. It was irregular. It don't follow the joint, if that is what you mean. Sometimes cracks do that, follow the course of the brick, but this did not.

The Court: Continuous straight line?

The Witness: Well irregular line, I think is better.

The Court: Continuous line?

The Witness: Call it that.

Rudolph Kruger, further direct.

The Court: Continuous regular line, not an irregular line.

The Witness: I wouldn't call it regular; it is irregular as to shape.

Mr. Cohn: But it is continuous as being—it is a lineal continuity—following up.

10

Q How far is that away from the nearest opening that was made? A Well, the nearest opening is about seventeen or eighteen feet from Broad street on the third floor. This extended only down to the fifth floor.

The Court: To the ceiling or the floor of the fifth floor?

The Witness: Close to the floor of the fifth floor. And then there was another crack fifty-two—about fifty feet—I paced it off—from the northeast corner backward, that is about the center of the building.

20

Q Where was that crack located—I mean as to height? A It began at the roof and came down to about the middle of the fifth floor.

Q What was the size of that and shape of it? A That crack was more or less as I have just described, excepting it was a little bit wider. It might have been about a quarter of an inch.

30

The Court: To what extent a quarter of an inch?

The Witness: I don't know.

The Court: What length?

The Witness: Ten feet, probably.

The Court: And the rest down to a hair-line?

40

Rudolph Kruger, further direct.

The Witness: Yes, sir.

The Court: Top hairline, too?

10 The Witness: No; it is wider at the top and comes down to a hair line. I examined that same crack on the interior to determine, if possible, what might have caused the crack.

Q Didn't you examine both lines as to the interior? A Yes, sir; I did.

Q Tell us about the first one first. A The first crack, on the interior, I could find no evidence of it coming through the wall. The second crack I did find evidence of its going through the wall, but it came through at a point where the stairs leading from the basement to the
20 roof—(interrupted).

Q Basement of what? A The Voorhees building.

Q Basement of the sixth floor of the Voorhees building? A Basement of the sixth floor to the roof of the Voorhees building and at the ceiling of the Voorhees building.

The Court: What floor?

30 The Witness: Sixth floor. There was a steel beam running at right angles to the wall carrying brickwork which formed the penthouse and the stairs on the roof of the Voorhees building, that crack was possibly due to that particular condition.

The Court: The weight, you mean?

The Witness: Yes, sir.

The Court: The weight of that beam.

40 The Witness: The beam and the stuff above it.

Rudolph Kruger, further direct.

The Court: You say it possibly was due to that?

The Witness: Yes, sir; it is very hard to determine.

The Court: It may be due to many other causes.

The Witness: Possibly. In examining this particular crack, the one on the inside where the stairs are, looked to me like an old crack, due to the fact that it was very dirty and you can often tell the age of a crack by the way they look. It didn't look like a new crack or didn't look like a crack that is continuing; it has already set and remains there and will probably crack no further than it has already. If you have a stress in a wall where it is cracking, it will keep on cracking. You will see evidence of it from time to time.

Q Any other cracks on that north wall? A On the north wall that is all we saw.

Q What did you find on the west wall? A The exterior of the west wall—(interrupted).

Q I was going to ask you what your opinion is as to whether the openings from the third floor down have any influence on the Voorhees building at the point where those cracks are? A At the point of the stairs it has absolutely no influence at all, because there are no openings underneath that point. At the other point I don't think it would either because the brickwork is high enough there to actually arch over those openings and run the stress down on the other side of the opening.

The Court: What do you mean "at the other point"?

Rudolph Kruger, further direct.

10 The Witness: At the crack nearest Broad street. I first referred to the crack on the middle of the building at the stairs, and then he asked the question what influence the crack would have over the opening, and the crack being so far above that I don't think it would have any effect—the opening I do not think would have any effect.

The Court: Up on the sixth floor?

The Witness: Yes, sir.

The Court: And not down to the fourth and third?

The Witness: That is right.

20 The Court: And I understand if the opening had any effect or influence on that wall, that the cracks would have started below and gone up?

The Witness: No, but they would probably run right down to the opening, because the worst condition you would have would be at the opening and not above the opening.

30 The Court: Time might accomplish that, mightn't it, if, in fact, the break is there now—that are there now are due to these openings?

The Witness: If the crack once starts I think it will go all the way down.

The Court: I know, but time—(interrupted).

The Witness: If it didn't come down in five years it wouldn't come down now. It has had sufficient time to settle and crack all it is going to crack if it was due to that opening.

40

Rudolph Kruger, further direct.

The Court: You are illogical now. If it were due to the opening, then it has had time enough to crack all the way down.

The Witness: If the crack is due to the opening I say the crack would be all the way down to the opening.

The Court: Because the structure is five years old. 10

The Witness: Because the structure is five years old. If there is any settlement—any stress at that particular point of the opening it is bound to show up.

Q You described the appearance of the crack near the staircase with respect to age. Have you any opinion as to the subject of age with relation to the first crack, the one that is fifteen feet from Broad street? A Well, that crack near Broad street—it is hard to ascertain because you can't see it from the roof as readily as I could see the other crack, and it has been painted over, so I do not think I could really determine the age of it by just inspection from the roof. You would have to make a very careful inspection of the crack from all points. 20

Q From the interior? A Interior and exterior to determine the age of the crack. 30

Q Now, with regard to the west wall did you find any exterior cracks? A I found no exterior cracks on the west wall.

Q Did you find any interior cracks? A Yes, sir.

The Court: You say you didn't find any?

The Witness: Yes, sir.

The Court: Did you look?

The Witness: Yes, sir. 40

Rudolph Kruger, further direct.

The Court: Made a careful examination?

The Witness: Yes, sir.

The Court: And there were none at all?

The Witness: I couldn't find any.

10 The Court: If there were any there could you have found them? Do you mean to say you would have found them if they were there?

The Witness: If there were cracks there I would have found them.

Q You were on the roof of the Stein building?

A I was.

Q When you looked at the exterior of the wall? A Yes, sir.

20 The Court: One very pronounced crack there?

The Witness: On the west wall?

The Court: Yes; extending all the way up.

The Witness: I didn't see any, sir. The only cracks that might have been there are those which we could not see from the roof; that is, up near the sixth floor of the Voorhees building, which is impossible to see.

30 Q Did you find any cracks on the interior of the west wall? A I did.

Q Where were they located? A At the window openings on the fifth and sixth floor, mostly.

Q Any on the fourth floor? A I think there was one crack on the fourth floor; yes, sir, at the window.

40 The Court: Having found these cracks on the interior did you look for any corre-

Rudolph Kruger, further direct.

sponding cracks on the exterior that would be a guide?

The Witness: Yes, sir; we did look to see if those same cracks showed up at the windows on the exterior—that is the reason I said we did not find them, because we actually could not locate anything which looked like a crack. 10

Q What was the general appearance of these cracks, the interior cracks? A The cracks ran off from the windows at a diagonal—(interrupted).

Q In the plaster? A It was a plaster crack.

Q Did you examine it to see whether it was deep enough to be in the structural part of the work? A Yes, sir. The only way we could tell was by sticking a rule in and see how far it would go in, and that is pretty hard to tell. Didn't break any plaster off. There might have been a small crack in the structure at that point. 20

The Court: You knew you were coming here, didn't you?

The Witness: Yes, sir.

The Court: Why didn't you crack the wall to see whether they were structural— why didn't you do that? 30

The Witness: I didn't want to damage the wall, because we were not—you would have to go back and plaster up the wall if you broke part of the plaster off.

The Court: You could have done that. Go on.

Q Are these cracks—interior cracks any different from what you normally see in a building 40

Rudolph Kruger, further direct.

which has been up fifteen years? A No; you find those particular cracks in any building that has been up a long time that has probably settled.

Q Would you attribute these cracks to any stress cast on the upper portion of the building due to the opening below? A Not due to the openings themselves, no.

The Court: Not due to the openings?

The Witness: No.

The Court: Why do you say "themselves"?

The Witness: Well, it might possibly have been due, as testified to, to improper shoring at the time the openings were cut. That is the only way I could attribute those cracks.

The Court: That is the distinction?

The Witness: Yes, sir.

Q Was the building shored at the time of the opening of the west wall? A When they were originally started they were not properly shored and at the time I got down there and saw what they were doing I had the men shore it up at that time. It might have been too late. There might have been stress in the wall which might have caused those cracks.

Q Those cracks then would have extended all the way down, wouldn't they? A Not necessarily, depending on—(interrupted).

The Court: Time that had elapsed?

The Witness: Yes, sir.

Q Going back to the openings in the west wall, is there anything extraordinarily difficult about

Rudolph Kruger, cross.

rebuilding that wall? A No. Those walls can be rebuilt and put in the exact condition they were before the openings were put in.

Q Even though they should be settling A Yes, sir, just bricked up and shimmied up under the ground, and make them absolutely solid and carry the same load. 10

The Court: That settling would cause the floor to sag, too?

The Witness: If they were sagging?

The Court: Yes.

The Witness: Yes, if they were sagging —(interrupted).

The Court: Could you straighten the floors?

The Witness: Yes, sir; jack them up. 20

Q Any floor sagging? A No floor sagging at all.

Q You do not find in any of the floors attached to the west wall any sagging at this time? A No, sir.

Cross examination by Mr. Whittemore.

The Court: The Voorhees building is a well-constructed building, isn't it? 30

The Witness: Yes, sir; very well constructed.

Q Mr. Kruger, you designed the alterations in the Voorhees building? A I did not.

Q Did you have any part in designing the alterations? A I did not.

Q You spoke of shoring up the walls if there should happen to be any sagging where these 40

Rudolph Kruger, cross.

openings were cut and thereby place the west wall in the same condition it was originally in, is that true? A I do not get your question.

Q If there is any sagging of the west wall in consequence of these openings can that sagging be eliminated? A If there is sagging, you say?
10

Q Yes.

The Court: In the reconstructed wall, do you mean?

Mr. Whittemore: Yes.

The Court: That is what I asked him. He said he could.

Mr. Whittemore: I did not understand all he said. The witness dropped his voice.
20

Q You say that is so, that you can restore it? A Sagging of the wall or floor?

Q If the floors sags as a result of openings cut in it, can that wall be shored or jacked up again? A No; the wall cannot.

Q Cannot? A No.

The Court: He said to me that the new wall could be reconstructed and in the reconstruction the sagged floors could be jacked up.
30

The Witness: Sagged floors, yes, sir; the floors can.

Q But if the wall sags itself can that be jacked up? A No, sir; depending, of course, on the size of the wall. If you have a short wall you might, but if you have a big wall it cannot be done.
40

Rudolph Kruger, cross.

Q Well, this is a big wall, isn't it? A That is right.

Q When you made the examination of the west wall did you use any instrument? A I did not.

Q What you have testified to there is merely from observation? A What testimony do you refer to? 10

Q Yours. Have you any idea—(interrupted). A What testimony do you refer to?

Q What you have testified to with reference to the west wall and pier? A That is right.

Q Did that pier bulge? A The pier does not bulge.

Q How do you know? A The pier cannot bulge due to weight. 20

Q I didn't ask you whether it could or not. I asked you whether it did? A The pier does not bulge.

Q All you know about it is from looking at it, is that right? A Yes, sir.

Q Didn't put any straight edge on it? A The pier is out of line. I did not put a straight edge on it.

Q You didn't put any plumb line on it? A No, sir. 30

Q And you are willing to stand a test on that of a plumb line and straight edge? A As to what?

Q As to whether it is bulged or not? A Yes, sir; as to whether it is bulged or not I am.

The Court: The witness seems to discriminate between bulging and being out of line. What do you mean by being out of line?

The Witness: Out of line? 40

Rudolph Kruger, cross.

The pier—maybe a little slope to the pier as it goes up.

The Court: Out of plumb?

The Witness: Out of plumb, due to workmanship in the wall when it was originally built. You do not always get—(interrupted).

10

Q Is that pier out of line in that respect then? A Yes, sir.

Q It is? A Yes, sir.

Q Oh, now, you say that is the way the wall was originally constructed, that is the reason it is that way? A Yes, sir.

Q Why didn't you say that in your direct examination? A Didn't ask the question.

20

Q You understood we were trying to find out whether that pier was straight or not, didn't you? A The only question that was brought to me was the question as to whether that pier was bulged or not. That was the testimony at the last hearing, and there is a difference between a bulging of a pier and a pier being out of line.

Q How can you tell whether the pier as it now stands out of line is due to a bulge or because it was originally erected that way? A Because a pier cannot bulge due to weight.

30

Q You say that because of your engineering knowledge? A Of engineering knowledge and tests upon brick piers.

Q Then you are prepared to say as an absolute fact without any exceptions that that wall must have been constructed crooked when it was originally constructed? A Yes, sir.

The Court: What is the effect of overweight if it isn't bulging?

40

The Witness: On a brick pier?

Rudolph Kruger, cross.

The Court: Yes.

The Witness: A brick pier will go by cracking, what we call sheer—it will slide off.

The Court: Yes, but if the adhesion is strong enough it will bulge.

The Witness: No, sir; when a pier once bulges it is going to go, there is nothing can stop it. When you once get a bend in that pier it is going to give way. 10

The Court: Give way by cracking—that giving away is by cracking, isn't it?

The Witness: Not exactly what we call cracking. It would just ooze out; it goes by a diagonal sheer—in other words you wouldn't see the bulging, you would see it give way by sheer. 20

The Court: What do you mean by sheer?

The Witness: Well, if you take a pier and you put the weight on it, what we call sheer is the movement outward. In other words it would slide right off the top, diagonally; usually about forty-five degrees.

Q If that pier is out of line on one side, is it correspondingly out of line on the other side, following the contour? A Not necessarily. 30

Q Well, is it in this case? A On the other side of the pier?

Q Yes.

The Court: You mean the inside of the building as against the outside?

Mr. Whittemore: Yes.

The Court: Interior and exterior.

The Witness: On the Voorhees side and Stein side. 40

Rudolph Kruger, cross.

The Court: Yes.

The Witness: It isn't out on the Stein side.

10 Q Is it perfectly straight? A There is a slight beveledged on the pier on the Voorhees side.

Q And not on the Stein side? A That is right.

Q The plaster on the Stein side is new plaster, isn't it? A Yes, sir.

Q The plaster on the Voorhees side is old plaster? A I presume so.

Q And if the pier did bend inward on the Stein side—(interrupted).

20 The Court: On the Voorhees side?

Mr. Whittemore: No; I am talking about the Stein side.

Q That curve could be filled up with new plaster and a straight edge produced, couldn't it? A Yes, sir.

Q The footing under column 17 was constructed before the column was set on it, wasn't it? A Yes, sir.

30 Q The column was set in the center of the footing? A Yes, sir.

Q And after column 17 had been completely set in the wall, the footing of that column was enlarged to provide for column 17A? A No, sir.

Q Didn't you say that the footing of column 17 was enlarged? A The footing of 17A—the footing of 17 and 17A was enlarged before 17 was put in place.

40 Q Don't you know that column 17 was all in the wall and in place before any question arose

Rudolph Kruger, cross.

about the necessity for column 17A? A I do not recollect.

Q Do you happen to know that column 17A was put in place because of an objection made by the Union County Trust Company? A I do now. I didn't at that time.

Q When the Stein Building was originally constructed you did not intend to put in any column 17A did you? A Well, it was not the intention from the plans. I wouldn't say that I did. 10

Q I mean the plans did not show any such column, 17A? A No; it did not.

Q Now, don't you know as a matter of fact that column 17 was already in place before any question arose as to whether or not it was proper to put that column there alone? A I don't recollect. It is a long time since that job was done. 20

Q If that is true, then you are mistaken, aren't you? A As to what?

Q As to the fact that column 17 was entirely in place before you built any enlarged footing for 17A? A Will you read that question?

Q I will reframe it. Are you sure that column 17 was not set in place before the footing was enlarged so as to provide for column 17A? A I am not sure as to that particular point. 30

Q You are not sure now. How much was the footing for column 17 enlarged in order to provide a footing for 17A? A I can't give the exact dimensions because I don't remember the size of the footing, but when we put a footing in we usually figure the load it has to carry and design it according to good engineering practice.

Q Can you give us an idea of what that footing enlargement was? A I cannot. 40

Rudolph Kruger, cross.

Q About. A Probably two or three feet. I don't remember at this time.

Q It was larger than the base on 17A? A What base do you refer to?

Q Base of column 17A? A The steel base?

Q It was larger than that, wasn't it? A
10 The steel base?

Q Yes. A Yes, sir.

Q Was it twice the size of the steel base? A It might have been.

Q What is the thickness of the Voorhees wall at the basement? A Two feet four, I think.

Q Twenty-eight inches? A I think so.

Q Column 17A was set in the center of the thickness of that wall, wasn't it? A I don't think it was.

Q Where was it set? A I think it was set
20 probably in the center of the third or fourth story wall—third story wall, because they wanted to get the column probably in the center of the wall, of the narrowest portion of the wall.

Q What was the thickness of the third story wall? A I think it is twelve inches thick.

Q What is the thickness of the column? A I don't recollect the exact size of the column, probably eight or ten inches.

Q But it was less than the thickness of the
30 third story wall? A That is correct.

Q So that that column was a matter of one, two or three inches inside of the Voorhees line? A Well, the column—the outside of the column might have been placed on the face of the outside of the Voorhees wall.

The Court: At the foundation or where?

The Witness: All the way up the con-
40 tinued column.

Rudolph Kruger, cross.

The Court: You mean the iron?

The Witness: The steel column; yes, sir.

Q You mean the steel column might have been flush with the exterior of the Voorhees wall?

A That is true.

Q Was it or wasn't it? A I don't recollect. 10

Q It would be better construction to have it under the center of the third story wall, wouldn't it? A No.

Q All right. Put it on the edge of that wall.

A Anywhere.

Q And have that wall overlapping? A It is independent; it doesn't carry the wall.

Q Independent of what? A The wall. The column sets in the wall. It don't make any difference whether you push it an inch one way or the other way. 20

Q How much job would it be to underpin column 17 and 17A and take out that foundation? A It wouldn't be much of a job at all.

Q You have quite considerable weight on those two columns, haven't you? A Yes, sir.

Q You mean to say it would be a very simple matter to carry all that weight on the underpinning and take out the footing? A You wouldn't do it that way. I would first put my footing in and then I would build my wall in. When I built my wall in the opening it would carry the load above. I would do that all the way up, close up the opening, and the columns would be carrying nothing. 30

Q Close the opening up first and then rip it out? A Then pull your column out.

Q Then you would rip out the footings for the columns after taking the columns out; is that right? A That is right. 40

Rudolph Kruger, cross.

Q Then there would be no underpinning at all? A I don't know what you refer to "no underpinning." When we underpin we underpin the—go down deep under the ground under the present footings of the column, put a new footing the entire length of the opening, build our
10 brick wall on top of that and then remove our column.

Q When you do that there would be a break between the footings as they now exist and the new material that would be put in, wouldn't there? A I don't just get what you mean as a break.

Q It would not be an integral mass? A You mean a continuous footing?

Q No. A But it could be made so.

20 Q How? A You could reinforce—put reinforcing rods in the footing at the connections.

Q You would have to have a break at the end of that reinforcing, wouldn't you? A Yes, sir.

Q Then you would not make an integral mass as it was before under any circumstances? A No; you couldn't make an absolute solid mass.

30 Q Can you tell me what your figuring is as to the weight of the west wall? What do you figure the weight of the west wall is for the six stories of the Voorhees building per square foot or lineal foot? A I figured the weight on the pier as fifteen ton to the square foot.

Q I want to go back of that figure. That figure is a conclusion from calculating the whole weight of the wall, is that correct? A Yes, sir.

40 Q Now give me the weight of that west wall for the six stories per square foot or square inch or per lineal foot. A I don't see what you mean by giving you the weight of the whole wall—at which point?

Rudolph Kruger, cross.

Q All along the wall; it is just the same from one end to the other, isn't it? A On the wall or on the pier?

Q I am talking about the original wall before it was cut out. A Yes, sir.

Q That wall is the same material, weight and character from one end to the other? A That is correct. 10

Q What is the weight of that wall per square inch, square foot or per lineal foot?

The Court: Without openings.

The Witness: Depends on the—(interrupted).

The Court: Without openings.

The Witness: At the sixth floor is one thing and at the—(interrupted). 20

The Court: He means at the bottom, at the base.

The Witness: At the base?

The Court: Yes.

The Witness: I don't recollect what it is. I can figure it up very readily for you.

Q You had it when you figured the weight on that pier, didn't you? A Yes, sir. 30

Q Why can't you tell us now what it was? A I figured it. I haven't got the figures here.

Q Then you cannot give us the calculation by which you determine the weight that was on that pier? A I could figure it right up for you in a few minutes. It wouldn't take much to figure up the weight of the wall.

Q You haven't the figures there that you prepared for the purpose of testifying? A No, sir. 40

Rudolph Kruger, cross.

Mr. Stein: You haven't them here?

The Witness: No; I haven't them here.

Q You want us to accept those figures without analysis? You didn't prepare yourself.

10 The Court: Never mind.

Q Did you include in those figures a live load?
A I did.

Q Did you include a dead load? A I did.

Q Will you give us what figures you allowed for a live load? A One hundred pounds per square foot.

Q How much dead weight? A The weight of the brick and the flooring itself.

20 Q How about the weight of the merchandise in the store? A That is all fixed at live load.

Q What? A Considered live load.

Q Now, when an opening is cut in a wall the weight of the wall above that is transposed from the original wall as it was first constructed over to the two ends, isn't it? A Correct.

Q And if there is a support in the middle, half of that is carried on that support, isn't it?
A That is correct.

30 Q Then the weight of the original wall on the foundation for that distance, twenty-eight feet wide— Is that it? Those openings are twenty-eight feet in the west wall, aren't they? A That is right.

Q The weight of that wall, twenty-eight feet, is now carried on the three points? A I don't get the twenty-eight feet. At the bottom, in the cellar?

40 Q Weight on the footings of the Voorhees building. A Yes, sir.

Rudolph Kruger, cross.

Q Now carried at three points, isn't it? A Yes, sir; two points, to be exact.

Q Isn't it carried on the southerly end of the opening, the pier in the middle and northerly end of the opening? A On the southerly end of the opening you are carrying it down the brick wall, you are not carrying it down in the pier, you are carrying it down a wall which runs out to East Jersey street—takes the entire action of that portion of it. 10

Q Isn't part of the weight of the fourth, fifth and sixth stories of the Voorhees building now transposed on the southerly end of the opening? A No, not on the southerly end of the opening. It is transposed to the entire wall on the southerly end.

Q You mean that part of that weight goes as far over as Jersey street? A Yes; the weight carries right down the entire wall. 20

Q But the bulk of it comes on the edge, doesn't it? A No, sir.

Q Is there as much weight on the part of the wall that is nearest to West Jersey street as there is on the edge? A Yes, sir; it is equally distributed over the entire wall surface.

Q That is equally true of the three feet of wall that is on the northerly end of the opening, is that right? A It is carried down that buttress on the northeast corner of the wall. 30

Q Yes. A It is carried down that part of the buttress into the portion of the north wall of the Voorhees building.

Q But there is only three feet of wall there.

The Court: You said northeast; you mean northwest?

The Witness: Yes, sir. 40

Rudolph Kruger, cross.

Q There is only three feet of the west wall left there, isn't there? A Three feet of the west wall left where?

Q On the first, second and third stories of the Voorhees building. A At a point at the northwest corner?

10 Q Northwest. A There is three feet of the west wall left, yes, sir.

The Court: Between the north wall and the first opening?

The Witness: Yes, sir; at the beginning of the opening.

Q And that carries, with the support it gets from the north wall, the same amount of weight that is carried between the southerly end of the opening and West Jersey street? A Well, that is difficult to say exactly. You have an action there above the roof of the Stein building, what we call an arch action, which is also difficult to determine the exact amount of load which is going to travel down the northwest pier and the portion which is going to run over on the wall near Jersey street.

20

Q It is substantially so, isn't it? A I don't understand what you mean by "substantially so."

30

Q Doesn't it stand to reason that there would be as much weight on that northeast corner as there would be on the other side of the opening? A Yes, yes; I see what you mean.

The Court: You mean per square foot?

The Witness: Per square foot of the wall area.

The Court: Do you mean as the structure is now?

40

Rudolph Kruger, cross.

The Witness: As it is now; yes, sir.

The Court: How much of the wall space is there between the opening and Jersey street?

The Witness: Oh, there is probably eighteen feet of it.

The Court: You mean to say that the eighteen feet only carries as much as the three feet on the northwest as a whole, not per square foot? 10

The Witness: I don't see what you mean. This portion here would carry as much as this (indicating); is that what you mean?

The Court: Yes, would the three feet carry as much of the entire weight of the wall load as the eighteen feet? 20

The Witness: Yes, sir; this pier would carry that portion of it, half on this side and half would go to the other pier.

The Court: There is eighteen feet more of foundation on the Jersey side than there is on the other?

The Witness: Pardon me; yes, but you have more weight. On that side you have openings in the south wall that went up— (interrupted). 30

The Court: Eighteen feet has got to carry more weight than three feet.

The Witness: Yes, sir, because it has so much more wall, no openings in it—the footings would carry more weight, more dead weight.

Q The three feet has six stories above it just the same as the eighteen feet has six stories above it, isn't that true? A Yes, sir. 40

Rudolph Kruger, cross.

Q And in addition the three feet has to carry half the load—withdraw that half load—has to carry an equal amount of load of the third, fourth and fifth stories above the opening that the southerly end of the wall has to carry? A Yes, sir.

10 Q Yes; now, the pier in the middle carries the weight of the wall above it? A Yes, sir.

Q And carries in addition to that, half the weight of the wall above the opening between floors, third, fourth and—fourth, fifth and sixth? A You mean the brickwork between the floors?

Q No; I didn't speak of the brickwork between the floors. I am talking about the weight of the wall above the opening, that is, the fourth, fifth and six stories of the Voorhees building. A Yes, sir.

20 Q In addition to carrying the weight of the wall directly above it, it carries half the weight of the wall of the fourth, fifth and sixth stories above the opening. A It does not. We didn't figure it that way, as I explained.

Q Where does it go to? A It arches over to the portion of that southerly portion of the westerly wall and down the pier at the northwest corner.

30 Q Haven't I already made allowance for that in saying that the two ends of the opening carry part of the weight of that wall, that arching effect? A No; it isn't figured that way at all.

Q What percentage then do you say that that pier carries of the weight of the wall of the fourth, fifth and sixth stories—what percentage?

A The way we figure the weight carried on that pier would be to draw from each corner of the opening at the top floor, that is the third floor of the Stein building, a sixty-degree angle upward

40

Rudolph Kruger, cross.

and where they meet at a point, the brickwork included, would be that portion enclosed in that triangle formed by these two lines making a sixty-degree angle, and the top of the opening would be the actual load of the pier.

Q Can you give us what that is in percentage?

A I cannot.

10

Mr. Cohn: Sixty per cent. of what? Of the weight on each side?

Q You cannot give us that percentage? A No.

The Court: It would be as sixty is to forty, wouldn't it?

The Witness: No; it depends on the amount of brickwork and the width of the opening, and you would have to draw a diagram to get your sixty-degree angle and then include that amount as the weight.

20

The Court: Sixty as to ninety, isn't it? That within the sixty-degree angle rests on the pier.

The Witness: Yes, sir.

The Court: And that outside of the sixty as to ninety on the outside?

30

The Witness: Yes, sir.

The Court: That is as sixty is to ninety, isn't it?

The Witness: Yes, sir; that is right.

Q Then there is more than half the weight above the openings that is cast on the northwest corner? A That is right.

Q And less than half on the pier? A That is right.

40

Rudolph Kruger, cross.

Q Did I understand you to say that the weight on the pier was two hundred and fifty pounds per square inch? A No, sir; I said the allowable weight on the pier is 250 pounds to the square inch.

10 Q Will you tell us what the actual weight on the pier is? A I do not recollect the exact figures.

Q How do you know that it is less than the allowable weight? Did you figure it? A I did.

Q But you can't tell us what the difference is. A I don't remember excepting that I found the piers to be overstressed.

Q Then, the actual weight is over 250 pounds, the allowable weight? A Yes, sir.

20 Q How much over? A If I recollect the factor of safety on that pier was reduced from ten to about six.

The Court: Meaning by that what?

The Witness: Meaning that—I will figure it for you in just a second. There must be about three hundred and fifty or sixty pounds per square inch actually on the pier.

The Court: And the allowable weight is two hundred and fifty.

30 The Witness: Two hundred and fifty.

The Court: How much is on it, actual weight, two hundred and thirty?

The Witness: About three hundred and fifty pounds to the square inch and you are allowed two hundred and fifty.

The Court: The actual was how much?

The Witness: Three hundred and fifty.

40 Q You say the factor of safety on two hundred and fifty pounds would be ten? A Yes, sir.

Rudolph Kruger, cross.

Q Does that mean that if the weight went up to twenty-five hundred pounds the pier would give? A It might and might not.

Q If they considered that the factor of safety the probability is it would give, is that right? A That is what we call the breaking point. Sometimes it runs over that. It depends on the construction of the pier. 10

Q A factor of safety of ten is good engineering? A Yes, sir.

Q The factor of safety of six is not good engineering? A No; it wouldn't be called the best engineering.

The Court: You say six is not?

The Witness: Six is not the best engineering factor, but, as I explained before, the conditions at that particular point you would never load up where you would have to go anywhere near the factor of safety of six. You couldn't load up that point with a load sufficient to get it up to the breaking point, I say, under these particular conditions as they exist. It isn't dangerous, although it is not good engineering practice. 20

Q When you figure three hundred and fifty pounds as the present weight you are referring to the dead load? A I am referring to a combined load. 30

Q Didn't you say the live load would be a hundred pounds? A That is right.

Q And then does it follow that the dead load is two hundred and fifty pounds and live load a hundred pounds, making your total of three hundred and fifty pounds? A I think you are confused as to the live load and the dead load. The 40

Rudolph Kruger, cross.

two hundred and fifty pounds per square inch is the pressure allowable. It doesn't necessary follow that the live load is a hundred and the dead load two hundred and fifty. As a matter of fact our dead load is very small on the floor compared with the live load. The dead load is the floor beams and floor which might run about thirty or
10 thirty-five pounds at the most.

Q In figuring the weight that this pier must carry, you have to figure both dead and live loads, don't you? A That is true.

Q Does the three hundred and fifty pounds include both? A I still think you are confused. Three hundred and fifty means stress and not a load. When you say three hundred and fifty pounds to the square inch you are referring to a
20 stress on that pier due to all the loading on the building at different points.

Q Isn't the stress with reference to weight? A Stress is not weight. Stress is caused by weight.

Q In determining stress have you included the live load as well as the dead load? A I did.

The Court: Do you know what he means? Do you know what is in the witness' mind? The distinction that he draws?

30 Mr. Whittemore: I don't think I quite get it.

The Court: I do not.

Mr. Whittemore: I think it will probably involve a course of engineering to bring it out.

The Court: Try it and see if you can.

Q When you speak of stress, are you referring to both horizontal and vertical force? A
40 Yes, sir; it might be either or both.

Rudolph Kruger, cross.

Q How do you apply three hundred and fifty pounds stress to a horizontal force? A Do you mind if I explain it in my own way? You take a load, for instance, coming down to the point on a brick pier of twenty-five thousand pounds and the allowable stress on the brickwork is two hundred and fifty pounds per square inch. If you divide two hundred and fifty into twenty-five thousand you get a hundred square feet—a hundred square inches of brickwork required to sustain that load. Now, the total load on the pier makes the stress. The allowable stress on a pier at breaking point is twenty-five hundred pounds, the factor of ten gives you an allowance of two hundred and fifty pounds per square inch allowed on the pier, and, as I say, you have a load of twenty-five thousand, divide two hundred and fifty into twenty-five thousand gives you a hundred square inches required; that would mean you need a pier twelve by twelve which—or eight by twelve, which would be sufficient to carry that particular load.

Q Then stress has relation the horizontal area?
A Horizontal area is determined by the street.

Q But if you have the horizontal area fixed to begin with, you then determine the stress from that, too? A You work backwards.

Q Work backwards? A That is right.

Q Now, in fixing this as allowable stress, two hundred and fifty pounds, you are using the horizontal area of this pier as the basis? A That is right.

Q And as a matter of fact, the weight that would be allowed to stand on this pier is two hundred and fifty pounds, based upon the size of the pier per square inch? A Yes, sir; that is right.

Rudolph Kruger, cross.

Q If the pier were larger, the allowable stress might be greater? A If the pier were larger the allowable—the stress which we find would be nearer two hundred and fifty. The larger you make your pier the nearer you are going to approach the two hundred and fifty.

10

The Court: The allowable stress, however, is standard.

The Witness: Is standard; yes, sir.

Q In figuring the allowable stress at two hundred and fifty pounds have you figured on a bonded pier? Do you know what I mean by a bonded pier? A Yes, sir.

20

Q Tell me what it is? A A bonded pier is a pier on which you placed either a blue stone or perforated steel plate at intervals in the pier so as to distribute the entire weight—the weight over the entire brickwork.

The Court: Surface?

The Witness: Surface; yes, sir.

Q Have you figured on such a pier? A No, sir.

30

Q Such a pier is very much stronger than this pier, isn't it? A Yes; it might be.

Q Well, it is very much stronger, isn't it? Isn't the stress that is allowable very much more than for this pier? A I wouldn't say in this case, for the simple reason that it is old—well, already set and a homogeneous mass; in the other case, where you build an isolated pier, you do not get that condition, when you have the openings—where you know you have openings beforehand and where you take care of them.

40

Rudolph Kruger, cross.

Q As a matter of fact, what does the table show with regard to a bonded pier—don't they show the allowable stress very much higher than an ordinary pier of ordinary brickwork?

The Court: New.

Q When you are designing a building aren't you allowed to place a greater weight on a bonded pier, new or old, than you can on a pier made of the ordinary brickwork? A Yes, sir.

10

Q Now, what allowable stress have you taken, the allowable stress on a bonded pier or on a pier of ordinary brickwork? A Pier of ordinary brickwork.

Q Is there a difference? A There might be a slight difference.

20

Q Can you give me what stress is allowed on a bonded pier? A It depends on which particular building code you are working on; some codes allow you more and some building codes allow you less.

Q What is the standard practice? A Standard practice depends on the code under which you are working. When you design a building you have to follow the code as to load and stress.

Q Standard practice and good engineering practice? A Two hundred and fifty is considered good practice.

30

Q On a bonded pier? A Yes, sir.

Q Then you would place the same weight on a bonded pier that you would on a pier of ordinary brickwork; is that right? A Depending on the conditions.

Q Under these conditions that exist in the Voorhees building? A Bonded pier would be better.

40

Rudolph Kruger, cross.

The Court: If new or old. You just a moment ago commented on this pier being old and for that reason stronger and set.

The Witness: I do not see—(interrupted).

The Court: Now, what do you mean?

10 The Witness: I don't know what you mean.

The Court: You said because this was a homogeneous mass you differentiate, as I understood you to say, from a new building just put up?

The Witness: Yes; that is right.

The Court: Does your answer still hold?

20 The Witness: I think in this particular case if you had to take that pier out and build a new brick pier and bond it—(interrupted).

The Court: You think bonded would be better?

30 The Witness: No; I think this pier would have been better for any building. If we had to take that pier out and build a bonded pier in there, you would have to shore it up and shimmy it up and you wouldn't get as good a condition as you have got now.

The Court: If you put a new pier there altogether you would prefer to put in a bonded pier?

The Witness: Yes; if I put in a new pier, I would put in a bonded pier.

The Court: Much stronger than a new pier not bonded?

The Witness: Yes, sir; that is true.

Rudolph Kruger, cross.

Q So you think you done better by leaving that old pier in than you would if you put in a bonded pier? A Yes, sir.

Q Did you put in a row of brick around that pier to bind it in place or reinforce it in any way before the work was finished? A No, all we did was to fill in on the edges, which were cut in cutting the opening. 10

Q To make good edges? A That is right.

Q Wouldn't it have strengthened that pier if you had built brickwork around it? A No, it would not. The mere fact of putting, say, four inches of brick all around it wouldn't tend to strengthen the pier, the brick would have to be bonded in with the pier.

Q Wouldn't you do that? Wouldn't that be proper practice? A Not unless I built the pier twelve inches all the way around it and bound it in with the present pier. 20

Q Would that have been the proper thing to have been done in this case? A No; I wouldn't have done it in that way if I were designing the building.

Q What way would you have done it? A What I would have done if I wanted to make that size opening would be to put a small column on the edge of the opening to carry the load all the way down to the basement floor. 30

Q That was not done? A That was not done.

Q The columns at the northwest corner were constructed as to design, were they not? A To my recollection they were not. I think there was a combined footing put in that particular place. I don't remember exactly what happened.

Q The design calls for separate footings for each one of those columns? A Yes, sir. 40

Rudolph Kruger, cross.

Q And you combined them into one? A My recollection is that we did, that the combination footing extended from the pier in the north-west corner to the southerly pier—to the column in the Stein building—the southerly pier in the Stein building.

10 Q Column 20 is that northwest corner, isn't it?
A That is so.

Q Column number 12 is located in the middle of the Stein building, approximately half way across the width of the Stein building, is that right? A That is right.

Q In order to combine the footings of those two columns you had to run a solid footing about twenty feet long or more—a little more than twenty feet long, didn't you? A A distance of
20 about eighteen feet.

Q Eighteen feet? A Yes, sir.

Q And column 20 set on one end of it and column 12 set on the other end of it; is that true? A Yes, sir; that is right.

Q In building the footing; that footing that you have described, to what extent did you cut into the wall of the Voorhees building? A Wasn't cut in at all. That is the idea of designing that type of a footing.

30 Q How close to the Voorhees wall did it go?
A Probably against the wall.

Q Was the end of that footing absolutely vertical or did it slope? A Why, I don't remember the exact condition. You see, we build a form for the footing of the pier and the sides of the footing are naturally vertical when you are building the form.

Q And the other footings were not vertical, they sloped, didn't they?

40 The Court: What other?

Rudolph Kruger, cross.

Mr. Whittemore: Footings under the other column.

The Witness: I do not recollect the exact condition of those other footings.

Q They are so designed, as sloping, aren't they? A Very often they may be designed as sloping, but—(interrupted). 10

Q In this case. A It is impossible—it may be designed as sloping, but when we put them in they were put in square; very often done on a job if the contractor can save money.

Q You don't say they did that? A I don't recollect; no.

Q Was there any design drawn of this footing? A This particular footing—the reason why I think it is in there is the fact that I designed a cantilever footing or combined footing, as we call it, for this particular corner, and that is why my recollection is hazy as to whether that was put in there or not. 20

Q Did you draw the design of it? A Yes, sir; I did.

Q Where is that design? A I haven't got the design. That was done seven years ago. I am not connected with the firm any longer.

Q Where was this kept; this map we are referring to—this plan? A Where was it kept? I don't know anything about it. 30

Q Wouldn't it be natural for the design of that new footing to be with the plans? A Not necessarily. Sometimes these things are done in the office and brought right to the job; it is to prevent the contractor from holding up the job.

Q Can you say now whether or not you designed that new footing with a vertical end or a sloping end? A Vertical end. 40

Rudolph Kruger, cross.

Q Why do you say it? A Because that type of footing would be so designed.

Q Have you any recollection at this time or are you testifying of what you considered would have been your practice? A The practice would have been to be vertical.

10 Q Have you an independent recollection of how you did this? A Even if I would do it now it would be vertical.

Q Have you a recollection of how you did this work? A No; I do not recall how I did it.

Q Are you prepared to say that they did not cut into the Voorhees wall at that corner in order to set in that foundation? A I do not remember the exact conditions at that particular corner, but the footing was put in and there wasn't any need of cutting the wall.

20 Q If you can't recollect how you designed it, how can you say there wasn't need for cutting the wall? Are you just testifying merely from your practice? A In designing a footing of this type, which is a special type footing, we have to look to our notes to design the footing; it can't be done from memory, because we do not get many occasions like this on the job. The ordinary type of footing can be designed from memory, but practically in all cases we design

30 from hand books and from notes.

Q And you are saying that because it would be your practice to make that straight edge, therefore you think it was done in this case? A That is right.

Q But you are not able to testify from special recollection of this particular thing? A I am not; no.

Q In placing that footing did you go deeper than the wall of the Voorhees building? A Deeper than the wall?

40

Rudolph Kruger, cross.

Q The footing of the Voorhees building? A I don't think we did.

Q You don't think so? A It wouldn't be good practice to do it. If you did that then— if you got below them—then you would have to underpin the Voorhees building to the same depth of this footing.

10

Q In the case of the footing under column 17A did you go below the footings of the Voorhees building? A In that case I think we did.

Q Did you go below the footings of the Voorhees building in the case of the footings under the other columns around the building? A I don't think we did, because the floors are level of both buildings and the loading on these columns is much less on the three story building, than they would be for the six story building.

20

Q You are aware of the fact that there would be an extraordinary amount of weight cast on this northwest corner? A Due to what?

Q Due to the cutting of the openings? A Yes, sir; there would be a weight cast onto it.

Q Did you make any preparation in the depth of the footing in the northwest corner to take care of that extra weight? A You are talking about designing footings in the northwest corner, aren't you, of the Voorhees building?

30

Q Of the Stein building?

The Court: No, on the northwest corner.

Mr. Whittemore: Footings of the Stein building at the northwest corner of the Voorhees building.

The Witness: You are referring to the load of the Voorhees building?

Mr. Whittemore: Yes.

40

Rudolph Kruger, cross.

The Witness: The load of the Voorhees building would have nothing to do with the footing for the columns of the Stein building.

10 Q Wouldn't it have something to do with it with regard to the amount of weight cast on the soil at that point? A Not with the footing, no.

Q You mean to say that it is perfectly all right to cast an extraordinary amount of weight from two buildings on soil, contiguous to each other, without making any preparation for it? A I don't get what you mean. The upward pressure of the soil is assumed to be a certain number of thousand pounds per square foot. Now that upward pressure is the same regardless of the load above.

20 Q If you have a pressure already cast on the soil at a certain point and you are going to add to that almost double, the weight of another building, on the soil, immediately next to it, don't you have to make extra preparation? A No, sir; the only preparation we have is in the footings themselves.

The Court: For the building being erected?

30 The Witness: Yes, sir. We disregard the building alongside.

The Court: He wants to know whether you didn't provide some lateral support for the building already up.

The Witness: Not necessary.

40 Q In other words, don't you have to go deeper where you have that extra weight put on the soil approximately at the same point? A No, because depth is not taken into considera-

Rudolph Kruger, cross.

tion when we consider load coming down from a building onto the footing. We consider width, number of square feet of footing covered. The depth doesn't matter; the depth varies. You could put a house footing in two feet deep and if you reinforce it with steel you have to only go one foot deep. 10

Q Have you any recollection as to the depth which you put that building at the northwest corner? A I have not.

Q You may have put it deeper? A I wouldn't have put it deeper.

Q You wouldn't, but I say you may have, owing to the fact that you cannot say whether you did or not? A That is possible.

Q If you did put it deeper you disturbed the soil at that point, didn't you, and deprived the Voorhees building of some of the lateral support of that soil? A Yes, sir. 20

Q And, if, as a matter of fact, the foundation was cut into that northwest corner on the Voorhees building, you disturbed some of the support that the Voorhees building originally had, didn't you? A If it was cut into.

The Court: It is claimed by your people that the northwest was cut in at the corner about four or five inches. 30

Mr. Whittemore: The design shows eighteen inches, diagonally across that corner.

The Court: East and west.

Mr. Whittemore: It would be northwest and southeast across the corner.

The Court: The cutting in from Pier 20 to Pier 12 under the foundation—under those two piers— 40

Joseph Di Stasio, cross.

Mr. Whittemore: Not under two piers. Pier 12 is fifteen feet away.

The Court: A continuous footing?

10 Mr. Whittemore: Yes, sir. That is not the way it was designed. It was designed showing diagonal footing under Column 20 across the corner of the Voorhees building, partly on the Stein property and partly over on the Voorhees property; that is where the Stein property made a turn. The design was more or less proper except it disregarded the rights of the Voorhees property.

The Court: The map shows Pier 12 directly east?

Mr. Whittemore: Yes.

20 The Court: The foundation, where it intercepted your wall was from Pier 12 to Pier 20. What do you mean by diagonally into your wall?

Mr. Whittemore: The evidence upon the hearing was that they cut into the wall at that point.

The Court: Took the corner right off.

30 Mr. Whittemore: Cut under it the same as they did with the other footing. The point I am making now is that they disturbed the virgin soil there and deprived the Voorhees corner of some of this support.

Q Now, about these cracks, Mr. Kruger. If the crack is wider at the top and comes down to a hair line, it signifies that there is a settlement one side or the other of the crack, doesn't it? A Maybe just one side, may not be; one side or the other.

40 Q One side or the other? A Either or both.

Joseph Di Stasio, cross.

Q The fact that an opening was cut almost directly under a crack of that kind that has its widest part at the top, leads to the natural conclusion that the opening caused it, don't it? A No, sir.

Q That would be one conclusion anyway, wouldn't it? A Possibly. 10

The Court: In the absence of any other cause?

The Witness: Any other theory.

The Court: Any other cause?

The Witness: Or cause.

The Court: Observable cause.

Q What other cause is there for this crack in the north wall? A It might have been a settlement of the Voorhees building itself before the Stein building was ever built. 20

Q Have you any reason for saying that it was a settlement of the Voorhees building before the Stein building was constructed? A Not excepting that practically every building settles and shows some signs, slight cracking of different kinds.

Q And a six-story building can crack at the top from a sixteenth of an inch to a quarter of an inch as a matter of ordinary experience? A Yes, sir; ordinary settlement of the building. 30

Q Have you any reason for saying it was caused by settlement rather than by this opening? A Excepting that the crack looks old and not new; that is the only reason I could give at this time.

Q This crack fifteen feet from Broad street I believe you said you could not get close enough to see whether it was old or new? A That is right. 40

Rudolph Kruger, cross.

Q So as long as you don't know whether it is old or new, it might just as much been caused by the cutting of the opening as by the settlement of the Voorhees building for all that you can say? A In my opinion if that was caused by the cutting of the openings, the cracks would have run down almost to the opening and not stop up at the fifth floor where it has.

10 Q That is the reason that you give for saying it was not caused by the opening? A Yes, sir.

Q I think in your testimony you said that the openings were only cut at the floor line, is that right? A I don't get what you mean "floor line."

Q From your first statement that the openings were only cut at the floor line? A That is right.

20 Q Aren't you mistaken about that? Wasn't there an opening cut in that wall that was continuous from the basement up to the third story of the Stein building? A You mean that the whole opening was taken out altogether?

Q Yes. A No, sir.

Q Will you swear to that?

The Court: He is doing that.

30 Q Are you absolutely certain of it? A Well, there are steel lintels across there to carry the brickwork. The plans show that.

Q Are you absolutely certain any brickwork—any of the original brickwork was left in at the floor or ceiling lines of the first, second or third stories? A That I can't say.

Q Don't you know that the entire opening was taken out and steel beams were put in at the floor lines? A I know there are steel beams at
40 the floor line.

Rudolph Kruger, cross.

Q And no brickwork? A I don't recollect that at all.

Q Do you say that there is any brickwork?
A I couldn't say offhand; I don't remember.

Q If there is no brickwork then I am correct in stating that the whole thing was cut out for the three stories? A If there is no brickwork, yes, sir. 10

Q Have you examined to see if there was any brickwork? A I didn't break into the building, no.

Q Is it possible to tell it by an examination as the building now stands? A Yes; certainly.

Q Could you tell from what you see that the ceiling line is plaster or whether it is brickwork? A By observation?

Q Yes. A No; you can't tell the difference. 20

RECESS.

Mr. Stein: I offer the building code of the City of Elizabeth in evidence.

It is admitted that the original building code of the City of Elizabeth, Section 20 reads "The load exerting pressure under the footings of the foundations in buildings more than three stories in height are to be computed as follows: with store houses and factories they are to be the full dead load and the full live load established by Section 27 of this code; in stores and buildings for light manufacturing purposes there is to be the full dead load and seventy-five per cent. of the live load established by Section 27 of this code." Section 27 reads: "Walls for 30 40

Rudolph Kruger, cross.

10 warehouse class, the expression 'walls for warehouse class' shall be taken to mean and include walls for the following buildings (among which is included stores) brick walls minimum thickness in inches, six story buildings, foundation wall twenty-eight inches, first story twenty-four, second twenty, third sixteen, fourth twelve, fifth twelve, sixth twelve."

Q The crack— A crack through the brick-work breaks the bond of the masonry, doesn't it?

A If the crack is through and through the wall it does.

20 Q When there is such a crack it interferes with the distribution of weight, does it not? A Possibly. No way of determining it.

Q When there is such a crack it has a tendency to magnify the lateral vibration? A Well, that is very hard to prove it.

Q The wall on each side of the crack can vibrate independently, can't it? A I don't know. That is highly theoretical.

Q You don't know. That is all? A No, I do not.

30 Q In calculating the weight of the west wall did you take into account the weight of the tank and contents of water on the roof supported on the west wall? A On the Voorhees property?

Q On the Voorhees property? A I think I did.

Q You don't know? A I am not positive.

Q When you testify here as a witness and you want us to accept your testimony can't you tell whether you did or not? A No; I did not.

40 Q You did not? A No.

Rudolph Kruger, cross.

Q Have you any idea how much superadded weight there would be on account of the tank and the weight of the water in the tank on that wall?

A Not unless I knew the exact size of the tank.

Q Don't you know the exact size of the tank?

A I do not.

Q You were there when the tank was put up? A Not on the Voorhees property. That was put up when the Voorhees building was built. 10

Q You were there when the tank was on the Voorhees property—you saw it, didn't you? A Yes, sir.

Q Was there plaster on the inside of all of the walls of the Voorhees building on the fourth, fifth and sixth stories? A On the west wall?

Q On the inside of the wall of the Voorhees building on the fourth, fifth and sixth floor? A Yes, sir; on the store side there are—on the Voorhees side of the fourth, fifth and sixth floors. 20

Q Was there plaster on the west wall of the Voorhees building on the inside of the sixth story? A On the inside of the sixth story? No; there was not.

Q What crack did you see in under the windows on the sixth story? A Cracks, as I explained before, running down from the window. 30

Q And those are not plaster cracks, are they? A No.

Q Then why did you tell us a moment ago that the cracks you saw were plaster cracks? A Well, because the cracks we did see were plaster cracks, those portions of the wall which were plastered.

Q The sixth story wall is not plastered, is it? A No.

Q If there are cracks there they cannot be plaster cracks, can they? A No. 40

Joseph Di Stasio, direct.

Q And there are cracks there, aren't there?

A Yes, sir.

JOSEPH DI STASIO, sworn for defendant.

10 *Direct examination* by Mr. Cohn.

Q What is your occupation? A Consulting engineer.

Q Where do you practice your profession? A My office is in New York.

Q Where were you educated? A Columbia University.

20 Q Graduate of that University? A Yes, sir.

Q How long have you been engaged in the business of being a consulting engineer? A Well, I graduated in 1913, about fourteen years. Of course, I have my own office about five years for myself; previously to that I was chief engineer of the Colman Steel Company and Faugner Concrete Steel Company, New York City.

30 Q You didn't have any part in the original construction of the Goerke-Kirsch store in Elizabeth? A No, sir.

Q Did you visit the premises recently? A Yes, sir.

Q When? A Yesterday.

Q Did you make an examination of the interior and exterior of the building? A Yes, sir.

40 Q Did you make a sketch showing the building in panels and location of columns; the two buildings, I mean? A Yes, sir.

Joseph Di Stasio, direct.

Q You made all these sketches based on the plans? A Based on the plans that we had.

Q With reference to Columns 17 and 17A will you tell us what would be proper engineering practice to follow for the replacement of the wall which was taken out when the Column 17 was inserted—installed on the Voorhees property? A Well, you mean any one method? There are—there may be various methods. 10

Q What would you consider a good method? A Well, we will build a new foundation wall where the old foundation wall was, including the footings for the same, and I would allow column 17 to remain in place as temporary shoring, and in building this brick wall we could shimmy up to make sure that the new portion of the wall will carry this part of the stress—in other words, it would relieve the stress from column 17, and after all the openings are bricked up, column 17 wouldn't be necessary any more; you could either brick it up in the wall or take it out. 20

Q Is there anything difficult about that construction work? A It is ordinary practice; we do it on shoring up the building always.

Q Now, did you inspect the wall at the northwest corner of the Voorhees building? A In which way, interior or exterior? 30

Q Did you inspect it on the interior? A Yes, sir.

Q How about the exterior? A Well, I looked at it from the roof of the Stein building; that is on the corner of the wall there.

Q Did you make any calculation as to the weight that that wall or pier is now carrying? A Yes, sir. I want to qualify that by saying that it is not an isolated pier. It is the buttress of a wall, and we make calculation on that. 40

Joseph Di Stasio, direct.

Q Can you briefly describe what the physical appearance of the building at that point is? A It is in perfectly good condition.

10 Q And it consists of a wall which is about three feet wide along the west line of the structure and continues on out at right angles and then northward for the entire length of the wall up to Broad street; is that correct? A That is the north wall of the Voorhees building.

Q Do you consider that that northwest wall or pier or buttress safely carries all the loads that are imposed upon it? A Yes, sir; the stresses are well within very good engineering practice at that point.

20 Q How do you arrive at that opinion? A Why, we—when I say “we” I mean my office and myself—we calculated all the loads coming on that corner and assumed a cross-sectional part of the wall that we assumed is just a buttress, although the north wall itself will help carry all that load by virtue of its continuity—like a cantilever.

30 Q Tell us the details generally which go into your calculations. A Well, we assume—we make calculations of the exact dead load and then added the live load as per code, which the Elizabeth code is a hundred pounds per square foot; the dead load of the Stein building was assumed, the metal joist system or metal lumber, and of the Voorhees building we assumed ordinary wood joist flooring, ceiling and so forth; we reduced these calculations down to a square foot, intensity of pressure per square foot—tons per square foot, and the pressure at that corner varies from about eleven to fourteen tons. In that class of brickwork on that pier it would be
40 very good practice to allow eighteen tons per

Joseph Di Stasio, direct.

square foot according to the New York code or Newark code or very good engineering practice.

Q You remember this pier or remnant of the wall that stands by itself in the west wall of the building? A Yes, sir.

Q What did you find as to the appearance of that remnant, all the way up from the bottom? 10

A Well, in the basement story, the wall—the basement wall itself has not been removed immediately under that pier except that there is two small openings about six feet wide—about seven feet—about fifteen feet each side of the center line of the pier above; at the first, second and third stories there are openings there which were about twenty to twenty-one feet according to the plans. The pier itself is plastered. I found no cracks—no structural cracks on the pier; however, on the inside of the Stein building adjacent to the brick pilaster supporting the Voorhees building there is a steel column and there is a plaster crack—a vertical plaster crack between the brick pier supporting the Voorhees building and the steel column supporting the Stein building, which is, as we may expect, on account of the variation of the plastering on the brickwork and on the terra cotta or natural expansion and contraction. 20

Q You mean wherever you plaster on brick wall and attach it to the brickwork and there is plaster on different kind of material as there would be on the plaster in this case, on tile surrounding the steel column, because of the plaster being on two types of material—(interrupted). 30

A You are apt to get cracks there. You have them, for instance, if you have metal lath and brick unless you take special precautions. It is not general, but you can expect it. And this also 40

Joseph Di Stasio, direct.

may be due to settlement of the new Stein building. The nature of the soil, bearing soil—is that before they can support any load they press, and in an old building you have already this initial settlement. A new building, as you build it up, may settle. Just the same as when we take
 10 a test to ascertain the bearing power of soil, for instance, we may load up—we may take a post four square feet and load that up, say to twelve tons, three tons to a square foot, while we are doing that the post will settle—it may settle an eighth or a quarter of an inch, depending on the character of the material. You get the same thing on all new buildings that are built on soil. Of course on rock you do not get any appreciable—you may not get any settlement on
 20 rock, but on soil it depends on the character. If it is very wet clay you may even slip.

Q Did you examine this remnant of wall on the second floor with a special eye to whether it bulges? A It seems that that wall there is out of plumb and my opinion is that the original wall was out of plumb.

Q Would you regard that pier as having bulged by reason of the making of the openings? A No. It is not the nature of brick piers to bulge like a steel column when weakened by load;
 30 brick piers before they bulge will crack.

The Court: Disintegrate?

The Witness: No; crack. Mr. Kruger brought out the point when he said it would crack like a stick. It will even explode—make a noise.

Q It would not bend? A It would bend, but you would have to determine the bending under
 40

Joseph Di Stasio, direct.

instruments. You couldn't see. If that pier bent an inch it would continue to go until it would be—it would come to ultimate failure.

Q Would the fact that the pier has been standing five years have any influence on the subject that it has never bulged or bent as a result of the opening? A As I have said I don't think a pier can bend; it is not that kind of material that will bend. I want to qualify that by saying it wouldn't bent like you could see it on a job, where it is about an inch. It would fail before it will bend an inch, on that height. 10

Q Did the installation of the horizontal beams have any effect to distribute the load caused by the opening? A You mean it will take the load to the pier?

Q Yes. A That is their purpose, to pick up the floor load and wall load and distribute them to the piers and buttresses. 20

Q Now the practice which was followed of allowing the foundation wall to stand practically intact with the exception of two small openings, could that fact affect that redistributing of the load so far as this pier is concerned? A You mean on the soil?

Q On the soil. A Well, yes, because the brick pilasters start at the first floor line and the opening—I am talking about the center pier—the opening is about fifteen feet each side of the center line of the pier, and the force coming from that pilaster first goes on the brick wall and then they distribute themselves in maybe sixty to forty-five degrees to the footing. In other words, the pressure will not be concentrated under the pier but will be redistributed again under the walls, and this distribution may not be uniform, however. 30 40

Joseph Di Stasio, direct.

Q Did you calculate the amount of stress on this pier? A We figured the stress; yes, sir.

Q What do you find? A We found about nineteen tons per square foot, which is—oh, about two hundred and sixty or sixty-five pounds to the square inch.

10 Q You found that slightly overstressed? A For that character of pier I do find that it is overstressed.

Q That is the pier in the west wall? A Pier in the west wall. It is stressed, under the assumption of full live load, as I said before, if the floor was loaded to a hundred pounds per square foot throughout the contributory area that is carried by that pier.

20 Q What factor of safety did you assign under these circumstances? A Well, it is considered good engineering practice on masonry to lay a factor of safety from around ten—(interrupted).

Q What factor is present in the case of that pier in its present condition? A Well, we had a load of about nineteen tons per square foot and if we allowed ten to twelve tons per square foot in that class of masonry, which is good practice—ten to twelve tons.

30 Q What would be the equation of the factor of safety which results from your last answer? A Now that pier is good for ten tons. Assume ten tons to the square foot. Before rupture we have to carry a hundred tons. We have nineteen, and there is a factor of safety of a little over five, see?

40 Q So that you do not regard the building—that portion of the building which is imposed on the pier as being unsafe at this time? A Not with the live load that we have used, for the

Joseph Di Stasio, direct.

simple reason that that factor of safety of ten is applied both on the dead load and live load.

Q The dead load does not change? A The dead load does not change; therefore, if you take the pilaster between the second and third floor we get a total load on that of about two hundred and sixty-six thousand pounds, of which, a hundred and ninety-five thousand is dead load, seventy-one thousand is live load; the area of the pier at that point is approximately twenty inches thick by fifty inches wide, or one thousand square inches. Allowing ten tons to the square foot it would mean before rupture the pier would have to carry fourteen hundred thousand pounds; if we deduct from the fourteen hundred thousand pounds a hundred and ninety-five thousand pounds dead load, which can never increase, that is, unless you change the character of the building, there remains one million, two hundred and five thousand pounds. If the live load is seventy-one thousand pounds we have a factor of safety of seventeen. In other words, you would have to take—you would have to take your live load of a hundred pounds and multiply by seventeen or put seventeen hundred pounds per square foot on that floor before you would get to the rupture of the brick pier.

10

20

30

Q Did you examine the exterior of the north wall? A Yes, sir.

Q Of the Voorhees building? A Yes, sir.

Q What did you find? You examined it, by the way, from the roof of the Stein building?

A I did.

Q And what did you find with reference to any cracks? A I saw two cracks. One was located—may I scale it?

40

Joseph Di Stasio, direct.

Q Yes. A About sixteen feet from Broad street building line and the other is about seventy-six feet from the Broad street building line. These cracks start, as pronounced cracks, from the coping—roof coping—and extend about two stories; that is, to about the floor line of the
10 fifth floor.

Q Can you venture any opinion as to the age of those cracks? A Those cracks may occur from a lot of unknown reasons—from natural settlement of the soil, from stress—overstress; that is in the one case, for instance, on the crack furthest away from Broad street. They have a pent house there and the crack is immediately under the sill beams supporting the pent house. It seems to me that that crack might have been
20 started by crushing at that point; there is sign of crushing right under that bearing beam. I noticed it—overloading at that point, you can call it.

Q That is where the staircase leads up into the pent house? A Yes, sir. When I examined these cracks I took particular precaution to see how close they came to the opening. There is an opening on the third story of the Voorhees building going into the Stein building. That
30 first crack which is eighteen feet away from Broad street is very close to that line and does not extend through the fourth story. In other words it does not come down to the window opening. Due to that I would not attribute this crack to the opening itself. The other crack which I said was farthest away from Broad street, also looks like a very old crack.

Q There are no openings under that crack which you described as being seventy-six feet away from Broad street? A There is an open-
40

Joseph Di Stasio, direct.

ing on the third floor which is about ten feet away, according to the plans.

Q Ten feet further west? A West.

Q How large an opening is that? A I didn't pay very much attention to that because I had about made up my mind that the openings had nothing to do with the cracks, that the cracks were ordinary settlement cracks of a six-story building bearing on soil. 10

Q Now, with regard to the west wall. You have examined the exterior of that wall from the roof of the Stein building? A I did.

Q Were you able from where you stood to discern any cracks in the wall? A I looked very carefully because I wanted to find cracks there—I expected to find them there, and I must say that I could not. I looked closely, but I was not close enough to it. I was on the roof looking up. But the other cracks on the north wall I discovered them the same way. 20

Q Using the same method you discovered the north wall cracks but not the west wall? A Not the west. There is no way of getting up on the wall, and it is painted and very difficult to tell unless you made a very minute examination. I really looked for them there.

Q Did you find any cracks on the interior of the west wall? A I did, at the window sills, mostly. 30

Q Can you describe these cracks as to length and character? A Well, to me they looked like—the cracks started in the plaster, but to me they looked like structural cracks that might have went into the brick wall. I assumed they went into the brick wall, as a matter of fact, and that is why I looked for them on the outside, but I could not see them on the outside. 40

Joseph Di Stasio, cross.

Q What have you to say as to the age of those cracks or the cause? A Well, the cause may be due to settlement may be due to over-stressing of the lintels; it may be due to improper shoring during the construction, when the openings were made, but in my opinion they are not
 10 due to any bulging in the pier, because I do not believe a pier could bulge enough; before the pier could bulge enough to produce cracks, the pier would fail.

Cross examination by Mr. Whittemore.

Q The outside wall, you say, is painted, is that right? A Yes, sir.

Q Could you tell whether that was the first coat of paint? A I don't think so, to me. It
 20 looked to me as if there was old paint there—might have been several coats, it looked as if it might have been painted over again. I couldn't tell you.

Q And when a painter is engaged in painting a wall of that kind when they find cracks in them they paint them up, don't they? A They usually do that, sure.

Q So that there may have been cracks in this wall that you can't see now, after they are
 30 painted up?

Mr. Whittemore: I want to bring out that there was work done on the outside of the wall to prevent seeing the cracks.

Q Did you go on the sixth story of this building? A We walked through the sixth story; yes, sir.

Q And there is no plaster on the sixth story,
 40 is there, on the west wall? A I do not recall,

Joseph Di Stasio, cross.

but I recall that on the north wall where the stairway is there isn't any plaster, because I noticed that the north wall cracked under the pent house through there.

Q I am referring now to the west wall; that is unfinished, isn't it, and left as a storage space?

A I do not recall. I don't know whether it is plastered or not. 10

Q But the cracks that you saw there on the fifth and fourth floors below, you say are structural cracks? A They are through the wall; they don't look like plaster cracks; they look as though they may go through the brick wall.

Q Could you in any place see daylight through those cracks? A No, sir.

Q Could you see any evidence of those cracks having been filled up to keep out the cold air and wind? A Not on the inside; no, sir. 20

Q In calculating the allowable weight on this pier, did you take into account that it was not a newly built pier, but was a fragment of an old wall? A I don't see what that has to do with calculating of weight.

The Court: Answer the question.

Q I asked you if you did take that into account? A I don't understand the question. 30

Q (Question read.) A You mean allowable stress there, then I will understand you.

Q Yes. A Yes, sir.

Q Did you allow—did you consider that a fragment of an old wall is entitled to be given as much allowable stress as a newly built pier with the bricks properly bonded in together?

A No, sir; I did not allow—I only allowed a hundred and forty pounds to the square inch on that, which is about ten tons. 40

Joseph Di Stasio, cross.

Q Then a newly built pier, built as a pier should be built, would be entitled to carry a greater stress? A According to the code and according to the recognized practice, yes, sir.

Q Have you allowed the same stress on this pier that you would allow on a continuous wall?

10 A I did not, no.

Q Would a continuous wall have a greater or less stress? A You mean allowable stress?

Q Greater or less allowable stress. A In Portland cement brickwork we allow two hundred and fifty pounds standard; that is about eighteen tons per square foot. On this pier—remnant of pier, figuring the resisting capacity I only allowed ten tons—ten to twelve, I said. When I figured the proportion of live and dead loads, I only allow ten tons; in other words, a
20 little over fifty per cent. of the other—I allow.

Q On what do you base your right to allow the ten tons per square inch that you have used, your own judgment or some established practice? A It is pretty—it is my experience and other—what other authorities quote.

Q Is there an established practice with regard to the use of a fragment of a wall or pier? A It isn't established, but when we do have occasion to use remnants of old piers about ten tons,
30 a hundred and forty pounds to the square inch is pretty well recognized. Now you take an old lime wall that we don't know anything about; I remember in Jersey City, way back now I can't tell you; we used to allow a hundred pounds, which is ten tons. This is Portland cement cement and mortar.

Q The size of this fragment of wall is reduced to what would be the dimensions of a pier, isn't it? A It is a pilaster.
40

Joseph Di Stasio, cross.

Q Well, is a pilaster the same as a pier?

A Yes, sir.

Q It wouldn't be called a wall any more, it is really a pier, instead of a wall? A I classified it as an isolated pier when I started.

Q Is it good workmanship to use the fragment of a wall for a pier? A It isn't the best engineering practice that can be done if you reduce your stresses. We do it. 10

Q You are a practical engineer engaged in building? A Yes, sir.

Q Have you specified in alteration work the use of a fragment of wall of this dimension? A Yes, sir.

Q To carry a weight as great as this? A What's that?

Q I want to know if you would do this? A For this particular job or jobs in general? 20

Q No, general jobs, would you specify that?

A On a general job if I had occasion to use the remnant of a pier and reduce my stresses and I thought the stresses weren't—that is the stresses were only about ten tons to a square foot I would do it, yes, sir.

Q Have you done it? A Yes, sir; I have done it lots of times.

Q In other places? A Yes, sir.

Q And you considered it good workmanship? 30

A I didn't say that. I said when occasion arises and I reduce my stresses; yes. I do consider it good practice.

Q You think it is good practice and good workmanship in this particular case? A In this particular case I do not because the pier is overstressed there. I told you that.

Q Have you made any allowance in your stresses or loads on that pier for the weight 40

Joseph Di Stasio, cross.

of the tank and contents of water on the west wall of the Voorhees building? A There are two tanks there, one on the Stein building is carried independently and the other on the Voorhees building. There is about ten thousand pounds. We allowed for one tank there. I don't
 10 know the exact capacity, but we took—I think a five thousand gallon tank or something like that.

Q Did you include it in your calculation? A Yes, sir; I added it on.

The Court: Tell me this. You say this isolated pier is overstressed. What do you mean by that? Overweighted—too much weight on it?

20 The Witness: If all the live load that we figured and the dead load would come on that pier it wouldn't have the factor of safety of one to ten, which is good engineering practice. It would only have the factor of safety of one to five or five and a half.

The Court: One to what?

The Witness: One to five or five and a half.

30 The Court: I mean is it in fact overstrained?

The Witness: Now?

The Court: Yes; that is what I want to know.

The Witness: With just the dead load?

The Court: Dead load and usual live load that comes in a store of that kind.

40 The Witness: The live load we estimate is a hundred pounds.

Joseph Di Stasio, cross.

The Court: Assuming that, is it, in fact—I don't care anything about your engineering figures—but is it in your judgment in fact, overloaded?

The Witness: In accordance with good engineering practice it is.

The Court: Is it in fact overloaded so as to be in any danger? 10

The Witness: I do not believe it is in danger.

The Court: Or that there is any danger of cracking or not properly supporting the wall?

The Witness: I don't think it is in danger of cracking from the load itself, but there may be other causes that might cause it to crack. 20

The Court: Such as what?

The Witness: Adjacent operations where the foundation may settle; it would go to the weakest point of the length.

The Court: How about vibration from the railroad?

The Witness: Vibration from the railroad?

The Court: The railroad is alongside of it. 30

The Witness: I think that the vibration— Of course, I am not qualified to answer that, because I didn't see the—feel the vibration.

The Court: What I mean, in an ordinary practical sense, is that pilaster too weak to carry that load? Should there be a heavier one there? Should it be supported? 40

Joseph Di Stasio, cross.

10 The Witness: Can I answer in my own way? I am trying to make myself clear. It should be increased if you wanted to get the usual factor of safety of one to ten, but you have a factor of safety of one to five and although there is no danger of its falling, it is not recognized as an adequate pier.

The Court: Is one to five safe?

The Witness: In masonry?

The Court: Yes; I mean for a store.

The Witness: It is safe; yes, sir.

The Court: You are runing a chance?

20 The Witness: The chance is remote on account of the fact that the live load is never realized on a building. In other words, the factor of safety there is one to five with a live load of a hundred pounds. In a store of that character I do not suppose the live load amounts to twenty or thirty pounds, so you never would get that live load.

The Court: If you should get the live load?

30 The Witness: You still would have a factor of safety of one to five which you may run a chance, because masonry, of course—brick masonry—isn't as reliable as steel.

The Court: What would be the result of that chance?

The Witness: If anything happened?

The Court: Yes.

40 The Witness: If anything happened—if the pier started to give or anything gave it would all give.

Joseph Di Stasio, cross.

The Court: Crack down?

The Witness: Absolutely. If the pier gave the whole thing would give. That is the reason I said if the pier bulged one inch it would go.

The Court: It is a public store—(interrupted). 10

The Witness: In my opinion it could be very easily remedied.

The Court: How?

The Witness: By just putting a couple of steel columns one on each side of it.

The Court: That would result in what?

The Witness: By doing it properly you could take the strain off the pier and put it on the steel columns. 20

The Court: That would result in what, in proper factor of safety?

The Witness: Yes, sir.

The Court: That would cost how much?

The Witness: Oh, I didn't figure. It would cost probably two, three or four thousand dollars.

Q Do you consider that a wall that is crooked is as safe and good for use for a pier as one that is built straight? A Absolutely not. 30

Q You say that this wall was crooked? A I do say that. That is the reason I gave you the calculation to show you that the live load ought to be increased seventeen times in the beginning because it was built—it is one inch out of plumb.

Q Did that increase the danger? A Yes, sir. 40

Rudolph J. Goerke, direct—cross.

Q Would that be a reason why that fragment of wall ought not have been used in the first place?

The Court: Alone?

Mr. Whittemore: Yes.

10

A In my opinion, yes, sir.

RUDOLPH J. GOERKE, sworn for defendant.

Direct examination by Mr. Cohn.

Q You are president of the Goerke-Kirsch Company? A I am.

20

Q And have been since the erection of the building? A That is right.

Q Do you personally remember the erection of the original structure? A I do.

Q What year was it constructed? A It was built in 1912 and part of it in 1913.

30

Q Do you remember approximately what the cost of the building was? A I do. We run short of money and had to borrow some from the Union County Trust so I have a very good recollection.

Q What is your best recollection? A The cost of the building at that time was \$130,000.

Cross examination by Mr. Whittemore.

Q Mr. Goerke, does that include engineering expense? A Yes, sir; that was the total cost of the building, architect's fees and elevators.

40

Rudolph J. Goerke, cross.

Mr. Cohn: We did not expect the question would be raised about the repainting of the walls and we have sent for the superintendent of the store who is on his way here to tell us what the real situation is.

Mr. Whittemore: We will admit that the witness will swear that the west wall was painted six years ago the last time and the north wall four years ago the last time. 10

Testimony closed.

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Exhibit A.

EXHIBIT A.

THIS INDENTUDE OF LEASE made this twentieth day of April, Nineteen hundred and ten, between JOHN VOORHEES, of the City of Elizabeth, in the County of Union and State of
 10 New Jersey, of the first part; and THE GOERKE COMPANY, a corporation duly organized under the laws of the State of New Jersey and having its principal office in the City of Newark, of the second part, WITNESSETH:

The said party of the first part has agreed to let and hereby does lease and let, and the said party of the second part has agreed to take and hereby does take, all that certain lot, tract or
 20 particularly described, situate, lying and being in the said City of Elizabeth, and described in a deed made October 23rd, 1878 (129-383) as follows:

BEGINNING at a corner formed by the intersection of the west side of Broad Street and the north side of Jersey Street; thence westerly along the north side of Jersey Street one hundred and forty feet to line of James Glasby; thence northerly along said Glasby's line ninety
 30 feet more or less to land of Amos Clark, Jr.; thence easterly along said Clark's line one hundred and forty feet to the westerly line of Broad Street; thence southerly along Broad Street eighty feet to the place of beginning; for a term of forty years, from the first day of April, nineteen hundred and twelve, or from such earlier date as provided for in the next paragraph hereof, and for rent the said party of the second part is to pay for the first ten years of said
 40 term the sum of ninety-five hundred dollars

Exhibit A.

(\$9500) per annum, and for the last thirty years of said term the sum of ten thousand dollars (\$10000) per annum, said rent being payable in equal instalments at the expiration of each quarter year of said term; and is also to pay as additional rent all taxes, water rents or charges and assessments levied or assessed against said premises during the term of this lease and keep the buildings on or hereafter erected upon said premises insured for the benefit of the party of the first part to the full insurable value thereof. 10

In case of the total or partial destruction by fire of the building now on said premises before said first day of April, Nineteen hundred and twelve, then and in such case immediately upon such total or partial destruction by fire, the term of this lease shall commence. In case said party of the first part shall be able to give possession of said premises on April first, Nineteen hundred and eleven and shall give said party of the second part notice in writing at least three months prior to said date, then and in such case the term of this lease shall begin April first, Nineteen hundred and eleven. 20

This lease is upon the following covenants and conditions, all and every of which the said party of the second part agrees to perform and keep: That it will pay the rent in the manner aforesaid; all said taxes, water rents or charges, assessments and insurance premiums being payable so soon as the same shall become due, and before any interest or penalty is chargeable thereon, and will permit the said party of the first part, or his agents, to enter the said premises at reasonable hours to examine the same, or to make such repairs or alterations therein as shall be necessary for the preservation thereof, the said party of 30 40

Exhibit A.

the first part not being bounden however to make any repairs; and if the premises, or any part thereof, shall become vacant or be deserted during the said term, to permit the said party of the first part, or his agents, to re-enter them without being liable for any prosecution therefor, and relet the same and receive and apply the rent, first, to the payment of the expenses of re-entering, and then to the payment of the rent due by these presents; and will preserve the said premises and quit and surrender them at the expiration of said term in as good condition as reasonable use and wear thereof will permit (damages by the elements excepted).

And the said party of the second part further covenants and agrees to and with the said party of the first part, that it will, at its own expense, immediately upon the commencement of the term of this lease, remove the present buildings on said premises and proceed and continue with the erection of a building covering the whole of said premises said building to be of at least three stories in height within eighty feet of Broad Street, and at least two stories in height elsewhere with the basement extending under the sidewalk to the curb line on Broad Street, which building shall, as soon as completed, become the property of the party of the first part.

It is expressly understood that for a period of two months during the actual construction of said building, no rent (except taxes, water rent or charges, assessments and insurance premiums) shall be chargeable hereunder.

It is further understood and agreed that in case any building on said premises be totally or partially destroyed by fire at any time or times during the term of said lease, the party of the

Exhibit A.

first part will pay to the said party of the second part all proceeds of fire insurance upon said building upon the restoration thereof, but there shall not at any time or times be any abatement of the rent by reason of any such total or partial destruction.

It is further expressly understood and agreed 10
that said party of the second part is immediately upon the completion of said building, and upon the restoration thereof, if it be afterward destroyed, to furnish the said party of the first part with evidences that no person or persons, corporation or corporations has or have any right or mechanics' lien against said premises on account of the building or the erection or restoration of said building.

It is further expressly understood and agreed 20
that at any time during the term of this lease, or the renewal thereof, if there be a renewal, the said party of the second part shall have the right to connect any building on the demised premises with any building upon any adjoining premises. In case such connection be made, however, the same is to be removed and the building restored to its original condition before the termination of this lease or of said renewal.

It is further expressly understood and agreed 30
that the said party of the second part is at all times, during the term of this lease, to comply with all municipal regulations imposed upon the owners or occupants of said premises, and to indemnify and save harmless the said party of the first part from any violation thereof.

It is agreed that upon the breach of any of the said covenants or conditions, the said party of the second part shall forfeit said term and the said party of the first part, may, at his 40

Exhibit A.

option, re-enter and recover immediate possession of said premises, and shall also have an action for all damages arising from said breach.

10 It is expressly understood and agreed that in case the said party of the first part desire to exercise his option and claim for a forfeiture of said lease, then and in every such case he shall notify in writing the said party of the second part of a desire to exercise said option, and in case within thirty days from the time of giving such notice said party of the second part shall perform all the covenants herein contained, this lease shall remain in full force and effect.

20 It is further understood and agreed between the parties hereto, that the term of this lease may, at the option of the said party of the second part, be extended for a further period of twenty years, on the same terms as herein contained, with the exception as to the amount of the rent over and above the taxes, water rents or charges, assessments and insurance premiums. If the said party of the second part desires to exercise said option it shall give the said party of the first part, his heirs or assigns, notice in writing at least six months prior to the expiration of the original term. If at the expiration
30 of one month from the time of the giving of such notice the said parties hereto, or their representatives, shall not have agreed as to the amount of such rent, over and above the taxes, water rents or charges, assessments and insurance premiums, then and in such case, at or before the expiration of said month the parties hereto, or their representatives, shall each choose an impartial person, and the two so chosen shall forthwith choose a third person, which three
40 persons, or any two of them, shall have the

Exhibit A.

power to name and fix by writing, under their hands, the said rent, over and above the taxes, water rents or charges, assessments and insurance premiums, for such further term of twenty years, such adjudication by said three persons, or any two of them to be made within one month after the appointment of the two of them. 10
 Within one month after such adjudication the said party of the second part, or its representatives, shall finally notify the said party of the first part of its or their desire to continue said term for such further period of twenty years, at the rent so fixed. In case said party of the second part, or its representatives, so notify within said term, said party of the first part, or his representatives, in writing, of its or their desire to continue said lease under said terms, said lease shall thereupon be so continued. In case of failure of the said party of the second part, or its representatives, to so notify the said party of the first part, or his representatives, within the time hereinbefore provided for, then, and in such case, this lease shall determine and end at the end of the term originally demised. 20

It is further understood and agreed by and between the parties hereto that upon the commencement of said term said party of the first part will make, execute and deliver to the said party of the second part his power of attorney to act for him in any proceedings affecting the taxation of said premises during the term of said lease. 30

It is further expressly understood and agreed by and between the parties to these presents, that the taxes for the calendar year in which the original term of this lease shall commence, shall 40

Exhibit A.

be apportioned between the parties hereto, and that when such taxes become due and payable the party of the first part shall contribute his proportionate share of the taxes for the then current year, proceeding upon the theory that said taxes cover the period from January first to December thirty-first.

10 IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused its corporate seal to be hereunto affixed the day and year first above written.

The Goerke Company (:shrfg

JOHN VOORHEES (SEAL)

THE GOERKE COMPANY (SEAL)

20 by A J Goerke Pres't

Signed, sealed and delivered
in the presence of

MORRISON C. COLYER

Attest:

Theodore J. Gerth
Treas.

30

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

Be it remembered, that on this twenty-sixth day of April, nineteen hundred and ten, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared John Voorhees, who, I am satisfied is one of the persons named in and who executed the foregoing indenture of lease; and I having first made known to him the

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Exhibit A.

contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

MORRISON C. COLYER

A Master in Chancery of New Jersey.

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10361

LEASE.

John Voorhees,

To

The Goerke Company

20

Dated April 20, 1910.

RECEIVED in the Registers Office of the County of Union, N. J., on the 26 day of June A. D. 1911. at 9.23 o'clock, in the forenoon, and recorded in Book 576 of Deeds for said County on pages 338 &c

FRANK H. SMITH,

Register.

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Exhibit C. 1.

EXHIBIT C. 1.

WHEREAS, heretofore on the Twelfth day of December, Nineteen Hundred and Twenty-one, ALBERT C. STEIN and MARY STEIN, his wife, entered into a Lease with GOERKE
10 KIRCH COMPANY, a Corporation of New Jersey, for the premises 108-110 Broad Street and 11-13 West Jersey Street, in the City of Elizabeth, County of Union and State of New Jersey, which Lease among other things provided in the 4th Article thereof, for the erection of a building on the demised premises at a minimum cost of One Hundred Thousand (\$100,000.00) Dollars, the side walls of which building it was agreed in said Lease, "Shall be independent of any
20 adjoining building, but the lessee shall be at liberty to install arch ways and openings so as to make the floor levels of the building to be erected on the demised premises contiguous to the floor levels in the building adjoining the demised premises on the south. Provided, however, that upon the expiration of the term or the renewal thereof hereinafter mentioned, the lessee will at its entire expense close the said openings and arch ways with substantial and appropriate masonry to the end that the openings and
30 archways in the south wall of the building to be erected as aforesaid shall be completely independent of any building abutting the same."

AND WHEREAS, the Goerke Kirch Company, lessee, has commenced the erection of said building on the demised premises and now has iron columns and cross beams placed and erected for the building of said south wall and is ready to build the masonry and brick
40 work between said columns and beams so as to

Exhibit C. 1.

build said independent wall on the south and to make such arch ways and openings as provided for in said Lease, but has now requested the party of the first part, the lessor, to release him from further filling in south wall with substantial and appropriate masonry and placing arch ways and openings, and instead has requested that the building of the brick work between the iron columns and cross beams be entirely omitted for the present and until the expiration of the term mentioned in said Lease. 10

AND WHEREAS, it has been estimated that the filling in of said columns and beams on the said south wall which have been erected in preparation for the building of said independent wall would represent 50% of the entire independent wall and would cost at this time the sum of Fifty-five Hundred (\$5500.00) Dollars. 20

AND WHEREAS, the said Goerke Kirch Company, lessee, has requested the party of the first part, lessor, to allow said building to be constructed with iron columns and cross beams placed in position and ready for the building of said independent wall of the south but without building said wall any further so that the building erected on the demised premises and the building which the lessor occupies at present immediately adjoining the demised premises on the south will be open practically as one building, and to pay the sum of Five Thousand Five Hundred (\$5,500.00) Dollars to the said Albert C. Stein, lessor for this privilege. 30

NOW THIS AGREEMENT WITNESSETH, that in consideration of the premises and of the sum of Five Thousand Five Hundred (\$5,500.00) Dollars to be paid as hereinafter provided by Goerke Kirch Company, Lessee, to Albert C. 40

Exhibit C. 1.

Stein, Lessor, the parties hereto do mutually agree as follows:—

10 1. The said Albert C. Stein and Mary Stein, his wife, agree to release the Goerke Kirch Company, lessee, from filling in the iron columns and beams now erected on said south wall with substantial and appropriate masonry and the building of said openings and arch ways.

2. The said Albert C. Stein and Mary Stein, his wife, lessors, agree that at the expiration of the Lease dated December 12, 1921, between them and the Goerke Kirch Company, the lessee, to fill in said columns and cross beams with substantial and appropriate masonry and to complete said independent south wall.

20 3. The Goerke Kirch Company, lessees, agrees to contribute at the expiration of said Lease 50% or one-half of the entire cost of the filling in of said columns and cross beams with substantial and appropriate masonry and the building of said independent south wall.

30 4. The Goerke Kirch Company, lessee, agrees that in consideration of the premises to give its Promissory Note in the sum of Five Thousand Five Hundred (\$5,500.00) Dollars, payable in three months from its date.

5. Albert C. Stein and Mary Stein, his wife, lessors, and Goerke Kirch Company, a Corporation, lessee, hereby in all other respects, confirm and affirm said Lease entered into between them on the 12th day of December, 1921.

40 6. The said Albert C. Stein and Mary Stein, his wife, lessors and Goerke Kirch Company, a Corporation, lessee, hereby covenant and agree that this Agreement shall be binding upon them and their respective heirs, executors, administrators, successors and assigns.

Exhibit C. 1.

IN WITNESS WHEREOF, the parties of the first part, Lessors, have hereunto set their hands and seals, and the parties of the second part, lessees, have caused these presents to be signed by its President and attested by its Secretary and hereto affix its corporate seal this day of Nineteen Hundred and twenty-two. 10

..... (L. s.)

..... (L. s.)

GOERKE-KIRCH COMPANY,

By

President.

Signed, Sealed and Delivered in the presence of

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Attest:

Secretary.

STATE OF NEW JERSEY }
COUNTY OF UNION. } ss.

BE IT REMEMBERED, That on this day of in the year of Our Lord One Thousand Nine Hundred and Twenty-two, before me, 30

A MASTER IN CHANCERY OF NEW JERSEY, personally appeared ALBERT C. STEIN and MARY STEIN, his wife, who, I am satisfied, are the persons mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said MARY 40

Exhibit C. 1.

STEIN, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY without any fear, threats or compulsion of her said husband.

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A MASTER IN CHANCEY
OF NEW JERSEY.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

BE IT REMEMBERED, That on this day of _____ in the year of our Lord One Thousand Nine Hundred and Twenty-two, before me the subscriber, a MASTER IN CHANCEY OF NEW JERSEY, personally appeared who being by me duly sworn on his oath, says that he is the of the GOERKE-KIRCH COMPANY, the Lessee named in the within Instrument; that is the _____ of said Corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said Instrument is such corporate seal and was thereto affixed, and said Instrument signed and delivered by said _____ President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

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Sworn and subscribed before me,

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Exhibit C. 3.

EXHIBIT C. 3.

THIS INDENTURE made this Twelfth day of December, in the year of Our Lord, One Thousand Nine Hundred and Twenty one, Between ALBERT C. STEIN and MARY STEIN, his wife, of the City of Elizabeth, County of Union and State of New Jersey, of the first part, hereinafter known as the Lessor, and GOERKE KIRCH COMPANY, a corporation of the State of New Jersey, of the second part, hereinafter known as the Lessee, for and in consideration of the sum of One (\$1.00) dollar and other good and valuable consideration by each party to the other in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements herein mutually entered into by the parties hereto, WITNESSETH:

1. The Lessor hereby lets and demises to the Lessee the lands and premises commonly known and designated as 108-110 Broad Street, and numbers 11-13 West Jersey Street, in the City of Elizabeth, County of Union and State of New Jersey, more particularly described as follows:—

FIRST TRACT: BEGINNING on the westerly side of Broad Street near the corner of Broad and Jersey Streets at the southeast corner of John Kean's lot formerly of Elias Wade; thence westerly along said Kean's southerly line one hundred and thirty seven feet; thence southerly parallel with Broad Street forty feet; thence easterly parallel with Kean's line one hundred and thirty seven feet more or less to Broad Street; thence along Broad Street Northerly

Exhibit C. 3.

10 forty feet to the place of Beginning. Together with all the rights of way conveyed to Charles H. Ross by two deeds, one from Michael M. Williams and wife to said Ross dated October 1st, 1848 and recorded in Essex Co. records in Book B 7 of Deeds pages 508 &c. and the other from Josiah Q. Stearns and wife to said Ross dated March 1st, 1856 and recorded in the records aforesaid in Book 223 of Deeds pages 571 &c.

The foregoing description is taken from a deed of Anthony Stein and wife to Albert C. Stein recorded in the Register's Office of the County of Union in Book 498 of Deeds for said County, on pages 209, &c.

20 SECOND TRACT: BEGINNING in the northerly edge of Jersey Street, at a point distant five feet in an easterly direction from the southeast corner of land late of Joseph and Virginia Collet; and from thence in an easterly direction thirty six feet along the northerly side of Jersey Street to the southwest corner of the land of Michael M. Williams and Job M. Williams; thence northerly along the west line of their land seventy-one feet and three inches to the southerly line of Charles H. Ross's land; thence westerly along the southerly line of said Ross's land nine feet and three inches to the southwest corner of said Ross's land; thence northerly along the west line of said Ross's land forty feet to the southerly line of John Kean's land; thence westerly along said Kean's south line twenty-seven feet and three inches to the east line of land late of Joseph and Virginia Collet; thence southerly along the said last mentioned land, twenty-seven feet

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Exhibit C. 3.

and seven inches to the end of the cartway between the land late of Joseph and Virginia Collet, and the land hereby conveyed; thence easterly along the north end of said cartway, five feet to the northeast corner of said cartway; thence southerly along the east line of said cartway, eighty feet to the north edge of Jersey Street at the place of Beginning, also the uninterrupted use and right of way in, over and upon the said cartway, being ten feet wide and eighty feet deep from the north line of Jersey Street between the land hereby conveyed and the said land late of Joseph and Virginia Collet, in common with the owners of said land; and the land hereby conveyed is conveyed to the said James Glasby subject to a right of way now held by Charles H. Ross, and Michael M. Williams, and Job M. Williams their heirs and assigns, through the said cartway, and also the right of way with their horses, carts and carriages over the land hereby conveyed from the north end of said cartway, over a space ten feet wide to the west line of Charles H. Ross's land in a northeasterly direction in such a course that the southerly line of the last mentioned cartway shall strike the westerly line of said Ross's land at a point ten feet and six inches, distant in a northerly direction from the southwest corner of said Ross's land.

The foregoing description is taken from a deed of William B. Glasby and Frederick F. Glasby, executors of the last will of James Glasby, deceased, recorded in the Register's office of the County of Union in Book 424 of Deeds for said County on pages 586, &c., with the appurtenances

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Exhibit C. 3.

and the sole and uninterrupted use and occupation thereof, for the purpose of conducting a mercantile office building and for the further purpose of conducting a store for the sale at retail or wholesale of merchandise of every sort, kind and description, for the term of twenty (20)

10 years to commence on the First day of April, Nineteen hundred and Twenty-two and to end on the First day of April, Nineteen hundred and Forty-two at twelve o'clock noon.

2. The Lessee agrees to pay as and for the rental of the above demised premises an annual fixed net rental of Eighteen thousand (\$18,000.00) dollars, payable in equal monthly installments of Fifteen hundred (\$1500.00) dollars, on the first business day of each and every month in advance during the term of the lease, and agrees to yield and pay in addition to the said net annual fixed rental and as a part of the total rental to be paid, as a consideration for the occupancy of the said premises all TAXES which may be assessed or imposed upon the demised premises during the term hereof by the City of Elizabeth, the County of Union or the State of New Jersey, (the lessor agreeing to contribute and pay one-quarter of the taxes for the year 1922, and also

20 three-quarters of the taxes for the year 1942 if said lease is not renewed as hereinafter mentioned, and if the same be renewed, the lessor agrees to pay in lieu of three-quarters of the taxes for 1942, three-quarters of the taxes for 1952), and the lessee further agrees to pay also

30 all and every municipal, County and State taxes and assessments of every kind and description, which may be imposed upon the demised premises; provided, however, that the lessee shall not

40 be obliged to pay any income taxes imposed upon

Exhibit C. 3.

the lessor by the City, County and State aforesaid, or by the Federal Government, and provided also, that in the event that said assessments are levied during the last five years of the first twenty years of the term, the lessee shall not be obligated to pay the same unless the lessee renews the term in the manner hereinafter mentioned; and in the event of such renewal the lessee shall be obliged to pay said assessments during the first five years of the renewal period hereinafter provided for and thereafter any assessments levied shall be paid by the lessor; and yielding and paying further the cost of all necessary fire insurance premiums or sums of money representing the same, which fire insurance shall be procured by the lessee in safe and responsible companies duly authorized to transact business within the limits of the State of New Jersey, which insurance shall be for the full insurable value of said buildings hereinafter mentioned, and which companies shall be subject to the reasonable approval of the lessor; the lessee agreeing further to cause said policies to be issued in the name of both the lessor and itself as their interest may appear; and paying also all water rents levied against the said lands and premises during the term including charges for high pressure service. IT BEING THE INTENTION THAT THE FIXED ANNUAL RENTAL AFORESAID SHALL BE NET TO THE LESSOR, Free and discharged from the obligation of liquidating taxes, water rents, insurance or other charges in the manner above mentioned.

It is further agreed that if any of the rentals above created, including the fixed annual net rental above mentioned, and also any of the

Exhibit C. 3.

sums above agreed to be paid by the lessee as additional rental, and as and for insurance premiums, taxes, water rents and carrying charges above enumerated, shall become due and payable and the said lessee shall not within thirty days after the respective maturities of said sums and within thirty days after written notice of default thereof shall have been given to it fully pay, satisfy and liquidate each and every of the aforesaid sums of money, then and from thenceforth it shall be lawful for the party of the first part, the lessor, their heirs, executors, administrators and assigns, after notice in writing to be given to the Elizabeth office of the lessee, to re-enter said premises and to remove all persons therefrom and the same to have again, repossess and enjoy as fully as though this indenture had not been made.

3. The lessee agrees to deposit with the lessor as and for assurance that the lessee will faithfully perform the covenants contained in this lease on its part, the sum of Eighteen thousand (\$18,000.00) dollars to be paid simultaneously with the execution of this instrument. The lessor agrees to reimburse the said sum of Eighteen thousand (\$18,000.00) dollars as follows: Nine thousand (\$9000.00) dollars upon the commercial completion of the building to be erected upon the demised premises by the lessee and Nine thousand (\$9,000.00) dollars in one year thereafter. In default of said reimbursement above mentioned, the lessee may apply at its option the aforesaid sum of Eighteen thousand (\$18,000.00) dollars against the first rentals to accrue hereunder. The Lessor agrees to allow to the lessee interest at the rate of five (5%) per cent per annum to be paid when installments

Exhibit C. 3.

of principal on account of the security fund are made payable as above mentioned.

4. The Lessee further agrees in consideration of the covenants herein contained on the part of the lessor to begin the erection as promptly as possible after April 1, 1922 and to finish with all reasonable dispatch a mercantile building upon the demised premises, which it is agreed shall be of a minimum cost of One Hundred Thousand (\$100,000.00) dollars, and said building shall be at least two stories and basement over the whole plot, except such land on the West Jersey Street side of the plot, as has heretofore been reserved for mutual alley purposes, and which is referred to in the description of the premises above set forth; the Broad St. frontage shall have an additional story in height to a depth of at least thirty-eight (38') feet from the Broad Street line of said premises. The building shall be erected in a good workmanlike manner and according to the existing rules, regulations and ordinances of the City of Elizabeth, County of Union and State of New Jersey. The side walls of the said building shall be independent of any adjoining building, but the lessee shall be at liberty to install arch ways and openings so as to make the floor levels of the buildings to be erected on the demised premises contiguous to the floor levels in the building adjoining the demised premises on the south. Provided, however, that upon the expiration of the term or the renewal thereof hereinafter mentioned, the lessee will at its entire expense close the said openings and arch ways with substantial and appropriate masonry to the end that the openings and arch ways in the south wall of the building to be erected as aforesaid shall be com-

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Exhibit C. 3.

pletely independent of any building abutting the same. The lessee agrees to furnish the lessor, within three months after the substantial completion of the building, with evidence of the full payment of all labor and material used in the construction of the building or agrees to deposit
10 with the lessor valid, legal releases from all mechanics, laborers and materialmen, who would have what is known as a mechanic's lien against the said building and the curtilage. It is further agreed that immediately upon the completion of the new building to be erected as aforesaid, the said structure shall become and be the sole property of the lessor, subject however, to the right of the lessee to occupy the same without any further compensation than herein specifically
20 provided for during the term of this lease or the aforesaid renewal. The lessee shall have the free right to make any additions or improvements which it deems advantageous for its own interest which shall not substantially destroy the value of the building.

5. It is further agreed that the lessee shall have the option of occupying the demised premises for a further period of ten (10) years from April 1, 1942 until April 1, 1952, provided that
30 on or before April 1, 1941 the lessee shall notify the lessor, by the delivery of a written notice in person or by registered mail of its intention to exercise the option expressed in this paragraph; And upon the failure of the lessee to give the notice aforesaid in the time and manner aforesaid, this lease shall be terminated on April 1, 1942 and the option herein given shall be automatically cancelled. Said occupancy shall be
40 under all the terms, covenants and conditions herein expressed, except the right of further re-

Exhibit C. 3.

newal and excepting that the lessee shall pay for the occupancy of the demised premises during the renewal period a rental equal to five (5%) per cent of the true value of the land owned by the lessor (expressly excluding the buildings thereon erected by the lessee), the lessee agreeing that the minimum rental to be paid by it during the renewal term shall be Eighteen thousand (\$18,000.00) dollars per year net, payable in the manner and form herein mentioned. The parties hereto agree that during the last year of the term they will endeavor to mutually agree upon the rental to be paid during the renewal period, but should they be unable so to do said rental value shall be arbitrated. In this event each of the parties hereto will choose an arbitrator and the arbitrators will choose an umpire, in the event of their inability to agree, and the decision of any two of the three arbitrators shall be conclusive and binding on the parties hereto and the written award made by them shall constitute the amount of the net rental to be paid hereunder during the renewal term, provided, however, that the minimum net rental to be imposed upon the lessee under said award shall be Eighteen thousand (\$18,000.00) dollars.

6. In the event that the building or buildings erected on the demised premises shall be partially or totally destroyed by fire or other elements, the lessee agrees to repair and restore the building with all reasonable dispatch and the new building when so restored or repaired shall be as nearly as possible in point of type of construction and of materials used therein as the building which will be erected upon the demised premises upon the commencement of this lease. In the event of the partial or entire destruction

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Exhibit C. 3.

of the building by fire as aforesaid, it is expressly covenanted and agreed that such partial or total destruction of said buildings by fire shall not abate the rent reserved by the terms of this lease, but that the lessee shall continue to pay, after such partial or total destruction of said
10 buildings by fire, the rent reserved in this lease pending such repair or said buildings or construction thereof as if no such fire causing total or partial destruction had ever occurred. The lessor agrees that all insurance monies collected under existing policies shall be turned over to the lessee from time to time to defray the cost of the construction of the said building or buildings or their repair or restoration, and upon the
20 complete construction of the building or its repair or restoration, the lessee will furnish the lessor with evidence of the complete payment of all labor and material or will deposit with the lessor valid legal releases of all persons, firms or corporations having the right of what is commonly known as mechanic's lien. The lessee shall be at liberty to make such changes in the reconstruction or restoration of the said building or buildings as may be required by the ordinances, rules and regulations of the City of Elizabeth, County of Union and State of New Jersey,
30 which will then be in force.

7. The lessee agrees that at all times during the term of this lease it will keep the building on the demised premises in good and sufficient condition and repair and upon the failure of the lessee to perform the covenants contained in this paragraph the lessor after thirty days notice may expend all such monies as may be reasonably required to keep said building in good and sufficient repair and collect the same from the
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Exhibit C. 3.

lessee as a part of the rental reserved hereunder and in the manner herein otherwise provided.

8. The party of the first part, the lessor, hereby covenants and agrees that the party of the second part, the lessee, upon paying said rent and performing all of the terms, covenants and conditions of this lease, shall and may quietly have, hold and enjoy the demised premises during the term hereof. 10

9. The lessee agrees to save the lessor of and from any liability, costs and damages by reason of the erection of the said building or any repairs, additions or restorations made in connection therewith and also agrees to save the lessor of and from any fines, impositions or other costs and charges which may result from the failure of the lessee to comply with the municipal, county or other ordinances, rules or regulations affecting the building in question and in force from time to time. 20

10. The lessee may assign, under-let or sub-let the demised premises for the uses aforesaid, but such assignment, sub-letting or under-letting shall in no manner or form impair any of the obligations of the lessee hereunder and all the covenants agreed to be performed by the lessee shall remain during the whole term in full force and virtue notwithstanding the making of any such assignment, sub-letting or under-letting. 30

11. The lessor agrees to lend every reasonable assistance to the lessee in connection with the reduction and equalization of the taxes, which may be imposed upon the demised premises and in connection also with the fire insurance rates which may be levied thereon. The lessor also authorizes and expressly empowers the les- 40

Exhibit C. 3.

see to appear before any board or body having the jurisdiction to assess and impose taxes, or before any board or body having the jurisdiction to assess rates on fire insurance and in the name of the lessor, but at the entire cost to the lessee and without any charge or liability to the lessor, to prosecute any rights or remedies which the owner of the said lands may have in the premises.

10 12. And the party of the second part, the lessee, agrees at the expiration of this lease to quit and surrender the premises hereby demised, and all additions, alterations and improvements made during the term of this lease, constituting realty, in as good a state and condition as reasonable use and wear thereof will permit, damage
20 by the elements excepted.

The lessee agrees, that in the event of the failure of the lessor to pay interest on any mortgage covering the demised premises, the lessee may pay the same and deduct the same from amount of rent accruing hereunder.

This agreement shall bind and enure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

30 IN WITNESS WHEREOF, the party of the first part, the lessor, have hereunto set their hands and seals, and the party of the second part has caused these presents to be signed by its President and attested by its Secretary, and its corporate seal to be hereunto affixed, all of which was done by the authority of a Resolution passed by the Board of Directors, these presents

Exhibit C. 3.

being signed interchangeably the day and year above written.

ALBERT C. STEIN. (L. s.)
MARY STEIN, (L. s.)

GOERKE-KIRCH COMPANY,

By R J GOERKE (L. s.)
President.

10

Signed, Sealed and Delivered

In the presence of

SAUL COHN

.....?

Attest:

EDMUND GOERKE,
Secretary.

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STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

BE IT REMEMBERED, That on this Thirteenth day of December, in the year of our Lord, One Thousand Nine Hundred and Twenty-one, before me, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared ALBERT C. STEIN and MARY STEIN, his wife, who, I am satisfied are the Lessors in the within Indenture of Lease named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

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And the said MARY STEIN, being by me privately examined, separate and apart from her husband, did further acknowledge that she

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Exhibit C. 3.

signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

SAUL COHN

A Master in Chancery of New Jersey.

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32565

LEASE

Between

ALBERT C. STEIN and MARY
STEIN, his wife,

—and—

20

GOERKE-KIRCH COMPANY, a Corporation.

Dated: December 12th., 1921.

30

RECEIVED in the Registers Office of the County of Union, N. J., on the 5 day of Apr. A. D. 1922 at 12.18 o'clock, in the afternoon, and recorded in Book 855 of Deeds for said County on pages: 9 &c

EDWARD BAUER

Register

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Exhibit C. 5.

EXHIBIT C. 5.

February 27, 1922.

Goerke-Kirch Company
Elizabeth, New Jersey.

10 Gentlemen:

We are advised that certain changes are contemplated in the building leased by you of the Voorhees Estate, in connection with the addition of your store of the Stein property, such as the cutting through of certain walls, etc. Under the terms of the lease the building on the property is to be restored to its original condition, and in order to avoid all controversy at the expiration of this lease, we think it would be wise to have a copy of the original plans filed with us as Trustee.

20

Another matter to which I would call your attention is that the insurance we now have on the property is all with the 90% co-insurance clause. Our understanding as to this insurance was that it would be so called straight insurance, without either 80% or 90% clause attached.

Awaiting expression from you on these matters, I am.

30

Yours very truly,

R. W. LEWIS,
Trust Officer.

Exhibit C. 5.

February 28, 1922.

Mr. R. W. Lewis,
Union County Trust Co.,
Elizabeth, N. J.

Dear Sir:

We have your letter of February 27th in reference to certain changes contemplated in our present building, also the matter of insurance, and wish to advise that Mr. R. J. Goerke is in Florida at the present time but we expect his return on or about March 6th. 10

We will immediately refer your letter to him for action.

Trusting this is satisfactory, we remain,

Very truly yours,

GOERKE-KIRCH CO., 20

WFR:VM.

W. F. ROSENCRANS.

COPY.

March 14, 1922.

Goerke-Kirch Company,
Elizabeth, New Jersey.

Gentlemen:—

In response to my previous letter to you concerning the interest of the Voorhees heirs in your new building, you advised that upon the return of Mr. Goerke on March 6 the matter would have his immediate attention. As the heirs are inquiring of me what has been done in the matter, I should like very much to hear from you at the earliest convenient time. 30

Yours very truly,

R. W. LEWIS 40
Trust officer.

Exhibit C. 5.

COPY.

WM. E. LEHMAN
738 Broad Street,
Newark, N. J.

June 8, 1922.

10 Judge C. McK. Whittemore,
c/o Union County Trust Co.,
Elizabeth, N. J.

My dear Mr. Whittemore:—

After our conversation of yesterday, I made a complete examination of the plans and found the following to be true:

20 The column under discussion is a column that is necessary as a center support to a steel girder or girders occurring on the first, second and third floors, which in turn supports the brick work above the openings on these floors.

I find that the column as now set is wholly within the Voorhees property and that in order to remove the property of easement, so far as your client's property is concerned, I have issued instructions that the girder now being supported by the column and which girder is on the Stein property, be entirely removed, so far as the girder is concerned, and that a series of new columns be erected, which columns will stand wholly upon the Stein property to support the particular girder that we have reference to.

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Trusting that the above is satisfactory and assuring you that we stand ready at any time to co-operate should any other complications arise that affect your client, I am

Yours very truly,

(signed) Wm. E. Lehman

40 WEL N

Exhibit C. 5.

COPY.

June 9th, 1922.

The Goerke Company,
c/o Goerke-Kirch Company,
Elizabeth, N. J.

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Gentlemen:—

Herewith enclosed we send you a copy of letter just mailed to your architect, Mr. William E. Lehman, in reply to a letter received from him under date of June 8. The enclosed letter will speak for itself and will set forth our position in regard to the matters referred to in it.

Yours very truly,

R. W. LEWIS
Vice President

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COPY.

June 9th, 1922.

Mr. William E. Lehman,
738 Broad Street,
Newark, N. J.

Dear Sir:—

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Received yours of the 8th. We are gratified to note that you have acceded to the request we have made of the Goerke Company to remove the girders of the new building on the Stein property from any support in the wall of the Voorhees building and also from any projection into that wall, inasmuch as you express the intention of having the girders for this Stein building supported by a series of new columns to be erected wholly upon the Stein property. It is not quite

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Exhibit C. 5.

clear to us, however, that you intend to remove entirely from the wall of the Voorhees building the steel girder that was put in a cut in that wall. We feel that we must reiterate our insistence that this girder be entirely removed and the cut filled up, and that no other cuts be made

10 in the wall of the Voorhees building except for the purpose of connecting the two buildings as provided in the lease. We shall be much pleased to have you advise us specifically upon this subject so there may be no misunderstanding of what is going to be done. In our capacity as Trustee we do not feel that we can acquiesce in having this girder remain in the wall. It would be our wish that the wall should continue as originally constructed, except as changes are precisely provided for in the lease in regard to connections or openings.

20

Since our interview of a couple of days ago it has come to our notice that the wall of the Voorhees building has been cut into in the basement and we are informed that the purpose of the cut, and some iron work has been or is about to be installed, is to support an escalator or escalators to be a part of the equipment of the Stein building. Again we are obliged to object

30 to this being done, and to ask that you remove all foundations or supports for anything whatever in the Stein building that may be located in the wall of the Voorhees building or in any way on the Voorhees property. Our reasons for making this objection are the same as those we have already explained to you. We do not see how we can forego insisting upon these objection in view of the absence of any discretion on our part as Trustee. Please be good enough to advise us that these arrangements in regard to the cuts

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Exhibit C. 5.

in the basement wall of the Voorhess building will be abandoned and the basement wall restored to its original condition without delay.

I am sending a copy of this letter to the Goerke Company, as we feel that we should notify the Goerke Company direct of our position in regard to these matters.

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Yours truly,

R. W. LEWIS.
Vice-President.

COPY.

June 10, 1922.

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Mr. William E. Lehman,
738 Broad Street,
Newark, New Jersey.

My dear Sir:—

Enclosed herewith I send you a copy of a letter I have just directed to the Goerke Company, with reference to further encroachments in the Voorhees property which have come to my attention. I hope that the matters in regard to which I have written will be immediately cleared up in a satisfactory manner.

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Yours very truly,

R. W. LEWIS
Vice-President.

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Exhibit C. 5.

COPY.

June 10, 1922.

The Goerke Company,
c/o The Goerke-Kirch Company,
Elizabeth, N. J.

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Gentlemen:—

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Since dictating my letter of yesterday I learn that there are other things about your method of construction of the Stein building which constitute, or will constitute, encroachments upon the Voorhees property. We have ascertained that in building the foundations for the iron columns intended to support the Stein building where it adjoins the Voorhees building on the two sides, these foundations have been so constructed that they project into the Voorhees property and in order to allow for such projection the base of the wall of the Voorhees building has been cut away in each place where these foundations have been constructed. We do not feel that we can consent to allowing these foundations to remain in this way so that they constitute an encroachment upon the Voorhees property. In consequence of a fire or in the years to come it may be necessary to reconstruct the

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Voorhees building and in that case the foundations for these iron columns will be in the way of the foundations of the new Voorhees building and at that time it might be claimed by the owner of the Stein building that adverse right had been acquired on the Voorhees property for these foundations of the iron columns. Other reasons might be assigned which make the construction of these foundations extending over into the Voorhees property very objectionable from our

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standpoint as Trustee of the Voorhees Estate.

Exhibit C. 5.

We regret the necessity of having to object and of having to cause you any such expense to remove the encroachment. We feel, however, that any such expense to which you may be put, is owing to your own mistake and that you have put the expense upon yourself. We must insist that these foundations to the extent that they encroach upon the Voorhees property be removed as soon as it can be done.

10

We have some intimations that in the construction of the Stein building it is not your intention to construct an independent partition wall for the Stein building to be erected upon the Stein property. We have not seen your plans and therefore do not know whether or not we are correct in believing this to be the case. If this is the case we are obliged to notify you that we cannot consent to allowing the wall of the Voorhees building to be used as an interior wall for the Stein building. We cannot permit any plastering or other covering to be affixed to the wall of the Voorhees building, or allow the wall of the Voorhees building to be decorated for the interior purposes of the Stein building. If our conjecture about your proposed building of the Stein building is correct, it seems to us that you have proceeded upon an erroneous idea that you have a right to use the wall of the Voorhees building, even to a partial extent, as a wall for the Stein building even for interior purposes. We must object to having the two buildings fastened together by plastering or any other form of fastening. We could not run the risk of controversy or any claims that might be made if the wall of the Voorhees building should be removed by a fire or in any other way, thus leaving the interior of the Stein building entirely open to the weather

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Exhibit C. 5.

without any enclosing wall of its own. We think this is a matter of great importance and that before proceeding further with the method of construction of the Stein building the matter should be carefully considered, and that it should be decided that the Stein building should be so
10 constructed as to be an entirely separate and independent building in every way, without considering the fact that you happen to have both buildings under lease. Of course, we recognize your right to make connections between the two buildings provided for in the lease of the Voorhees property, but we cannot consent to anything more than this being done.

We trust that we may have an immediate consideration of this matter by you, and that we
20 may arrive without delay upon a definite understanding of exactly the course that you are going to follow, as we would particularly like to be relieved of the necessity of any legal proceedings for the purpose of having the rights of yourselves and ourselves determined by the Court. I have no doubt that you will be equally desirous of avoiding the necessity of any proceedings in Court.

I am sending a copy of this letter to your archi-
30 tect, Mr. William E. Lehman, for his information.

Yours very truly,

R. W. LEWIS.
Vice-President.

Exhibit C. 5.

July 22nd, 1922.

The Goerke Company,
c/o Goerke Kirch Company,
Elizabeth, New Jersey.

Gentlemen:—

We hoped the controversy concerning the wall 10
of the Voorhees Estate building could be con-
cluded by the removal of the encroachments and
the building of an independent wall for the new
building adjoining on the Stein property. We
have heard, however, that you are negotiating
with Mr. Stein for a modification of the lease of
his property which will dispense with the erec-
tion of an independent wall for his building. We
have not been advised that you have done any-
thing or intend to do anything about the removal 20
of encroaching foundations. The attitude of some
of the principal parties in interest in the Voor-
hees Estate, makes it impossible for us to do
anything in the way of an agreement, and, as
Trustee, we are obliged to insist upon all the
legal rights of the Voorhees Estate.

May we ask, therefore, for a definite and
prompt statement (1) whether the encroaching
foundations of the Stein building will be re-
moved entirely from the Voorhees property, and 30
(2) whether you intend to fill in around the steel
framework a complete independent wall for the
Stein building adjoining the wall on two sides
of the Voorhees building, or if you intend to use
the exterior of the wall of the Voorhees building
as an interior enclosure of the Stein building.

In case you shall decide these questions con-
trary to our insistent, it will be necessary for us
to institute suit against you to have our claims
adjudicated upon by the Court.

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Exhibit C. 5.

Trusting you will state your position explicitly
in the next day or so, we are

Very truly yours,

Union County Trust Company

C. H. K. Halsey
President.

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August 3, 1922.

The Goerke Company,
c/o Goerke-Kirch Company,
Elizabeth, New Jersey.

Gentlemen:

20 The inspection recently made with your knowl-
edge by our architect, confirms our previous in-
formation with regard to encroachments of the
Stein building on the Voorhees property, in that
the architect reports that the foundations of the
columns of the Stein building extend into the
Voorhees property and some of the iron girders
of the Stein building extend into the wall of the
Voorhees building and connect with an iron col-
umn set in the wall of the Voorhees building. This
30 latter encroachment of the iron girders we un-
derstand is to be terminated by severing the iron
girders from the column in the wall of the Voor-
hees building, but the construction work is pro-
ceeding, (the iron work being practically com-
pleted) and the severance has not yet been made.
Furthermore, we are advised that the work has
been done to a point which makes it difficult to
perform the operation involved in such sever-
ance, and we consider that this work ought to be
done at an early date and before the difficulties
40 increase.

Exhibit C. 5.

We call your attention again to the fact that we have not had any reply from you to our last letter asking for a statement of your position with regard to these foundations and also with regard to the use of the exterior of the wall of the Voorhees building as an interior enclosing wall of the Stein building. You will appreciate that you have had warning for a long time past of our objections, and you are and have been continuing the construction work entirely at your risk.

The report of our architect makes it necessary to register an objection to the very large size of the openings proposed to be made in the walls of the Voorhees building. The lease of the Voorhees building gives the right to make connections with an adjoining building, but we consider the sizes of the openings as proposed to be unreasonably large and in excess of the right given by a proper construction of the lease. In this point is also involved your right to set an iron column in the wall of the Voorhees building for the purpose, as stated, of supporting these openings. This right we must also question.

We are also advised that there may be some danger involved in the method employed in cutting these openings, in that the size of the openings is so great that the brickwork of the three upper stories of the building is not being properly and adequately sustained until the supporting iron beams are installed. We believe it would have been better and safer construction if the openings had been only partly cut through on one side and an iron beam installed before the remainder of the wall was cut away. We request you to look into this matter without delay and have done at once whatever may be neces-

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Exhibit C. 5.

sary to make the conditions safe and avoid all risk of damage to the Voorhees building.

Our attention has been directed to the fact that the steel frame of the Stein building on the side adjoining the Voorhees building, is at this time not provided with any transverse horizontal connections or supports, as in the case of the framework on the North side, and the vertical position of the supporting columns on the southerly side is largely dependent upon the present connection of the girders with the column set in the wall of the Voorhees building, which connec-

Goerke Co. 8/3/22.

tion you have verbally stated your intention to sever. We think that this southerly steel framework should have connecting girders to insure the permanent rigidity of this part of the Stein building.

We should be pleased to be advised by you at an early date with regard to all of these matters and would be glad to work out the rights of all concerned in a friendly manner, rather than otherwise, and we hope you will be disposed to cooperate with us in this regard.

Yours truly,

30 UNION COUNTY TRUST COMPANY
President.

P. S. We wish at this time to note the fact that the installed portion of the escalator apparatus is set in the space which would be occupied by an independent wall of the Stein building if such wall is constructed as we consider necessary. The present location of this apparatus would apparently have to be moved in order to make space for this independent wall.

Exhibit C. 5.

COPY.

October 14, 1922.

Goerke Company,
c/o Goerke-Kirch Company,
Elizabeth, New Jersey.

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Gentlemen:—

We are in receipt of report of the architect who examined the columns and girders of the new Stein building which you have just opened for inspection. He reports that the bolts and rivets connecting the new girders on the Stein property to the column in the Voorhees property have been disconnected on the first and third floors and roof, but that he was unable to make an inspection of the girder at the line of the second floor because the work is all enclosed at that point and this enclosing work has not been removed for inspection as on the other floors. We are under the necessity of requesting that you will have the enclosing work around the girder on the second floor removed for the purpose of inspection of our architect. This is necessary for the reason that we are acting in a representative capacity and are obliged to inform the interested parties that our architect has personally verified the fact that the girders have been disconnected entirely from the Voorhees building. It will not satisfy the parties in interest to tell them that we have assurances on this subject. We do not doubt the correctness of your statement about this girder, but we cannot satisfactorily settle the matter with the beneficiaries of the Voorhees Trust unless the inspection has been complete at every point. We regret the necessity of putting you to any trouble or expense with regard to the second floor girder, but will ask you to bear in mind

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Exhibit C. 5.

that the occasion for it arises out of your own action and not because of any fault of ours. Our architect suggest that he will further desire to make a second inspection of the topmost girder, which you will please allow at the same time that you arrange to have him inspect the girder
 10 at the second floor line.

Thanking you very much for your immediate attention to this matter, we are,

Yours very truly,

R. W. LEWIS,
 Vice-President.

COPY.

20

October 20, 1922.

The Goerke Company,
 c/o Goerke-Kirch Company,
 Elizabeth, New Jersey.

Gentlemen:—

Mr. Poggi informs us that the opening cut in the places to allow examination of the girder near the first floor ceiling of the Stein building is not adequate for him to make the necessary inspection. He has requested that an opening be
 30 cut on the other side and has been informed that it would not be done unless payment for the work will be assured. I am inclined to think that this statement must have been made without proper thought or consideration, as there is no use offering an inspection unless sufficient opportunity is given to allow an inspection to be made in a satisfactory manner. The party making the inspection must be the judge of the sufficiency of the opportunity. The situation is one
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Exhibit C. 5.

that has been created by you and not by us, as I have stated before. I hope this matter will be taken up in a proper spirit, so as to do the whole thing in a liberal manner and have everybody fully and thoroughly satisfied.

Please advise me if you will give this matter your prompt attention and let me hear from you concerning it promptly on receipt of this letter. 10

Yours very truly,

Vice-President.

COPY.

December 16, 1922.

Georke-Kirch Company,
Elizabeth, New Jersey. 20

Gentlemen:—

Mr. Voorhees would like to look over the Voorhees building and the Stein building, with reference to construction matters connected with the two buildings. As Mr. Voorhees is one of the parties interested in the Voorhees Estate, we would appreciate it if you will allow him full facilities and opportunity for making such examination as he desires considering that he is exercising such right as we may have in this regard as Trustee of the Voorhees Estate. 30

Yours very truly,

Vice-President.

Exhibit C. 5.

COPY.

July 17, 1923.

Goerke-Kirch Company,
Elizabeth, N. J.

10 Gentlemen:—

We have been considering and investigating the two fire insurance policies which you have furnished to us, one for \$20,000 in the Sprinklered Risk Underwriters and the other for \$10,000 in the American Exchange Underwriters, and have been informed that these policies are not issued by any incorporated stock companies but are issued by a long list of individuals located in many different places and that these individuals are liable only for limited amounts of insurance. In case of a loss and contest concerning the amount of damage, according to the way the policies are made out, it might be necessary to institute a very large number of separate suits involving small amounts, which for practical purposes would be a prohibitory proposition owing to the trouble and expense involved.

20
30
40 There is also a question concerning the continuing responsibility of each one of the underwriters, as the other underwriters do not seem to be responsible for the share of any one underwriter who might become financially irresponsible. As you know, we are holding this Voorhees property in trust, and being a trust proposition we must insist upon all of the insurance being in the most satisfactory shape, and we would therefore ask you to furnish us with policies to replace those in the Springlered Risk Underwriters and the American Exchange Underwriters, and must also ask that you do this within a day or so after the receipt of this letter, as otherwise we

Exhibit C. 5.

shall be under the necessity of having the property insured at your expense.

We must also ask you to make arrangements to eliminate from all of the fire insurance policies the co-insurance clause to which they are now subject. The lease agreement for the Voorhees property provides that you shall furnish us with insurance for the full insurable value of the property, and under the circumstances we do not consider that we ought to accept insurance policies subject to co-insurance clauses, which in the case of a loss might result in our inability to collect the full amount of the loss. 10

It likewise becomes necessary at this time for us to call attention to the fact that the increased cost of building, labor and materials has probably increased the value of the Voorhees building to such an extent that the sum of \$225,000 of insurance does not represent the full insurable value of the property. We consider that the total amount of insurance should be very substantially increased, probably to the figure of \$300,000. We have had no appraisal of the building at present values but if there is to be any dispute over the obvious necessity for increasing the insurance, it may be necessary for us to have an appraisal made. We trust that you will see your way clear to increase the amount of insurance voluntarily to the sum of \$300,000 and save us the necessity of procuring an appraisal. 20 30

Yours very truly,

C. H. K. Halsey
President.

Exhibit C. 5.

COPY.

August 20, 1923.

Goerke-Kirch Company,
Broad Street,
Elizabeth, New Jersey.

10

Gentlemen:

Before I left on my vacation I wrote you a letter in regard to the fire insurance policies on the building which you have under lease, and in my letter objected to two policies issued by underwriters. While I was absent you were good enough to furnish us with two other policies to take the place of those issued by the underwriters, but I have not heard anything from you in regard to the other matter mentioned in my letter, namely, the amount of the total of insurance on your building, which is only \$225,000. I think you will agree with me that the full insurable value of your building is very considerably in excess of \$225,000. Under the terms of the lease we cannot accept insurance on the basis of 90% of the value of the building, but are required to insist upon having insurance for the full insurable value. If you consider that the building at present values is not worth more than \$225,000. you should be good enough to look into the question of the present values as quickly as possible and find out if you are not mistaken. If you will have an appraisal made by a competent builder, I should be very glad to have you submit to me such an appraisal as a guide for the action that we should take in regard to the fire insurance. Please let me know if you will have an appraisal made or what you will do in regard to the increase of the insurance. It seems to me

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Exhibit C. 5.

the insurance ought to be for a total of around \$300,000.

Awaiting an early reply, I am

Yours very truly,

President.

10

COPY.

August 30, 1923.

Messrs. Saul & Joseph E. Cohn,
Chamber of Commerce Building,
Newark, New Jersey.

Gentlemen:

Received yours of August 24th expressing the opinion that the present total of insurance, \$225,000. is sufficient upon the Voorhees building in this City under lease to the Goerke-Kirch Company. I am sorry that you have this opinion, because it does not agree with our information. Some of the parties interested in the Voorhees Estate have strenuously objected on the ground that the amount of insurance carried is too low, and we have inquired to find if this claim is correct. While we have not had an expert appraisal on the building, we have secured advices that the present insurable value of the building is in excess of the total of insurance now carried and probably amounts to as much as \$300,000. Our interest in the proposition consists in properly executing the trust which we have assumed by carrying out the terms of the agreement with the Goerke Company. It is only by doing this that we can avoid criticism and the possibility of liability on the part of the Union County

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Exhibit C. 5.

Trust Company in case of a very bad loss by fire. We cannot run any risks on this liability, nor can we justify ourselves for not requiring an adequate amount of insurance unless we are in a position to prove that the insurance complies with the contract, and that we cannot do. We

10 realize that the Goerke Company desires to have no greater expenses for insurance than is necessary under the terms of the contract, but would like very much to settle with them in a way that will constitute adequate protection to both of us as to the amount of insurance that ought to be carried. I suggested in my letter to the Goerke Company that this could probably be accomplished to the satisfaction of both sides if an expert appraisal should be secured by the

20 Goerke Company which would establish a proper amount of insurance. The contract calls for insurance for the full insurable value and under this provision I do not see how we can discuss allowance for depreciation during the early period of the life of this building. Taking a cost of \$127,000 as a criterion and applying the established increase of the cost of building and building labor since this building was erected, of considerably over 200%, we find that the sum

30 of \$225,000 is less than the full insurable value of the building, simply using this as a basis of calculation without an expert appraisal. The reliable published statistics say that the cost of building, building materials and building labor, have increased at a very much higher rate than other things that go to make up the present cost of living, and it would seem on the face of it as if our estimate of the present value of \$300,00 would be conservative.

Exhibit C. 5.

We trust that you *are* your clients will realize our position in this matter and will work with us in a spirit of cooperation in an effort to settle the real insurable value in a reliable way satisfactory to both parties. We do not want to have any controversy, but we do not see how the matter can be dismissed by simply expressing a difference of opinion from the layman's standpoint. The risk rests all on us and we should
 Messrs. Saul and Joseph E. Cohn P 2 August
 30, 1923.

10

not be asked or expected to assume or carry all of the risk.

Yours very truly,
 President.

20

COPY.

September 15, 1923.

Messrs. Saul & Joseph E. Cohn,
 Chamber of Commerce Building,
 Newark, New Jersey.

Gentlemen:

I will appreciate it very much if you will let me have a reply to my last letter indicating the necessity for additional insurance on the Goerke building in this City owned by the Voorhees Estate. I have no desire to engage in a protracted discussion of this matter, but have been hoping that after consideration of my last letter you would see your way clear to arrange with us in a spirit of cooperation, for an appraisal of the property upon which we could both depend with assurance for the determination of

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Exhibit C. 5.

the amount of fire insurance to be carried. Kindly drop me a line stating exactly what your position will be.

Also, please let me know whether you have prepared your answers in the ejectment suit and Chancery suit of the Voorhees Estate
 10 against Stein and against the Goerke-Kirch Company.

Yours very truly,
 President.

COPY.

April 24, 1924.

20 Goerke-Kirch Company,
 Broad & Jersey Street,
 Elizabeth, N. J.

Gentlemen:

The M. Byrnes Building Company has recently completed an estimate of the replacement cost of the building which you hold under lease from the estate of John Voorhees, which they place at \$331,266.00; allowing depreciation for
 30 12 years at 1-1/8% per year, or 13-1/2% in all, its present value would be \$286,545.09. Under the terms of the lease entered into between the late Mr. Voorhees and yourselves it therefore becomes our duty to require that full insurance for this amount be placed in our hands. At present we are holding a total of \$225,000 insurance with a 90% clause in the policy and excepting any liability as to the foundation or underground
 40 pipes or flues or machinery below the level of the ground. We feel we should be furnished

Exhibit C. 5.

with policies for the amount stated, not bearing this 90% clause and making no exceptions as outlined.

Assuring you of our wish to cooperate with you in this matter to every possible extent consistent with our duty, and awaiting your advices, I am,

10

Yours very truly,

C. H. K. HALSEY

Trust Officer.

COPY.

April 29, 1924.

20

Mr. R. J. Goerke, Pres.,
The Goerke-Kirch Company,
Broad & Cedar Streets,
Newark, New Jersey.

Dear Sir:

I have your letter of the 28th instant relative to insurance on your building in this City, advising that you will secure an appraisal on the building and then confer with us to effect a satisfactory adjustment of the matter.

30

You will recall that in the first instance our suggestion was that you join with us in procuring an impartial appraisal of the building replacement value, for insurance purposes. This you did not see fit to do, and we feel that having definitely arrived at the figures quoted to you through an appraisal, it would put us in a difficult position should we wait any considerable time without receiving the necessary insurance to meet these figures, and I must therefore ask

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Exhibit C. 5.

that you obtain your appraisal in not longer than ten days, that we may get together and definitely adjust the matter.

Yours very truly,

Trust Officer.

10

COPY.

May 12, 1924.

Mr. R. J. Goerke, Pres.,
Goerke-Kirch Company,
Broad and Cedar Streets,
Newark, New Jersey.

20 Dear Sir:

Considerably over a week ago I received word from you that you expected to have your appraisal of the Goerke-Kirch building completed within a few days. This was in response to my letter to you that we would have to have the matter definitely settled within ten days, my letter being dated April 29th.

30 We do not feel that we can afford to let the situation drift along with the definite figures we now have, and I must ask you to give it your immediate consideration.

Yours very truly,

(Signed) R. W. LEWIS.

Trust Officer.

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Exhibit C. 6.

EXHIBIT C. 6.

Will of John Voorhees, Dec'd

Will Bk E 2-528

Date 3-21-1913

Died 1-13-1916

Prob. 1-28-1916

10

In The Name of God, Amen. I, John Voorhees, of the City of Elizabeth, in the Co. of Un., & State of N. J., being of sound & disposing mind & memory, do make & publish this my last will & testament, in manner following, that is to say:—

1st:—I do order & direct all my just debts & funeral expenses to be fully paid & satisfied as soon after my decease as may be reasonable.

20

2nd:—I do give & bequeath unto my wife, Elizabeth, the sum of \$1,500.00 *per year*, to be paid to her by my executor hereinafter named, in equal monthly payments, each & every year during the term of her natural life, commencing on the 1st day of the month next after the date on which this my last will & testament shall have been admitted to probate, which sd annuity is to be accepted by her *In Lieu* of her dower in my real estate.

30

3rd:—I do hereby authorize & empower my executor hereinafter named to grant, bargain, sell & convey my vacant lot located on Grand St. in the City of Eliz. N. J., to any person or persons, in fee simple or otherwise, at public or private sale, at such time & upon such terms as it

(See #2)

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Exhibit C. 6.

(#2)

Will Bk E 2-528

shall deem to be for the best interests of my estate, & I direct that the net proceeds of such sale be added to the principal of my estate.

- 10 I suggest, however, that my executor hereinafter named, if in its judgment such a course shall be deemed advisable, may lease sd Grand St vacant lot for a long term of years—say from 30 to 50 yrs—the lessee to pay all taxes & for all improvements, which, at the end of the term, shall revert to my estate.

- 4th:—I do give, bequeath & devise unto my wife, Elizabeth, the house & lot of ld known as #516 Morris Ave., in the City of Eliz. N. J.,
 20 where I now reside together with all the furniture therein contained, to be used, occupied & enjoyed by her for and during the term of her natural life; & from & immediately after her death, or prior release, I do hereby authorize & empower my executor hereinafter named to grant, bargain, sell & convey the same to any person or persons in fee simple or otherwise, at public or private sale, at such times & upon such terms, as my executor shall deem to be for the
 30 best interests of my estate, & I direct that the funds derived from such sale be added to the principal of my estate; & I also order my executor to pay out of my

(See #3)

Exhibit C. 6.

(#3)

Will Bk E 2-528
estate all the taxes which shall be levied against
the sd house & lot.

5th:—I give & bequeath unto my Son, John H.,
all my Carpenter & other Tools.

10

6th:—At the death of my sd wife, I hereby
authorize my executor hereinafter named to per-
mit my children, Edna, Lulu, Mabel & John H.,
to select from my household goods in my resi-
dence such articles as each shall desire, & in case
they cannot agree as to any article, then I sug-
gest that the same be taken by the child who is
willing to pay the highest price for the same.
And I do hereby order my executor hereinafter
named to sell, at public sale, all my household
goods & the contents of my barn, not heretofore
disposed of.

20

7th:—I do hereby authorize & empower &
order my executor hereinafter named to set apart
from my estate the sum of \$2,500.00 for the fol-
lowing purposes, namely:—I do give & bequeath
unto the "Elizabeth General Hospital & Dis-
pensary" the income of the sum of \$1,000; unto
the "Alexian Brothers Hospital" the income of
the sum of \$500; unto the "Elizabeth Orphan
Asylum" the income of \$500; & unto the Youns
Mens Christian Association" the income of the
sum of \$500.

30

I do further order & direct than any necessary
expenses that shall be incurred in connection
with any of

(See #4)

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Exhibit C. 6.

(#4)

Will Bk E 2-528

10 the sd funds, the same shall be borne by & paid out of the income of the particular fund in behalf of which they were incurred, which is intended to include commissions & costs of every kind, so that my estate shall not be chargeable for any more than the sd principal sum of \$2,500. legacies aforesd. And in case either of the sd beneficiaries shall ever cease to exist, then I do order & direct that the bequest to such institution shall immediately thereupon revert to my estate.

8th:—I do hereby give & bequeath unto my Brothers, Frederick L. Voorhees, of Chicago, Ill., & William Voorhees, of Schooley's Mountain, N. J., the sum of \$100. each, & unto the "First Presbyterian Church of Hackettstown," & the "Trinity Methodist Episcopal Church of Hackettstown," N. J. the sum of \$100. each.

20

9th:—All the rest, residue & remainder of my estate, of what nature or kind soever, which shall belong to or be owned by me at the time of my decease, I do give, bequeath & devise unto my executor hereinafter named & its successors in office, *In Trust*, until 21 yrs after the death of my last surviving grandchild, who shall be living at the time of my decease, for the following purposes, viz.:—

30

1. To invest & reinvest from time to time all the principal funds belonging to my estate in such securities as will yeald the greatest rate of interest consist-

(See #5)

Exhibit C. 6.

(#5)

Will Bk E 2-528

ent with the security of the principal; & to hold all my real estate not disposed of according to the provisions of this my last will & testament, as above specified; & after deducting from the income of the sd rest, residue & remainder of my estate, all legal expenses & charges necessary for the proper, careful & economical handling, manipulation & administration of my sd estate, as well as the taxes, insurance & repairs thereon & incident thereto, to pay to my sd wife, Elizabeth, the legacy bequeathed to her in the "2nd" Item hereof; & to divide the balance of the sd net income into 4 equal shares, & to pay to each of my sd children. Edna, Lulu, Mabel & John H., one of sd shares, in equal quarterly payments to commence on the 1st day of Jan., Apr., July or Oct. coming next after the date on which this my sd last will & testament shall have been admitted to probate.

2. And at the death of any of my sd children to pay to his or her children, my grandchildren, their Mother's or Father's share, to be divided equally among them, share & share alike. And I hereby order & direct my executor hereinafter named to pay to each legatee *In Person*, the annuity due him or her hereunder, taking his or her personal receipt or release therefor; provided, however, that

(See #6)

Exhibit C. 6.

(#6)

Will Bk E2-528

10 in case of the death of any of my grand-children
without leaving lawful issue him or her surviv-
ing then in that case, his or her share shall go
to his or her Brothers & Sisters, & be equally
divided among them, share & share alike; & in
case no Borthers or Sisters survive, then his or
her share shall revert to, & become a part of
the principal of my estate.

20 3. At any time during the last 5 yrs of the
period during which I have, in the "9th" Item
hereof, directed that the sd rest, residue & re-
mainder of my estate may be held *In Trust*, I do
hereby authorize & empower my executor here-
inafter named to grant, bargain, sell & convey all
of my real estate, in fee simple or otherwise,
at public or private sale, to any person or per-
sons, upon such terms, & at such time or times
during the last 5 yrs of sd period, as it, or its
successors in office shall deem to be for the best
interest of *mt* estate; & also to reduce my entire
estate to *Cash*, & to divide the same among my
lineal descendants according to their right of
representation, per stirpes, & not per capita.

30 10th:—It is my will that the trust above cre-
ated shall not extend beyond the limit of 60
yrs from the date on which this my last will &

(See #7)

Exhibit C. 6.

(#7)

Will Bk E2-528

testament shall have been admitted to probate.

11th:—I hereby order, direct & require my executor hereinafter named to render to each of the legatees under this will, semi-annually a full correct & true itemized sworn statement showing an account of my entire estate, including all receipts, disbursements & a list of all securities belonging to my estate up to the date thereof. 10

12th:—I do hereby give to my executor hereinafter named as full & ample power & authority to compel the performance of any & all the covenants contained in a certain lease of the bldg located at the cor. of Broad & West Jersey Sts, in the City of Elizabeth, N. J. as well as in reference to all & every other business of my estate, as I would have had, if living. 20

13th:—I do hereby authorize & empower my executor hereinafter named to grant, bargain, sell & convey my double brick dwelling located on East Broad St, in Elizabeth aforesd, upon the expiration of the present lease, to any person or persons, in fee simple or otherwise, at public or private sale at such time or times as it shall deem to be for the best interests of my estate, in 30

(See #8)

Exhibit C. 6.

(#8)

Will Bk E2-528

case it shall consider such a course advisable.

10 14th:—It is my will & I do order & direct my executor hereinafter named to take a correct & true inventory of all personal property belonging to me at the time of my decease, (except that contained in the bldgs on the prop. where I now reside), & give to each of the legatees named in the "4th" & "6th" Items hereof a true copy thereof; but I do hereby order & direct that no inventory of my estate shall ever be filed by my executor hereinafter named in any Surrogate's or Probate Judge's Office or before any Orphan's Court of any County in which it shall be necessary to prove this my will. I do
20 herein & hereby expressly exempt my executor from filing any such inventory & I do hereby authorize & order it to plead this clause of my will *In Bar* of any such requirement & before any tribunal in which it may be demanded.

30 Lastly:—I do hereby nominate & appoint the *"Union County Trust Company," of the City of Elizabeth, N. J., sole Executor of, & Trustee under, this my last will & testament, with the express understanding & agreement that it shall not charge or be allowed more than the gross sum \$7,000. in full for its commissions as Exec-

(See #9)

Exhibit C. 6.

(#9)

Will Bk E2-528

* Qualifies.

utor, & Counsel fees, & in addition thereto, not to exceed 3% on all income as & when paid out in full for its commissions as Trustee & Counsel fees. 10

In case of my death within a yr & a half from this date, I order & direct my executor hereinafter named to pay to my children at the rate of the sum of \$1000. each for 1 yr & a ½ after my decease, instead of the amount bequeathed to them under Article 1, of the "9th" Item hereof, so that my estate may be reimbursed to the extent of the legacies bequeathed in the "7th" & "8th" Items of this, my will, & the espenses of the administration of my estate. 20

John Voorhees (Seal)

Witnesses

William H. Rice

James Fisher

Hackettstown, N. J.

Codicil

30

This is a Codicil, to be added to the L W & T of me, John Voorhees, of the City of Elizabeth, N. J. which will bears date 3-21-1913:

1st:—I hereby ratify & confirm my sd will in all respects, save so far as the same shall be

(See #10)

40

Exhibit C. 6.

(#10)

Will Bk E 2-528

altered by this present codicil.

10 2nd:—It is my will & I do hereby order that the words: “and order” shall be inserted after the word: “empower” in the 3rd line of subdivision “three” of the “Ninth” item on pg 4 of my sd will; & that the word: “semi” shall be stricken out of the 3rd line of the “Eleventh” item on pg 4 of my sd will.

20 3rd:—I do hereby authorize & empower my friend & relative, James Fisher, of Hackettstown, N. J. once in every 2 or 3 yrs, to examine the accounts of my sd executor, & the securities of my estate in order to so familiarize himself therewith as to be better prepared to talk with & advise the legatees thereon.

Dated 9-8-1915.

John Voorhees (Seal)

Witnesses

Mathias T. Welsh

William Lanterman

Hackettstown, N. J.

30 The above is a true copy of the Will of John Voorhees dec'd.

(Signed) William Runyon
per A. M. Ross.

Exhibit C. 6.

Application for Probate of
the Will of John Voorhees, Dec'd

App. Bk L-85
Date 1-28-1916
Died 1-13-1916

Application shows the following heirs at Law 10
of sd dec'd:

Elizabeth Voorhees, the widow of Elizabeth,
N. J. & their 4 children, viz:—

Edna, wf of John G. Maxfield, Springfield,
Mass.

Lulu, wf of Harry Trask, Springfield, Mass.

Mabel, wf of George F. Taylor, Cranford, N. J.

John H. Voorhees, a son, of Elizabeth, N. J.

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NOTICE OF APPEAL.

Filed January 26, 1929.

54—162

IN CHANCERY OF NEW JERSEY.

10

Between

UNION COUNTY TRUST COM-
PANY, Trustee under the
provisions of the Last Will
and Testament of John
Voorhees, deceased,
Complainant,

On Bill, &c.
Notice of
Appeal.

20

and

THE GEORKE COMPANY, *et*
als.,
Defendants.

30

The defendants hereby appeal from the final
decree made in the above-entitled cause on the
12th day of December, 1928, by the Chancellor
on the advice of Vice-Chancellor John H. Backes,
and from the whole and every part thereof, to
the Court of Errors and Appeals in the last
resort in all causes.

Dated: January 23, 1929.

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with
Defendants.

40

Notice of Appeal.

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

RALPH E. LUM,
Of Counsel with Defendants.

Service of copy of the within Notice of Appeal is hereby acknowledged this day of 10
January, 1929.

Solicitors for Complainant.

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PETITION OF APPEAL.

Filed February 9, 1929.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

UNION COUNTY TRUST COM-
PANY, Trustee &c. of John
Voorhees, deceased,
Complainant-Respondent,

and

THE GOERKE COMPANY, *et*
al.,

20

Defendants-Appellants.

*On Appeal
from
Chancery.*

*Petition
of Appeal.*

30 The petition of the Goerke Company and Goerke-Kirch Company, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a decree of his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, made on the advice of Vice-Chancellor John H. Backes on the 12th day of December, 1928, in a cause in said court wherein Union County Trust Company Trustee under the provisions of the last will and testament of John Voorhees, deceased, is complainant and your petitioners and another were defendants, in this respect to wit:

40 That the said decree adjudges as follows: That within six months after the date of this decree the defendant the Goerke-Kirch Company detach and remove all concrete piers and footings, whether for the exclusive or part mainte-

Petition of Appeal.

nance of the Stein building, girders, roof, ceiling and angle irons supporting the same, and sprinkler system pipes (for greater particularity the things hereby enjoined are set forth in the bill of complaint) presently encroaching upon the building on the lands of the complainant described in the bill, extending from the building adjoining on the north and west and known as the Stein building; and that the said defendant replace the walls of the building on said premises as they were before the said encroachments were made; 10

That said defendant, Goerke-Kirch Company, within the time aforesaid mentioned, at any point within the complainant's building, detach the heating and lighting system used in combination for the heating and lighting of the building on the lands of the complainant and the Stein building, and thence desist and refrain from heating and lighting the Stein building by, through or with the heating and lighting system originating in the complainant's building; 20

That the said defendant, Goerke-Kirch Company, within the time aforementioned, remove from the exterior walls of the building on the complainant's land—that portion which forms the interior wall of the Stein building—all plaster, decorations, moldings, fixtures, fire hose, screws, nails or any other attachment whatever, and that they restore the said walls to the condition they were in before such encroachment was made; 30

That the said defendant, Goerke-Kirch Company, within the time before mentioned erect and construct in a good workmanlike manner sufficient and adequate supports for the safely 40

Petition of Appeal.

carrying of the west wall of the building on the complainant's land at the point of opening connecting the said building with the Stein building;

10 That said Goerke Company and Goerke-Kirch Company forthwith specifically perform the provisions of said lease requiring the keeping of the building of the complainant's insured for the benefit of the complainant to the full insurable value thereof, which is hereby adjudged to be the sum of \$286,548. That the said insurance shall be written and insured by and through a duly incorporated stock insurance company or companies authorized to conduct an insurance business in the State of New Jersey.

20 That the defendant, Goerke-Kirch Company, pay to the complainant its costs of this suit to be taxed and that there shall be included in said costs and taxed as part thereof a counsel fee to the solicitor to the complainant of \$3,500. which was thereby allowed and taxed.

30 And your petitioners humbly appeal from that part of the decree of the Chancellor as aforesaid upon the ground that the same is erroneous for that the alleged encroachments do not constitute waste; and for that the alleged encroachments were within the rights of the defendants under the terms of the lease between the parties; and for that the said complainant is not entitled to have the alleged connections removed until the termination of the said lease or the renewal thereof; and for that the defendants have kept the building insured to the full insurable value thereof pursuant to the terms of the said lease; and for that the complainant has a complete and adequate remedy at law; and
40 for that the complainant is in laches; and for

Petition of Appeal.

that the complainant is not entitled to costs and counsel fees; and for that the complainant is not entitled to the relief granted herein.

Your petitioners therefore pray that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this Honorable Court may seem meet. 10

LUM, TAMBLYN & COLYER,
Solicitors for and of Counsel with
Appellants.

RALPH E. LUM,
Counsel for Appellants.

Service of a certified copy of the within Petition of Appeal is hereby acknowledged this 19th day of February, 1929. 20

WHITTEMORE & McLEAN,
Solicitors for Complainant.

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ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

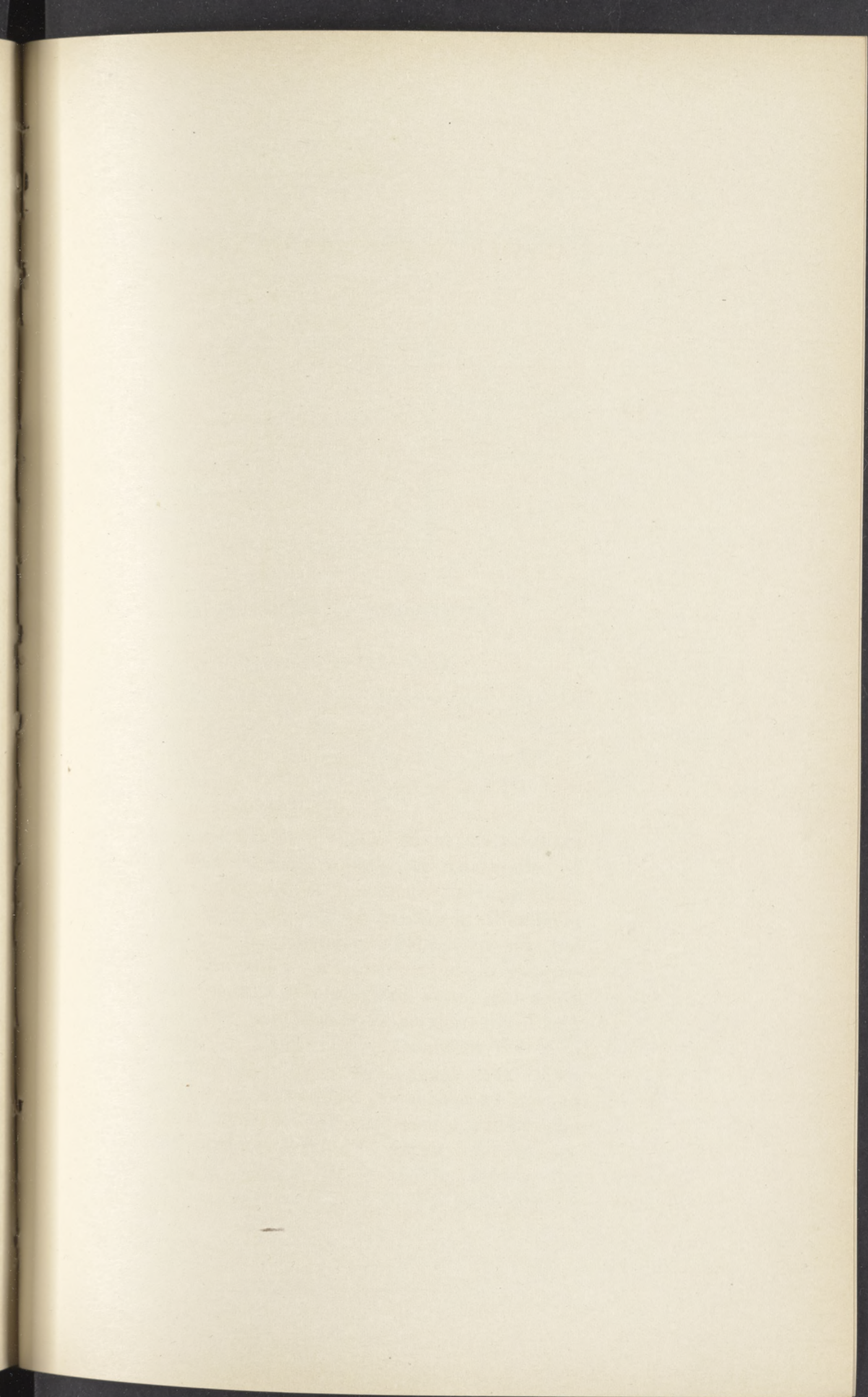
10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">UNION COUNTY TRUST COM- PANY, Trustee, etc. of John Voorhees, deceased, <i>Complainant-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">THE GOERKE COMPANY, <i>et al.,</i> <i>Defendants-Appellants.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p><i>On Appeal from Chancery. Answer to Petition on Appeal.</i></p>
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20 The answer of the Union County Trust Com-
pany, Trustee under the provisions of the last
will and testament of John Voorhees, deceased,
the above-named respondent, to the petition of
appeal of the Goerke Company and the Goerke-
Kirch Company, the above-named appellants.

30 This respondent not admitting the truth of all
or any of the matters in the said petition of ap-
peal contained, for answer thereto nevertheless
admits that a decree was on December 12, 1928
made and entered in the Court of Chancery of,
New Jersey in the above-entitled cause for the
purposes in said petition mentioned and as there-
in set forth; but as to the substance and form
of said decree, this respondent begs leave to
refer thereto when the same shall be produced.

This respondent is advised and believes that
the said decree is agreeable to equity; and it
prays that the same may be affirmed with costs
to be taxed in favor of the respondent.

40 WHITTEMORE & McLEAN,
Solicitors for and of Counsel with Respondent.



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New Jersey Court of Errors and Appeals

Between

UNION COUNTY TRUST COM-
PANY, a corporation, Trustee,
etc.,

Complainant-Respondent,

and

THE GOERKE COMPANY, a corpo-
ration, *et als.*,

Defendants-Appellants.

*On Appeal
from
Chancery.*

BRIEF FOR APPELLANTS.

Statement of the Case.

The bill of complaint in this cause is filed by the Union County Trust Company, a corporation of this State, as trustee under and by virtue of the provisions of the last will and testament of John Voorhees, deceased (Case, p. 1).

It is stated in the bill that on or about April 20, 1910, the said John Voorhees was seized of a certain tract of land with a building then erected thereon, situate in the City of Elizabeth, which tract is particularly described in the bill (Case, p. 1); that said Voorhees made and entered into a certain agreement dated April 20, 1910 with The Goerke Company, whereby Voorhees leased to The Goerke Company the said premises for the term of forty years from April 1, 1912; that said The Goerke Company agreed to pay Voorhees certain rent therefor and also all taxes, water rents or charges and assessments levied against the premises during the term of the lease and to keep the buildings on

or thereafter erected on said premises insured for Voorhees to the full insurable value thereof, and that said The Goerke Company further covenanted and agreed to preserve said premises and to quit and surrender them at the expiration of the term in as good condition as reasonable use and wear thereof will permit (damages by the elements excepted) (Case, pp. 1 and 2).

It is further alleged that in and by the lease The Goerke Company agreed immediately on the commencement of the term to remove the buildings on the premises and erect thereon a building at least three stories in height within 80 feet of Broad street and at least two stories in height elsewhere, with a basement, extending under the sidewalk, which building as soon as completed, should become the property of said Voorhees (Case, p. 2, l. 23).

In the fourth paragraph of the bill it is stated that in said lease it was agreed that The Goerke Company should have the right to connect any building on the demised premises with any building on the adjoining premises, and in case such connection should be made, the same should be removed, and the building restored to its original condition before the termination of the lease or of the renewal therein provided for, and that said lease contained a provision for an option to extend the same for a further period of twenty years (Case, p. 2, l. 32).

A copy of the lease is attached to the bill and marked "Exhibit A" (see Case, pp. 292 to 299).

It is also alleged that immediately or shortly after the commencement of the term, The Goerke

Company removed the building then on the premises and erected a six-story building covering the entire tract of demised land, which building has been used and occupied for ten years past, and is now used and occupied by The Goerke Company, or its assigns, as a department store, and that said The Goerke Company or its assigns, has paid said Voorhees and the complainant, rent for said building and land as provided in the lease (Case, p. 3, l. 10).

The Goerke Company assigned its right, title and interest under said lease to The Goerke-Kirch Company, which Company assumed the obligations of The Goerke Company, and agreed to perform the same including the payment of the rent stipulated and the erection and maintenance of the buildings mentioned (Case, p. 3, l. 23).

According to the allegations of the bill, on or about January 13, 1916, said John Voorhees died leaving his will and codicil, which were admitted to probate by the Surrogate of Union County on February 1, 1916, in and by which will he devised the premises described in the bill to the complainant, Union County Trust Company, as trustee, upon certain trusts mentioned in said bill; that there are several grandchildren of said Voorhees now living and that said trust will continue for at least the period of twenty-one years and may continue for a period of over fifty years, according to the circumstances (Case, p. 3, l. 36 and p. 4, ll. 1-32).

In the tenth paragraph of the bill it is stated that on December 12, 1921, Albert C. Stein and wife, leased to said The Goerke-Kirch Company, certain premises described as Nos. 108 and 110 Broad street, and Nos. 11 and 13 West Jersey

street, in the City of Elizabeth, the same adjoining on two sides the premises hereinbefore described and by the terms of said lease said Company agreed to erect a new building on said premises, which should become the property of said Stein (Case, p. 4, l. 33).

In the eleventh paragraph of the complainant's bill it is stated that on or about April 1, 1922, The Goerke-Kirch Company commenced the erection of a three-story building on the premises leased from Stein, and in the course of the construction work and the completion thereof, trespassed upon the lands and premises of the complainant in certain respects. Thereafter, under subdivisions a. to p. inclusive, the complainant sets out with some particularity the respects in which the Voorhees property was encroached upon (Case, pp. 5, 6, 7 and 8).

According to the allegations of paragraph 12, the said trespasses were committed without any knowledge or consent of the complainant and in many instances of said trespasses, complainant has learned or been informed of them shortly prior to the institution of this suit, and sets forth further particulars with respect to alleged encroachments already mentioned and correspondence and conferences with respect thereto and concludes with an allegation that the girders on the three floor levels extend into and trespass upon the property of the complainant (Case, pp. 8 and 9).

It further appears by paragraph 13 that complainant instituted an action of ejectment against Stein to remove the trespasses and encroachments of the foundations under the steel columns on the property of Stein (Case, p. 9, l. 36).

It is stated that complainant has made certain protests with respect to certain of the alleged trespasses particularly set forth in paragraphs 14 and 15 of the complaint (Case, p. 10).

According to the allegations of the sixteenth paragraph, The Goerke-Kirch Company and Stein made an agreement whereby for a consideration, Stein released the said Company from the agreement for the construction of an independent southerly wall adjoining the property of the complainant on the north and west, and accepted said new building as it had been constructed without such a wall (Case, pp. 10 and 11).

The complainant avers that these alleged trespasses and encroachments are of an extraordinary character and if not restrained will occasion repeated suits and continued litigation; that they have occasioned complainant irreparable damage and injury, and if continued will permanently impair the future enjoyment of Voorhees property; that by the terms of the lease complainant is entitled to have the building continue as an independent building, complete in all of its equipment and appurtenances, without any attachment to or connection with any other building, except as provided in the lease and without having any other building dependent in any way upon complainant's building (Case, p. 11, l. 36; pp. 12 and 13).

In paragraph eighteen the complainant applies for the determination of all questions of construction of said lease and as to whether there has been a forfeiture thereof (Case, p. 13, l. 15 and p. 14).

Concluding, the complainant prays that the defendants may be enjoined from the further

continuance, commission or maintenance of the aforesaid trespasses and encroachments; that the Court ascertain and determine the amount of damages sustained by complainant on account of the said trespasses or encroachments; that the Court may determine all questions of construction of said lease under which the rights of the complainant arise with relation to the matters alleged insofar as the same affect said rights and will declare the rights of the parties interested and the parties to the suit, including the right of forfeiture of said lease; and that the Court will decree the specific performance of the lease made between Voorhees and The Goerke Company so far as the same involve covenants and agreements contained in the lease (Case, p. 15).

To this bill the defendants, The Goerke Company, The Goerke-Kirch Company and Albert C. Stein, filed their joint and several answers which will be found on pages 16 to 29 inclusive of the printed case.

By their answer, defendants admit that on or about April 1, 1922, The Goerke Company commenced the erection of the three-story building on the premises leased from Stein but they deny that they have trespassed upon the lands and premises of the complainant in any manner or form, and proceed to make answer to each of the subdivisions of paragraph 11 of the bill with respect to the alleged trespasses, and they meet the allegations in the following manner:

(A) They admit the installation of foundations for steel columns upon which the frame work of the new building on the Stein property now rests, but deny that such foundations encroach over upon the lands of the complainant in any manner.

(B) They deny that the foundation wall of complainant's building was cut for the purposes set forth in the bill.

(C) They admit the allegations of subdivision e of paragraph 11 of said complaint, but aver the work was done pursuant to the terms of the leases with Voorhees and Stein.

(D) They admit that vertical columns and horizontal iron girders were placed at the several floor ceiling levels in the Voorhees building where the openings occurred as set forth, but deny that such columns or horizontal iron girders extended into the property of said Voorhees, and deny that said columns or girders constitute a part of the frame work of the Stein property, but aver that the frame work was done in pursuance of the rights extended to the lessee by virtue of the two leases mentioned.

(E) They deny each and every allegation of subdivision e of paragraph 11 of the complaint and aver the fact to be that the escalator is twenty-one and one-half ($21\frac{1}{2}$) inches from the wall and is supported on vertical columns wholly within the Stein property.

(F) Defendants deny the allegations of subdivision f of paragraph 11 of the complaint in the manner and form alleged, but aver that each building has separate gas connections and separate water connections. Defendants show that at the time of the erection of the Stein building, the old boiler in the Voorhees building was replaced by a new boiler with ample capacity for heating both buildings, together with new steam mains in the basement of the Voorhees building running through to the Stein building to supply heat adequately and without overburdening and increasing wear and tear to pipes of complain-

ant's building; that the pipes in the two buildings are entirely and absolutely independent and separate. Defendants also deny generally that there has been an overburdening of complainant's building and that the reasonable use, wear and tear of the equipment has been increased.

(G) Defendants deny every allegation of subdivision g of paragraph 11 of the bill and aver that each building has an independent sewer and water system.

(H) Defendants admit, in order to install a new boiler it was necessary to cut an opening in the wall of the boiler room of complainant's building and that the wall was properly replaced in a workmanlike manner.

(I) Defendants deny the allegations of subdivision i of paragraph 11 of the complaint in the manner and form as alleged and refer to the averments of subdivision F of paragraph 11 of the answer.

(J) Defendants admit that in order to connect the building erected by The Goerke-Kirch Company on the Stein property with complainant's building, in the manner and form provided for by the Voorhees lease, it utilized the north and west walls of complainant's building and plastered the same with adamant plaster; and admit that the Stein building rests upon steel columns and framework in the manner heretofore alleged by the defendants. They deny the allegations that they have violated the terms of the lease in any particular and deny that they have wilfully injured complainant's building or failed to preserve the same. They also deny that the work has been constructed in any manner which constitutes irreparable damage and further deny that there has been created an in-

ability on their part to comply fully and completely with all the covenants contained in the Voorhees lease, and also deny that the walls in question can never be restored to their original condition.

(K) They admit the allegations of subdivision k of paragraph 11 of the complaint, but aver that by reason thereof the building on complainant's property has been conserved and protected and further aver that the work was done pursuant to the rights of the defendants by virtue of the Voorhees lease.

(L) Defendants deny the allegations of subdivision l of paragraph 11 of the complaint and repeat and make part hereof the allegations of the defendants contained in subdivisions (F), (G) and (I).

(M) Defendants deny each and every allegation in subdivision m of paragraph 11 of the complaint as alleged but aver that in constructing the Stein building they installed a separate water tower having a sufficient capacity to supply the sprinkler system in the Stein property in addition to the water tower that was theretofore installed in the Voorhees property, and that defendants caused to be installed separate risers in the Stein property supplying all of the sprinklers that were installed in the Stein property; that both systems upon completion were approved by the Schedule Rating Bureau. They deny that by reason of acts on their part in connection with the sprinkler system, the use of complainant's building has been overburdened or its normal wear and tear increased. They further deny that there has been created in any way a diminution in the fire protection afforded

to complainant, or that complainant's building has been exposed to any further risk or hazard.

(N) They deny all the allegations of subdivision n of paragraph 11 of the complaint and aver that the electric current of both buildings is controlled in each building on the various floors and that each building is independent of the other insofar as electric light is concerned; that all of the wiring in both buildings is of sufficient capacity to carry the load imposed in each building.

(O) They admit the construction of the iron beams supporting the water tank on the Stein property, but aver that said construction was made by reason of the right to connect contained in the Voorhees lease.

(P) Defendants admit the allegations of subdivision p of paragraph 11 of the complaint.

In and by the twelfth paragraph of their answer, the defendants deny the allegations of paragraph 12 of the complaint and repeat the averments made by them in connection with the answer to each subdivision of paragraph 11. They further aver that the complainant had complete knowledge of the methods used by the defendants in connection with the construction of the work and of the labor and materials used in relation thereto and was cognizant of the rights of the defendants to connect the building on the Stein property with complainant's building in the manner and form in which such connection was made, and they further aver that they complied with several requests which complainant made during the progress of the construction (Case, p. 23, ll. 1 to 20).

The defendants admit the institution of the suit referred to in paragraph 13 of the complaint, but deny the other allegations (Case, p. 23, l. 20).

Defendants also admit that portion of paragraph 14 of the bill, which alleges the removal of the iron support set in the wall of complainant's building, but deny the other allegations of the paragraph and repeat the allegations of the defendants set forth in subdivision 4 of paragraph 11 of the answer (Case, p. 23, l. 24).

Defendants answering further says that from time to time during the course of the construction of the work on the Stein property, complainant protested with regard to some of the particulars of the construction and in numerous instances defendants complied with the suggestions of the complainant and with regard to any protests on the part of the complainant that there might be an encroachment, tendered the written release of Albert C. Stein, whereby complainant would have been relieved at law or in equity of any possibility of claim on the part of Stein or his successor in title, and offered to enter into an agreement whereby complainant's beneficiaries would have been precluded against any loss, damage or liability by reason of any act performed by the defendants; that defendants reached orally an agreement with the complainant's officers but the complainant was unable to reduce such oral arrangement to a written agreement due to the attitude of the beneficiaries under the Voorhees will; that during the progress of the construction of the work and during the conferences had in connection therewith, complainant recognized the rights of the defendants to connect the two buildings as pro-

vided in the Voorhees lease (Case, p. 23, l. 32 and p. 24).

Answering the sixteenth paragraph of the complaint the defendants admit that an agreement was entered into between them and Stein releasing them from the construction of an independent southerly wall, however, reserving to Stein the right to have defendants build said wall at the termination of the lease between defendants and Stein, but defendants deny that Stein receives or will receive any consideration by way of rental or other compensation for the use made of complainant's wall by the defendants as alleged in the bill or that the defendants by reason of said agreement have acquired any benefit or use of the space mentioned. Defendants further aver that the additional ground alleged to have enured to the benefit of the defendants was strictly within the terms of the demise of the Voorhees lease and the acts of the defendants are in accordance with the rights granted (Case, p. 24, l. 25 and p. 25).

Defendants deny the allegations set forth in paragraph 17 and aver that the alleged trespasses have not occasioned any irreparable damage or injury and will not in any manner or form impair the future enjoyment of the Voorhees property (Case, p. 25, l. 15).

Answering the eighteenth paragraph of the bill, the defendants deny the existence of any rights in favor of the complainant in the manner and form alleged and deny that the complainant has a right to apply for the determination of the question referred to in the complaint, and also deny that complainant is entitled to treat the lease as forfeited or that this Court may adjudicate whether a forfeiture has accrued or

that complainant is entitled to a specific performance of the terms of the lease (Case, p. 25, l. 34).

In conclusion of the answer to the bill, the defendants set up and affirm a defense to the effect that the complainant, if the trespasses and encroachments set forth actually exist, has a complete recovery at law by suit for damages and in ejectment, which complainant has recognized as set forth in paragraph 13 of the complaint (Case, p. 26, l. 12).

Under the second affirmative defense, the defendants allege that the trespasses referred to in the complaint are not continuing trespasses and of such extraordinary character that the same cannot be removed or be compensated for in an action at law; that complainant is guilty of laches and that a mandatory injunction will not lie because the rights of the complainant are not certain and must first be settled at law, and because the defendants are not guilty of the breach of any affirmative covenant under the lease, and because the complainant has by its acts, waived any breach of the defendants by its failure to act promptly.

Defendants further allege that complainant is not entitled to have the construction of the lease construed in the manner and form prayed for in the complaint and that the complainant is not entitled to forfeit the lease for reasons set forth (Case, pp. 26 and 27).

On the third affirmative defense the defendants reserve the right to apply to the Court for a dismissal of the complaint for want of equity (Case, p. 27, l. 23).

There is attached to the bill a cross bill by the defendants, in which they repeat the allega-

tions of the answer and allege that they erected a building in accordance with the terms of the lease with said John Voorhees and the provisions thereof. It further alleges that the complainant has instituted in the Union County Circuit Court an action in ejectment against Albert C. Stein. These allegations are followed by a prayer that the action in the Union County Circuit Court be restrained, and that the erection of the building on the property belonging to complainant and the said Albert C. Stein, was in accordance with the terms of the two leases held by the defendants (Case, pp. 27, 28 and 29).

The complainant filed its replication and answer to the counter-claim which is found at length on page 30 of the printed case.

The complainant amended the bill of complaint by including therein an allegation with respect to the insurable value of the building upon the leased premises (Case, p. 32).

The defendants' answer to the amendment to the bill denies the allegations thereof (Case, p. 34).

The complainant thereupon filed replication to the answer to the amended bill (Case, p. 35).

The hearing of the issues joined in this cause was had before Vice-Chancellor Backes, whose opinion was filed on June 28, 1926, and is set forth at length on pages 36 and following of the printed case.

In pursuance to said opinion, a final decree was entered on December 17, 1928 (Case, p. 44).

Upon the entry of the final decree in the cause, an order was made on December 17, 1928, by the Court of Chancery, staying the execution of the

final decree until the further and final disposition of the matter by the Court of Errors and Appeals (Case, p. 47).

On January 26, 1929, notice of appeal from the decree in this cause was filed (Case, p. 356).

On February 9, 1929, the petition of appeal was filed in this Court (Case, p. 358), and answer thereto was filed by the respondent (Case, p. 362).

GROUNDS OF APPEAL.

The appellants herein allege that the decree of the Court of Chancery made in this cause is erroneous and for grounds of appeal further state that the alleged encroachments do not constitute waste and were within the rights of the appellants under the terms of the lease between the parties; and that the said complainant is not entitled to have the alleged connections removed until the termination of the said lease or the renewal thereof and that the appellants have kept the building insured to the full insurable value thereof pursuant to the terms of said lease and that the complainant has a complete and adequate remedy at law; and that the complainant is in laches; and that the complainant is not entitled to the said costs and counsel fees.

With respect to the findings of fact in relation to the alleged encroachments.

Before considering the questions of law involved in this appeal, it is important to review the findings of fact with respect to the alleged encroachments and trespasses as set forth in the bill of complaint. For convenience we will consider them under separate headings.

PIERS AND FOOTINGS.

The Court below found that in 1910, John Voorhees, now deceased, leased the northwest corner of Broad and Jersey streets, Elizabeth, New Jersey, to The Goerke Company, for a term of forty years with the renewal right of twenty more years; that an old structure then on the premises was demolished and The Goerke Company erected a six-story building covering the entire tract eighty feet on Broad street and one hundred and forty feet on Jersey street and thereafter assigned its lease to The Goerke-Kirch Co. Eleven years later The Goerke-Kirch Company leased from one, Stein, for a long term, his L-shaped lot adjoining on the north and west facing Broad and Jersey streets, and tore down the old building and erected a three-story brick store covering the entire lot, as it had agreed to do.

In the opinion (Case, p. 37) the Court found that instead of resting on walls, the floors and roof of the Stein building are supported by thirteen steel columns on concrete piers and all but one or two of the piers are set in the concrete footing of the Voorhees foundation eight or more inches and resting on center, the columns are flush with the walls. Again (Case, p. 38) referring to the official plans, the Court indicates that it was designed to build the Stein building without interior walls and to attach the roof and to support the floors and roof by columns upon concrete piers set in concrete footings in the Voorhees building, and further the Court says, "It is not disputed that the plans were followed in all respects except as to the pier at the northwest corner of the Voorhees building."

Although the Court has made these findings with respect to the pier encroachments, they are followed with this observation on page 39 of the case, beginning with line 10:

“No harm has come to the Voorhees building by reason of any of the pier encroachments. Its stability has not been impaired, nor is there any proof that any at all may come in the future. They all can be removed by chopping off at the division line and permitting the concrete to remain as part of the footing or by chipping it out entirely, restoring the footing by new concrete.”

An examination of the testimony on this branch of the case fails to bear out the findings of the Court with respect to the encroachments of the footings and the piers.

To maintain its contention, the complainant offered as a witness on its behalf, Mr. Poggi, an architect with twenty-nine years' experience. At page 85 of the printed record, he states that he was on the premises during the course of its construction, three times at least and maybe four. He refers to his first visit in August, 1922, at the request of the complainant for the purpose of ascertaining apparently, whether the footings encroached in any way on the Voorhees building. At page 86 of the printed case he is asked: “Now, do you really know whether these footings encroached?” To this he answered, “No, I don't.”

Again the complainant offered as a witness Mr. Meeteer, a construction engineer with twenty-five years' experience. At page 94 of the printed record he admits that he made examination of the Voorhees building and the Stein building involved in this suit. He was asked with respect to the alleged encroachment and as to whether

he knew whether it existed or not and replied that he did not. He examined the building on October 27th, 1922.

John Henry Voorhees, a son of the late John Voorhees, testified on this subject (Case, p. 113). He states he saw the concrete piers of the Stein building after they were in. The cellar floor had not been put in and he could see them for a height of eight inches. He admits he could see down only about eight inches and claimed he could detect a flare.

James Fisher, an attorney of this State (Case, p. 20) testified to the effect that he saw the Stein building in the course of construction once, but admits that the earth was partly filled in around the piers and that the piers appeared above the surface. He further admits that he couldn't see below the ground.

Another witness, Mr. Davis (Case, p. 123) states that his wife is a granddaughter of the late John Voorhees; that he saw the Stein building in the course of erection in company with Mr. Voorhees and Mr. Fisher and observed the construction of the piers on the north side of the Voorhees building. He indicates in his testimony (Case, pp. 125 and 126) that the top of the Stein piers encroached into the footings of the Voorhees building.

Another witness offered on this subject was Mrs. Taylor (Case, p. 127). She is the daughter of the late John Voorhees. She saw the Stein building in the course of erection two or three times and states that she noticed the Stein piers being constructed. She states she saw or could see, seven or eight inches of the piers and also states that the footing on the Voorhees wall was cut out to allow space for the pier of the column.

At page 130 of the printed record she was asked whether she examined all the piers, both north of the Voorhees building and west of the Voorhees building and replied, "I went around but of course I didn't take actual measurements."

Mr. Lewis testified on behalf of the complainant (Case, p. 172) and stated that he saw the Stein building in the course of construction and saw the concrete pillars along the wall of the Stein building where it adjoins the two sides of the Voorhees building. He further states that the footings projected in under the wall of the old Voorhees building. At page 174 of the printed record he is examined by the Court and says that is his recollection of what he saw, and follows: "it is my recollection that you could see where the piers went in there under the foundation wall of the Voorhees building." At page 175, when pressed with respect to the condition that he saw and whether he remembered clearly or not, he says, beginning with line 21: "Well, as true as you can expect your recollection to be after four years. I would say that is the way I saw the piers."

On this subject the defendants produced as a witness Mr. Kruger. He is an architect by profession and authorized to practice in this State, and supervised the building construction of the Stein building for the architect. At pages 262 and 263 of the printed case he says he does not think they went below the footings of the Voorhees building. He says at line 16: "I don't think we did, because the floors are level of both buildings and the loading on these columns is much less on the three-story building, than they would be for the six-story building."

On this subject the only witnesses supporting the contention of the complainant are Mr. Voorhees, Mr. Fisher, Mr. Davis, Mrs. Taylor and Mr. Lewis. It seems quite remarkable to say the least, that these lay-persons, who make no claim to knowledge of building construction, could see more than an architect and a construction engineer of many years' experience. Evidently Mr. Poggi and Mr. Meeteer, complainant's own expert witnesses, viewed this construction during the month of August and while conditions in the cellar were the same as those described by the other witnesses. In fact, these scientific men inspected the construction work for the very purpose of determining whether there were any encroachments upon the Voorhees building. From their testimony it appears that they could discover no encroachments at all. Furthermore, the supervising architect of the defendant indicates very clearly it was unnecessary to encroach upon the footings of the Voorhees building because the Stein building was only three stories high and the Voorhees building was six stories in height and consequently was carrying a heavier load. The witnesses offered by the complainant on this branch of the case exhibited an absolute incompetency to pass upon practical subjects of engineering and in fact, it clearly appears that they could not see conditions below the surface, nor does it appear that they made any effort to discover what was below the surface. Furthermore, they admit they took no measurements. In this connection, the value of their testimony is also shaken by the fact that these lay-witnesses, so to speak, all indicated that the steel columns were flush with the wall on the north and west side of the Voorhees building. On this point, however, Mr. Meeteer, the construction en-

gineer, at page 137 testified that the edges of the columns were nominally four inches from the brick wall of the Voorhees building and that they were not flush up against the building. Certainly the testimony of this construction engineer on this particular point must be accepted in preference to the testimony of these other persons, who certainly cannot be as competent to pass on a subject of this nature as an experienced construction engineer of twenty-five years' standing.

We therefore respectfully contend that there was not presented in this cause, adequate and competent proof of any of the alleged pier encroachments.

ROOF AND CEILINGS.

The Court found that the roof of the Stein building is fastened to the Voorhees building and the ceilings extend into it one to three inches, resting in slots supported by angle irons (Case, p. 37, l. 21). At page 41, the Court below held that the erection of an independent wall was necessary to eliminate the encroachment of the roof and ceiling of the Stein building. On this subject Mr. Poggi, the architect, was examined (see Case, p. 57). He is asked whether the roof of the Stein building is connected in any way with the Voorhees building. He says the plasterings of the Stein building are run up on the Voorhees building. On the side of the Voorhees building it is secured with nails driven into the mortar and that flashings were nailed to the Voorhees building. Further, he says a portion of the ceiling of the Stein building is carried into the Voorhees building on the west wall of the Voorhees building, all the way from an inch to three inches it extends in. The supports supporting the ceiling on the third floor of the Stein

building are extended into the west wall of the Voorhees building for a distance of one to three inches. Evidently the supports are small channel irons carrying along the west wall of the Voorhees building. These channels extend into it about three inches.

We respectfully contend that the defendants were entitled to make these simple attachments to the Voorhees building and that such right was granted them by the terms of the lease executed by the late John Voorhees, to which reference will be made hereafter.

BOILERS.

According to the opinion of the Court below, the Stein building is heated by boilers in the Voorhees building. Again on this subject the Court says the right to connect does not include the right to heat the Stein store from the boilers in the Voorhees building, and further (Case, p. 40, l. 28): "The landlord is entitled to a reversion of the boilers in as good a state as reasonable wear and tear will permit. The wear and tear on the boilers and pipe system in the contemplation of the parties are such as would come from heating the demised premises only. In this respect the tenant is incapacitating itself from performing the covenant of surrender."

On this subject we would refer to the testimony of Mr. Poggi (Case, p. 55). When asked about the steam pipes he says that he found a steam supply main from the boiler and the return line passing through the vault wall between the two vaults under the sidewalk, and it would indicate that the Stein building is being heated by a boiler placed in the vault of the Voorhees building. He further says there are two boilers

there, meaning in the vault of the Voorhees building. One of them appears to be used for the purpose of heating the Voorhees building and the other the Stein building. This is apparently all the testimony on this subject.

From this testimony it would appear that the utmost that can be contended is that the boiler to heat the Stein building is located in the vault of the Voorhees building. There is no testimony to show that there is any connection between the heating systems of the two buildings. All that appears by the testimony is that the boiler for the heating of the Stein building is in the vault of the Voorhees building. Furthermore, when it is considered that the lease of the Voorhees building ran forty years with a privilege of twenty years' renewal, it will be perfectly obvious that the heating system that was installed at the beginning of a term of such length would be absolutely worthless long before the end of such term. In other words, the tenant will probably be obliged to introduce more than one new heating apparatus during the life of the lease.

Furthermore, we respectfully contend on this branch of the case also, that the defendants were clearly within the rights granted them under the Voorhees lease.

LIGHTING SYSTEM.

At the bottom of page 37 of the printed record, in the course of the opinion of the Court, it is stated that the lighting system of the two buildings is a unit. Again at page 40, the Court says: "The unit electric system seems not open to the same objection. There is no wear and tear, at least none is proven or apparent."

The only testimony relative to the lighting system was that given by Mr. Poggi at page 61 in the record. At line 5, he is asked if he knew whether the wiring is connected in the two buildings, to which he responded he didn't investigate that.

There appears to be nothing in the proofs offered in this case to sustain the finding that the lighting system of the two buildings is a unit. Evidently the Court admits that the matter is at least trivial and it is not open to the same objection as is the system of heating the premises. However, we respectfully contend that the defendants are clearly within their rights under the privileges granted in the Voorhees lease.

SPRINKLER SYSTEM AND TANK.

The Court below found that a pipe of the sprinkler system of the Stein building extends through the basement wall of the Voorhees building and a supporting beam of the sprinkler tank extends over the roof of the Voorhees building two feet (Case, p. 38).

Further, at the bottom of page 40 and the top of page 41 of the record the Court apparently found that the sprinkler system is not a unit operated from the Voorhees building, and that each building has its own tank, "But, a pipe of the Stein system improperly enters the Voorhees basement for about twenty feet before it returns again to the Stein building. The beam overhanging the Voorhees roof from the Stein tank is removable by sawing off."

The condition of the buildings in this respect is referred to by Mr. Poggi (see Case, p. 59, l. 22). He refers to finding a six-inch pipe leading from the sprinkler system tank carried

through the rear wall of the Voorhees building overhead. He then describes the course of the pipe extending through the wall of the two buildings into the Voorhees building. It takes a turn to the left and then comes back through the Voorhees building again, one tank supplying the sprinkler system of the Stein building, the other the sprinkler system of the Voorhees building. The pipe leading from the tank over the Stein building extends down through the Stein building to its basement; thence near the ceiling runs eastward through the wall—the rear wall of the Voorhees building; thence northward through the north wall of the Voorhees building and again into the Stein building. The length of this pipe is about twenty or twenty-five feet (Case, pp. 59 and 60).

With respect to this feature, we respectfully contend that no encroachment results therefrom and that the defendants were clearly within their rights under the privileges granted by the Voorhees lease.

EXTERIOR WALL.

The Court below found that there are no exterior walls to the Stein building on the Voorhees side; the exterior of the north and west walls of the latter building, plaster finished, form the inside walls of the Stein building (Case, p. 37). Again the Court refers to the necessity of the erection of an independent wall to eliminate, among other things, the exterior wall of the Voorhees building for the interior of the Stein store (Case, p. 41, l. 10).

Again Mr. Poggi testified with respect to this situation. He says they have applied the wall plaster of the Stein building on the outside of

the north wall of the Voorhees building, making an inside wall for the Stein building throughout, all the way up from the basement to the top. He also states there are attached to the wall several items such as fire hose and items of that character, screws, bolts and nails (Case, p. 65).

This seems to be the only proof offered on this subject. No testimony was offered to indicate that the stability of the walls of the Voorhees building was in any way impaired or damaged.

With respect to this feature, we also contend that the defendants were clearly within their rights under the Voorhees lease, to which reference will be made hereafter.

WEST WALL.

Considerable testimony was taken throughout the hearing of the cause with respect to the condition of the west wall of the Voorhees building. In the course of the opinion (Case, p. 40) referring to the opening in the west wall, the Court says "Forty of the ninety feet of this wall on each of the three floors was removed for doorways, each twenty feet in width, and a remnant of the wall, four feet six inches wide retained as a pier to support the upper three stories. It is the only support and is out of plumb. This is poor construction, so both sides say. The stress is too great for the size of the pier. It has but a safety factor of five and should be double that in scientific construction. There are no present indications of weakness in the pier, but there are cracks in the wall above and the proof is that collapse from overstress is sudden, without warning. The

remedy is simple: suitable columns on either side of the openings resting on the basement wall. That wall is safe to carry the load, so the builders say."

The Court below admitted in the course of the opinion (Case, p. 39) that the defendants had the right to make these openings in the wall of the Voorhees building. There was a difference of opinion among the construction engineers and architects as to whether the west wall was properly supported (see testimony of Mr. Poggi, Case, p. 66, and Mr. Meeteer, Case, p. 98).

However, the engineers and architects did not consider the condition dangerous, but at most, that the factor of safety from a scientific viewpoint should be increased. However, Mr. Kruger, the architect produced by the defendants (Case, p. 220 says: "I have found in examining the pier and calculating the stress on the pier, that the pier is slightly overstressed due to this additional load, but I do not find it dangerously so." On cross examination he admitted that a factor of safety of ten is good engineering and that a factor of safety of six wouldn't be called the best engineering, and concludes that the condition, however, that he found was not dangerous.

Again Mr. DiStasio, construction engineer, offered on behalf of the defendants, testified that he considered that the stresses that he discovered on the west wall are good engineering at that point (Case, p. 278 and following).

It is not contended that the west wall is in a present dangerous condition but that only from a scientific standpoint its safety factor could be increased. Whatever present conditions may be, the defendants under the terms of the Voorhees

lease are only required to return the property at the expiration of the term in the condition required by the terms of the lease. If the defendants yield up the premises at the end of the term as required by the lease, they will have fulfilled their contractual obligation so that the complainant is not interested in its condition during the running of the demised term.

The alleged encroachments do not constitute waste by the tenant and are permitted by the terms of the lease.

In Volume 40, *Cyclopedia of Law*, page 497, waste is defined as follows:

“Waste, as the term is used in real property law, may be defined to be any act or omission of duty by a tenant of land which does a lasting injury to the freehold or inheritance, and tends to cause permanent loss to the owner of the fee, to destroy or lessen the value of the inheritance or to destroy the identity of the property or impair the evidence of title. It is the violation of an obligation to treat the premises in such manner that no harm be done to them and that the estate may revert to those having an underlying interest undeteriorated by any wilful or neglectful act.”

“Waste is usually defined to be a spoil or destruction in houses, lands or tenements, to the damage of him who is in reversion or remainder.” See Taylor’s *Landlord and Tenant*, 7th Edition, page 294.

The same author at page 297, after referring to the strictness of the ancient law on this subject says:

“But this strictness of the common law has been essentially modified in this country, and, as now understood it is not waste for a tenant to erect a new edifice upon the demised premises, or make an alteration there-

in, if it can be done without destroying or materially injuring the buildings or other improvements already existing thereon. He has no right indeed to pull down valuable buildings or to make improvements or alterations which will materially and permanently change the nature of the property, so as to make it impossible for him to restore the premises, at the expiration of the term, substantially as he received it; but to apply the ancient doctrine of waste to modern tenancies even for short terms, would, in some of our cities and villages put an entire stop to the progress of improvements and deprive the tenant of those benefits, which both parties contemplated at the time of the demise, without any possible advantage to the owner of the reversion."

The leading case on the subject of waste in this State, is apparently *Klie v. Von Broock*, 56 N. J. Eq. 18. The head-note in this case runs as follows:

"A lessee in possession under a lease for five years commits waste when, without the permission of the lessor, he partially destroys a party wall by cutting out an opening for a door to connect with the adjoining premises, though done with the permission of the other joint owner of the wall."

In the course of the opinion, *V.-C.* Pitney refers to the ancient authorities defining waste. At the top of page 29, he says:

"But in my judgment the test in such a case is not alone whether a material injury is done to the building, but whether it is altered in a material manner, and to an extent beyond what is fairly implied from the terms of the original contract of letting."

"It is said by the treatise-writers, and authorities are cited for the position, that the severity of the ancient rule of waste has been relaxed and that many alterations are now held not waste which in ancient times

would have been held as waste. I have examined the cases which are said to illustrate this modification and my conclusion is that in most of them a permission by the owner to the tenant to alter and change the building is either found in the terms of the demise or is to be implied from the circumstances of the case. Thus, if the owner of a dwelling in a neighborhood which is rapidly being developed from a dwelling region to a building region, lets it to a party for a long term of years knowing that he expects to use it for business purposes, that, by implication is permission to him to make such alterations as are necessary and usual for that purpose. And so, where a demise is made for a great number of years—say one hundred or two hundred—for a fair rental value of the premises, there it must be presumed that the tenant for years should have well-nigh unrestricted use of the premises, provided he does not reduce their rental value. For in such a case the reversion, independent of the rent, is of mere nominal value.”

The further observations of *V.-C. Pitney* on this subject at the bottom of page 29 indicates a change of attitude on the subject of waste. He there proceeds as follows:

“So, I should say that if a building be erected and let for a hotel and through oversight or miscalculation some mistake in the interior arrangements occurs which materially interferes with its beneficial use for that purpose, and requires a change, it is probable that the right to make such change could properly be inferred from the circumstances. An illustration is found in this case. At the special request of the tenants, the landlords divided the basement into two parts by a cross-wall of brick, not part of the original plan, and not necessary for the support of the building. This was done in order to keep the heat of the range in the kitchen from penetrating to the front part of the

basement. When the building came into actual use it was found that this wall was an injury rather than a benefit, and was in whole or in part removed by the defendants. They assert that it was done with the consent of the landlords; but the landlords deny this. Be this as it may, I think it was not waste and its removal was not relied upon as a part of the complainant's case."

In the instant case we respectfully contend that there was permission by the owner to make the alterations and changes in the building and the connections thereto, both in the terms of the demise as well as implied from the circumstances of the case.

At this point we refer particularly to the lease between John Voorhees and The Goerke Company which was annexed to and made part of the bill of complaint in this cause. It is set forth at length in the printed case at pages 292 to 299 inclusive.

Pursuant thereto the landlord granted to The Goerke Company a lease of the premises therein described for a term of forty years from the 1st day of April, 1912, at a certain fixed rental therein set forth. In addition to the rental, the tenant was to pay all taxes, water rents or charges and assessments levied or assessed against said premises during the term of the lease, and keep the buildings on or thereafter erected upon the premises insured for the benefit of the landlord to the full insurable value thereof.

Furthermore, the tenant agreed with the landlord that it would at its own expense immediately on the commencement of the term of the lease, remove the buildings then on the premises and continue with the erection of a building covering the whole thereof, said building to be at least

three stories in height within eighty feet of Broad street and at least two stories in height elsewhere, with the basement extending under the sidewalk to the curb line on Broad street, which building as soon as completed became the property of the landlord.

Provision is also contained therein for the extension of the lease for a further period of twenty years with a provision for the ascertainment of the amount of rent to be paid during that period.

In addition it is provided that the landlord shall execute and deliver to the tenant this power of attorney to act for him in any proceedings affecting the taxation of the premises during the term of the lease.

There is also a provision in this lease which is particularly pertinent to the situation now under consideration. It reads as follows:

“It is further expressly understood and agreed that at any time during the term of this lease or the renewal thereof, if there be a renewal, the said party of the second shall have the right to connect any building on the demised premises with any building upon any adjoining premises. In case such connection be made however, the same is to be removed and the building restored to its original condition before the termination of this lease or of said renewal.”

We respectfully contend that this clause in the lease gave the tenant greater privileges than was conceded by the Court below with respect to the alleged encroachments thereon.

At page 41 of the printed case the Court says:

“The erection of the independent wall to eliminate the encroachment of the roof and ceiling of the Stein building and the use of

the exterior wall of the Voorhees building for the interior of the Stein store, seems inevitable."

"None of the encroachments find justification in the right to 'connect' the Voorhees building with the one adjoining. The right to connect is not to be conjured into a right to encroach. By fair intentment it is limited to openings as already indicated. The encroachments were made to save the expense of an interior wall, upon agreement with Stein, to omit it from his building for the time, for compensation. They were deliberately made, covertly and under protest and no attempt at justification is admissible. The encroachments are waste by the tenant aided and abetted by Stein."

On the subject of the openings to which the Court refers, we would call attention to that part of the opinion found on page 39, beginning at line 20, which runs as follows:

"The right to connect the building with one adjoining was not intended to be limited to passageways. The long term, the erection of the building at the tenant's cost, and the character of the business—a department store—all indicate the conception of the parties to have been that if the tenant should extend its enterprise to the next door building, the opening should be as well for the advantageous display of wares and to give the interior the appearance of a single store. That is common practice in cities and it is fair to assume that the lessor was not without experience and for that reason did not limit the extent of the openings save as to structural integrity and so that the building would be restorable at the end of the term in compliance with the tenant's covenant to return in 'as good condition as reasonable use and wear thereof will permit.' In this view it cannot be said that the openings are unreasonably large."

By reference to the covenant now under consideration, it would appear that it was the intent of the landlord that the tenant should have well-nigh absolute control of the whole structure during the term of the leasehold estate. In the words of the grant, the tenant has the right to connect any building on the demised premises with any building on any adjoining premises. Furthermore, it provides that in case such connection be made, the same is to be removed and the building restored to its original condition before the termination of the lease. There is no attempt whatever in the grant of these general powers to limit them in any way. It does not limit the tenant in connecting floors only between adjoining premises. The right is given to connect the building on the demised premises with any building on any adjoining premises. Had the landlord intended to limit the rights of the tenant to openings in the wall, as indicated by the Court below, he certainly would not use such general and comprehensive terms. In the Stein lease, the rights of the tenant in this respect were limited and it is therein set forth precisely the extent to which the tenant might go.

According to the dictionary, the verb "connect" as used in this lease evidently means, "to join or fasten together as by something intervening; to bind; to unite or link together" (see Webster's New International Dictionary).

See also Words and Phrases (First Series) page 1432. To "connect" is to join, unite, bind or fasten together.

Bridgeman v. Town of Hardwick, 31 Atl. 33, 34; 67 Vt. 32.

The same dictionary defines "connection" as the "act of connecting or state of being connected; junction; union; alliance; relationship; that which connects, as a part, a word or a particle; bind, tie."

It is fair to presume that the parties to the lease used these words in their ordinary sense and that they fully comprehended their meaning. According to the terms of the lease, the tenant had the right to join or fasten any building on the adjoining premises to the building on the demised premises. Before the termination of the lease, the junction is to be removed and the building restored to its original condition. It is apparent, therefore, that there was no limitation upon the method of junction to be followed. In fact, there is no claim made or established that by the juncture so made the structural integrity of the building has been impaired. Such being the case under the terms of the lease, the landlord must be satisfied with the restoration to the original condition before the termination of the lease or of the renewal.

The Court below found that the tenant did erect a six-story brick building covering the entire lot eighty feet on Broad street and one hundred and forty feet on Jersey street as it had agreed to do (Case, p. 36). By reference to the lease, however, it will appear that the tenant did, in fact, erect a much larger and more valuable building on the premises than it was obliged to do under the terms of the lease. According to this instrument the building was to be at least three stories in height within eighty feet of Broad street and at least two stories in height elsewhere. The Court also found that in pursuance to the covenant of the tenant to keep the building insured to the full insurable value, the

tenant had affected insurance to the amount of \$225,000.00. The Court found that the building's value is \$286,548.00. We refer to this feature of the case because it seems clearly indicative of an intention upon the part of the landlord to give the tenant more or less control of the building during the demised term. He knew that the premises were to be used for a department store and that the tenant then contemplated an addition thereto anticipating that the demised premises would be insufficient for the business of the tenant. This property was located in the very business center of one of the prominent cities of the State where a large retail trade is carried on. It is common knowledge that large retail dealers in order to secure sufficient accommodations are obliged to unite contiguous properties in order to secure sufficient space to display their wares, and carry on their trade. For this reason it is perfectly apparent that when the landlord gave the tenant the right to connect any building on the demised premises with any building upon any adjoining premises, he was not placing any unnecessary or undue limitations upon the right of the tenant. As heretofore suggested, had the landlord intended to limit the tenant to the uniting of the floors of the buildings through passageways, he could have so limited the right granted. However, the right was not limited to the connection of floors but the tenant was granted the right to connect any building upon the adjoining premises with the building on the demised premises.

In *Klie v. Von Broock* (*supra*), V.-C. Pitney indicated very clearly that under certain conditions the tenant might have right to alter and change a building, implied from the circumstances of the case. He refers to the case of a

lease of a dwelling in a neighborhood which is changing its character and where a lease is made for a long term of years by the landlord knowing that the tenant expects to use it for a business purpose. There the Court indicated by implication, permission is given to make such alterations as are necessary and usual for the purpose. The Court also refers to cases of long demises and indicates that there it must be presumed that the tenant should have well-nigh unrestricted use of the premises. In the instant case, however, we may go further than is indicated by the Court in the last case cited. For here we have not only all the conditions which existed in the instances mentioned by the Court, but we also have express permission from the landlord to the tenant to connect the adjoining buildings. In the instant case we have in the first place, a lease for forty years with a privilege of renewal for twenty years more, all at a very substantial rental. In addition, the landlord pursuant to the lease has erected upon the premises a structure of the value of upwards of \$250,000.00. In view, therefore, of such situation, it is perfectly apparent that the landlord intended that the tenant should enjoy as the Courts have heretofore indicated, a well-nigh unrestricted use of the premises. It is not contended or established that the structural integrity of the building is affected, nor that the building may not be restored to its original condition at the end of the term pursuant to the covenant.

The tenants have kept the building insured pursuant to the terms of the lease.

In the course of the opinion of the Court below (Case, p. 42) the Court says: "the tenant covenanted to keep the building insured to the full insurable value. The effected insurance is \$225,000. The proof is and it is not controverted that the building's value is \$286,548. The additional insurance will be ordered."

In the decree the appellants herein are directed specifically to perform the provisions of the lease requiring the keeping of the building insured to the extent of the sum mentioned in the decree, and it is also ordered that the insurance be written by incorporated stock insurance companies authorized to do business in this State (Case, p. 46).

Pursuant to the terms of the lease between the parties, it is provided that the tenant is to keep the buildings on or hereafter erected upon said premises insured to the full insurable value thereof (Case, p. 293, ll. 10 to 15).

Furthermore, there is contained therein this provision (Case, p. 293, l. 28):

"This lease is upon the following covenants and conditions, all and every of which the said party of the second part agrees to perform and keep: that it will pay the rent in the manner aforesaid; all said taxes, water rents or charges, assessments and insurance premiums being payable as soon as the same shall become due and before any interest or penalty is chargeable thereon"

* * * * *

To establish the insurable value of the building, the complainant offered as a witness Mr. Byrnes, whose testimony is found in the printed case, pages 180 to 187 inclusive. He estimates

the value of the building as it stands at \$286,545.09. In explanation of his valuation he states that the money it would take to replace the building was over \$300,000. The value of the building as it stood in April, 1924, was some \$286,000. He evidently arrives at this value by deducting from the replacement value, the estimated depreciation (see Case, p. 184).

On this subject the defendants offered Mr. R. J. Goerke as a witness. He was the president of one of the defendant companies and had been since the erection of the building. The building was constructed in 1912 and part of it in 1913. He states that he has a good recollection of the expense of the building and stated that the cost at that time was \$130,000. On cross examination he stated that the sum mentioned included engineering expense and that the sum mentioned was the total cost of the building, architect's fees and elevators.

The Court below found that the effective insurance carried on the building was \$225,000.

We respectfully contend that the amount carried by the tenants is ample to conform to any requirements of the lease.

Furthermore, the complainant below had an adequate remedy at law for the recovery of insurance premiums and was not entitled to resort to a Court of Equity to enforce its alleged claims to additional insurance. Certainly it was not entitled to a mandatory injunction against the tenants to enforce any such alleged right as is here claimed.

The cases holding that the remedy at law must be plainly inadequate before mandatory injunction will issue, are:

Savage v. Port Reading R. Co., 67 Atl. Rep. 436;

Lord's Executor v. Carbon Iron Mfg. Co., 38 N. J. Eq. 452;

Bailey v. Schnitzius, 45 N. J. Eq. 178.

The counsel fees awarded to the complainant were excessive.

In the final decree the Court below granted the complainant's costs against the defendant, The Goerke-Kirch Company, and directed there should be included in the bill of costs and taxed as a part thereof, a counsel fee of \$3,500.00.

By reference to the bill of complaint filed herein it appears that the complainant therein alleged that the said defendant had committed certain trespasses upon the lands and premises of the complainant and thereupon proceeds to enumerate the alleged trespasses which are found on pages 5, 6, 7 and 8 of the printed case.

By reference to the decree, however, it will appear that the complainant satisfied the Court below that only a part of the alleged trespasses had been committed and that the Court evidently must have found against the complainant with respect to certain of these allegations.

Under the circumstances we respectfully contend that the counsel fee allowed to the complainant was not justified by the nature and extent of the relief granted.

The complainant is in laches.

The testimony presented by the complainant to which we have heretofore referred, clearly indicates that the complainant was thoroughly cognizant at all times of the manner and method about to be employed in the erection of the Stein building. An architect and construction engineer examined the Stein premises when the foundations were being laid and when the piers to support the building were being constructed. Certain members of the Voorhees family, to whose testimony we have referred, also inspected the Stein premises when the foundations were being laid. Mr. Poggi first visited the premises in August, 1922. Mr. Meeteer, the construction engineer of the complainant, examined the building in October, 1922. Mr. R. J. Goerke, the president of one of the defendant companies, testified that the building was constructed in 1912 and part of it in 1913.

The bill of complaint in this cause was not filed until August 1, 1923.

Evidently the building on the Stein property was actually completed for some time before the bill of complaint in this cause was filed.

The correspondence between the parties (Exhibit C. 5, Case, p. 320 and following) shows that the construction work of the building was going forward rapidly during the year 1922.

In view of this situation the observations of V.-C. Howell in *Smith v. Spencer*, 81 N. J. Eq. 389, are pertinent. In the course of the opinion at page 393, he says:

“The complainants informed themselves of the situation directly after the foundations therefor had been laid, and on October 31st, 1911, or the day following, their counsel

wrote a letter to the defendant calling his attention to the erroneous location of his building, and a considerable correspondence ensued between that time and the filing of the bill of December 18th following. In the meantime the construction was going forward, and until the date of the filing of the bill no proceedings were taken to enjoin the construction. It was the duty of the complainants under this state of facts to act immediately after they had ascertained what the situation was. *Sutcliffe v. Eisele*, 62 N. J. Eq. (17 Dick.) 222; *Zelman v. Kaufherr*, 76 N. J. Eq. (6 Buch.) 52; *Meaney v. Stork*, 80 N. J. Eq. (10 Buch.) 60. The complainants cannot in a situation like this, protect their rights by claiming such rights, however, persistently, by mere correspondence. Legal proceedings must be taken before there has been a serious expenditure of money. They waited until the defendant's building was half finished, and not until then did they seek the relief which they should have sought as soon as they had ascertained the facts. On this branch of the case I must hold that the complainants are guilty of laches.

The complainants, therefore, can have no relief against the defendant, and the bill must be dismissed, with costs."

Under the circumstances of this case, therefore, the complainant herein was not entitled to the extraordinary remedy granted by the Court below.

In conclusion, may be say that we are not dealing with a situation in which a tenant has taken valuable property from a landlord and by waste destroyed and mutilated it so as to seriously injure the reversionary interest. We believe that this brief makes it manifestly clear that the Voorhees lease contemplated the destruction of an old building, which was done, and the

erection of a new building by the tenant, which building was to become the property of the landlord. The tenant has voluntarily done more than twice what it was obligated to do in the way of building under the terms of the lease.

The building, estimated by the witnesses of the landlord, as having a value in excess of \$285,000.00, becomes the property of the complainant. The parties understood that the new building erected by the tenant was to be used as a department store in connection with another or other buildings and the right to connect was expressly given.

We believe then that under the severest and most restricted interpretation of waste at the common law, equity should not make such a decree as we are now concerned with.

To go down under the foundations of the Voorhees building to determine whether a few trifling inches of cement extended under the footings of that building, would involve in itself tremendous expense upon the tenant. On the other hand, the landlord has an adequate remedy at law; has been guilty of laches; has consented both expressly and impliedly to all that was done and the decree should be reversed and the bill dismissed.

Respectfully submitted,

LUM, TAMBLYN & COLYER,
Solicitors for Appellant.

RALPH E. LUM,
SAUL COHN,
Of Counsel.

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New Jersey Court of Errors and Appeals

UNION COUNTY TRUST COMPANY,
a corporation, Trustee, etc.,
Complainant-Respondent,

and

THE GOERKE COMPANY, a corpo-
ration, *et al.*,
Defendants-Appellants.

On Bill, etc.
On Appeal from
the Court of
Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement of Facts.

Union County Trust Company is the Trustee under the provisions of the Last Will and Testament of John Voorhees, deceased. John Voorhees, prior to his death, to wit, in the year 1910, leased the northwest corner of Broad and West Jersey Streets, Elizabeth, N. J., to the Goerke Company for forty years, with a renewal right of twenty more years, and after demolishing the old structure then on the premises, the Goerke Company erected a six-story building covering the entire lot of eighty feet on Broad Street and 140 feet on West Jersey Street, as it had agreed to do under the terms of the lease, and which building became the property of the lessor according to the agreement. The Goerke Company subsequently assigned its lease to the Goerke-Kirch Company. About eleven years later, the Goerke-Kirch Company leased from the defendant, Albert C. Stein,

his L-shaped lot adjoining on the north and west the Voorhees property, said lot fronting on Broad Street and on West Jersey Street. The Goerke-Kirch Company tore down the old building on the Stein property and erected a three-story brick store covering the entire Stein lot. In the lease of the Voorhees property it is provided that the lessee should have the right to connect any building on the demised premises with any building on any adjoining premises. According to the agreement offered in evidence, the Stein lease had a corresponding clause. The Goerke-Kirch Company, in erecting the Stein building by agreement with the defendant Albert C. Stein, omitted the southerly and easterly walls abutting the Voorhees property and utilized the exterior of the north and west walls of the Voorhees building for the southerly and easterly walls of the Stein building, attaching plaster, decorations, moulding, fixtures, fire hose and screws to the exterior of the Voorhees wall. In erecting the Stein building it was so built that the concrete piers under the columns of the Stein building along the north and west boundary of the Voorhees property encroached into and on the Voorhees property. The foundation of the Voorhees building was cut into in order to provide space for the encroaching piers of the Stein building. The horizontal girders in the Stein building were extended into the Voorhees building, and the defendants connected the steam heating pipes of the Stein building with the steam pipes and boilers in the Voorhees building, thereby using and overburdening the Voorhees boiler to heat the Stein building. The roof of the Stein building was connected with the wall of the Voorhees building and the ceiling of the Stein building encroached into the walls of the Voor-

hees building from one to three inches, resting in slots supported by angle irons. A pipe of the sprinkling system of the Stein building goes through the basement wall of the Voorhees building, and a beam of the sprinkler tank of the Stein building overhangs the Voorhees property two feet, and a ladder from said tank is attached to and stands over the Voorhees building, and the defendants created a dangerous condition in the rear of the west wall of the Voorhees building by making openings which were too large, leaving piers of insufficient strength to support the said walls and resulted in the buckling and deflection and overloading of footings and causing of cracks in five stories of the west wall of the Voorhees building. The floors and roof of the Stein building on the southerly and easterly sides adjoining the Voorhees property, instead of resting on walls, are supported by thirteen steel columns set in concrete piers $7\frac{1}{2}$ feet long and correspondingly wide and deep and flaring, and all but one or two of the piers are set in the concrete footings encroaching into the Voorhees foundation eight or more inches and resting on centres. The columns are flushed with the Voorhees walls, the concrete footing of the Voorhees building was chipped out down to the soil or only part way, and the new footing for the Stein building rests on the footings of the Voorhees building. A column known as No. 17 (Case, p. 319), to support an opening in the northerly wall of the Voorhees building (the opening made by Goerke-Kirch Company) rests on a combination concrete pier that also serves to support a column known as No. 17-A in the Stein building. The Stein building is heated by boilers in the Voorhees building and the lighting system of the two buildings is one unit. The Goerke-Kirch Company cut excessive openings in the north and west

walls of the Voorhees building; the openings in the north wall aggregate 38 feet on each of the three floors, and the openings in the west wall aggregate 40 feet on each of the three floors.

FACTS FOUND BY THE COURT OF CHANCERY.

In deciding the case at bar, the Court of Chancery found that the following facts, among others, were established by the proofs.

The stores (Voorhees store and Stein store) were connected by cutting openings through the north and west wall of the Voorhees building. There are no interior walls of the Stein building on the Voorhees sides. The exterior of the north and west walls of the Voorhees building, plaster finished, form the inside walls of the Stein building. The roof is fastened to the Voorhees building and the ceilings extend into it one to three inches, resting on slots supported by angle irons instead of resting upon walls. The floors and roofs are supported by thirteen steel columns on concrete piers seven and one-half feet long and correspondingly wide and deep and flaring, and all but one or two of the piers are set in concrete footings of the Voorhees foundation eight or more inches and resting on center. The columns are flush with the walls. Either the concrete footing was chipped out down to the soil or only part way and rest in the footing. A column, No. 17, to support an opening in the northerly wall of the Voorhees building rests on a combination concrete pier that also serves to support a column, 17-A, in the Stein building.

Case, p. 37. The Stein building is heated by the boilers in the Voorhees building. The lighting system of the two buildings is one unit. A pipe of the sprinkler system of the Stein building

extends through the basement wall of the Voorhees building and a supporting beam of the sprinkler tank extends over the roof of the Voorhees building two feet.

Case, p. 38. The official plans of the Stein building show that it was designed to be built without the interior walls, to attach the roof and to support the floors and roof on columns upon concrete piers set in the concrete footings in the Voorhees building, and it is not disputed that the plans were followed in all respects except as to the piers at the northwest corner of the Voorhees building. There the acceptable testimony is, the column and one next southerly along the west wall rest on a combination pier laid alongside the building in the soil of the Stein lot. The combination pier, upon which column 17 and 17-A rest, extends across the property line. It is said to have been put in as a single pier to accommodate column No. 17 in the Voorhees wall and to have been enlarged and extended into the Stein lot to support column 17-A. How that was accomplished, if that was the way, is not explained. The probabilities are that column No. 17 originally rested on the footing of the Voorhees building and that the combination pier was later inserted somehow. Maybe beneath the footing. Be that as it may, each column gets its share of soil support from its own property, and on that score it is unobjectionable by having been constructed to accommodate column No. 17-A, the use of which by column No. 17, being incidental, so much as extends behind the Stein line must be looked upon as an encroachment (Case, pp. 38 and 39).

The right to connect the building with the one adjoining was not intended to be limited to passageways. The long term, the erection of the building at the tenant's cost, and the character of the

business—a department store—all indicate the conception of the parties to have been, that if the tenant should extend its enterprise to the next door building the opening should be as well for the advantageous display of wares and to give the interior the appearance of a single store. That is common practice in cities, and it is fair to assume that the lessor was not without experience and for that reason did not limit the extent of the openings, save as to structural integrity, and so that the building would be restorable at the end of the term in compliance with the tenant's covenant to surrender in "as good condition as reasonable use and wear thereof will permit". In this view it cannot be said that the openings are unreasonably large. An aggregate of 38 feet of openings on each of the three floors in the 140 feet long north wall would seem to be well within moderation. The larger of the openings is adequately fortified by column 17, and the proof is that there is and can be no harm from this source. This cannot be said of the openings in the west wall. Forty of the ninety feet of this wall (the lot is wider in the rear) on each of the three floors was removed for doorways, each twenty feet in width, and a remnant of the wall, four feet six inches wide, retained as a pier to support the upper three stories. It is the only support and is out of plumb. This is poor construction, so both sides say. The stress is too great for the size of the pier. It has but a safety factor of five and should be double that in scientific construction. There are no present indications of weakness in the pier but there are cracks in the wall above and the proof is that collapse from over-stress is sudden, without warning. The remedy is simple: suitable columns on either side of the openings resting on the basement wall. That

wall is safe to carry the load, so the builders say.

The right to connect does not include the right to heat the Stein store from the boilers in the Voorhees building. The landlord is entitled to a reversion of the boilers in as good a state as reasonable wear and tear will permit. The wear and tear on the boilers and pipe system in the contemplation of the parties are such as would come from heating the demised premises only. In this respect the tenant is incapacitating itself from performing the covenant of surrender. The unit electric system seems not open to the same objection. There is no wear and tear, at least none is proven or apparent. The sprinkler system, apparently, is not a unit operated from the Voorhees property. Each building has its own tank. But, a pipe of the Stein system improperly enters the Voorhees basement for about twenty feet before it again returns to the Stein store. The beam overhanging the Voorhees roof from the Stein tank is removable by sawing off.

The erection of an independent wall, to eliminate the encroachment of the roof and ceiling of the Stein building and the use of the exterior wall of the Voorhees building for the interior of the Stein store, seems inevitable.

None of the encroachments find justification in the right to "connect" the Voorhees building with the one adjoining. The right to connect is not to be conjured into a right to encroach. By fair intendment, it is limited to openings, as already indicated. The encroachments were made to save the expense of an interior wall, upon agreement with Stein to omit it from his building, for the time, for compensation. They were deliberately made, covertly and under protest and no attempt at justification is admissible. The encroachments

are waste by the tenant, aided and abetted by Stein.

Now, as to the form of relief. Can it be something short of restoration of the building at this time? The defendants protest, that they will remove the encroachments at the end of the term, cannot be entertained. Even had they offered security, it would be a matter for negotiation between the parties. If it were a court question the defendants would not be entitled to serious equitable consideration, because of their wilfulness. And, in the meanwhile, the marketability of the demised premises would be greatly impaired, to the detriment of the trustees, if it has the power of sale, and to the *cestuis que trust* if they cared to part with their interest. There is nothing whatever in the conduct of the defendants that appeals to the Court to ease them of the complainant's right to an injunction restraining the continuance of the encroachments. That will be the decree, and a mandate that the tenant support the openings in the west wall. *Klie v. Von Broock*, 56 N. J. Eq. 18; *Kirschberg v. Flusser*, 87 N. J. Eq. 588; *Krich v. Zemel*, 96 N. J. Eq. 588; *Krich v. Zemel*, 96 N. J. Eq. 208; *Capone v. Ranzulli*, 99 N. J. Eq. 627; High on Inj., Sec. 434; 27 R. C. L. Waste, Par. 38; Kerr on Inj., 231. The claim of the defendants that the complainant is estopped because it offered no protest during the progress of the encroachments (which is not true) is met by the fact that the defendants knowingly trespassed, and at their peril.

The attack upon the Court's jurisdiction is without merit. The title to the premises is not in dispute; the encroachments are not denied, and the complainant's legal rights are not in doubt because the meaning of "connect" is debatable.

It is the privilege and duty of this Court to determine the true construction.

The tenant covenanted to keep the building insured "to the full insurable value". The effected insurance is \$225,000. The proof is, and it is not controverted, that the building's value is \$286,548. The additional insurance will be ordered.

The findings of the lower Court are amply supported by competent testimony.

EVIDENCE CLEARLY SHOWS THAT THE SOUTHERLY AND EASTERLY WALLS OF THE STEIN BUILDING WERE OMITTED, UTILIZING THE EXTERIOR NORTH AND WEST WALLS OF THE VOORHEES BUILDING AS THE INTERIOR WALLS OF THE STEIN BUILDING, ATTACH PLASTER TO THE VOORHEES WALL, ALSO DECORATIONS, MOULDINGS, FIXTURES, FIRE HOSE, SCREWS. BENEFIT APPROPRIATED BY STEIN AND RECEIVES COMPENSATION THEREFOR. SAVING IN COST OF CONSTRUCTION OF INDEPENDENT WALL.

Case, p. 51. Alfred C. Stein testifies that the wall was to be eliminated at this time and erected at the end of the lease and that a certain allowance was made for that agreement.

C. GODFREY POGGI, architect, testified:

Case, p. 52, line 39. "You mean that when you agreed to allow them to defer the building of the wall, they paid you the cost of the wall?" "No, they paid me \$5500.00, which I was to collect out of the collateral pledged by the Goerke-Kirch Company."

Case, p. 65, line 3. There was no southerly wall of the Stein building adjoining and parallel with the north wall of the Voorhees building.

Case, p. 65, line 17. "Defendants have plastered the outside of the north and west walls of the Voorhees building, making an inside wall of the Stein building."

Case, p. 65, line 29. There are several items attached to the outside of the Voorhees wall, such as fire hose and items of that character fastened to the wall.

Case, p. 187, line 34. That the cost of constructing a southerly and easterly wall in the Stein building along the Voorhees wall would be \$22,000. This testimony was not contradicted.

The northerly and westerly walls of the Voorhees building are used by the defendants as enclosures in place of the southerly and easterly walls of the Stein building, and the Voorhees walls are used for the support of the southerly and easterly sides of the Stein building. The outer northerly and westerly walls of the Voorhees building have been plastered by the defendants from cellar to roof of the Stein building, which could not very readily be removed, and if the Stein building should be removed by fire or other causes, the exterior of the Voorhees building would be defaced by remnants of the plaster hanging to it. The interior of the Voorhees building would be unprotected against the elements and fire, and the Voorhees building would be subjected to a greatly increased fire hazard. The defendants have also affixed screws and fixtures to the Voorhees wall, all of which constitutes waste.

THE FOUNDATIONS OF THE STEIN BUILDING
ENCROACH INTO AND UPON THE VOORHEES
PROPERTY IN THE CASE OF CONCRETE PIERS
UNDER ELEVEN COLUMNS ALONG THE NORTH
AND WEST WALLS.

Mr. Poggi, an architect, testified (Case, p. 74, l. 11): "This designed encroachment varies from nine inches to three feet at column 17. At column 20 the encroachment is sixteen inches or thereabouts. That is about the extent of the variation, from nine inches to three feet, the encroachment varying."

Case, p. 75, line 16. "The average designed encroachment of the Stein building into the west wall of the Voorhees building is seven and one-half feet. This encroachment is broken, not continuous. It is only at the piers. The distance between the piers is eight to ten feet on the north wall and sixteen to eighteen feet on the west wall of the Voorhees building."

Case, p. 76, line 16. The piers are wider at the bottom to add stability. The object of the encroachment on the Voorhees property by the piers is for the purpose of placing the columns as close to the Voorhees wall as possible, and also in the center of gravity for the footings of piers.

MR. GEORGE P. MEETEER, architect and engineer,
testified:

Case, p. 105, line 11. Encroachment of piers at the northwest corner of the Voorhees building has taken away bearing power of the soil.

Case, p. 106, line 4. According to the plans of the Stein building the encroachments are between two and three square feet in area under the piers, and on line 19 he testified that the piers stick into

the Voorhees building two feet. The wall of the Voorhees building is two feet four inches thick.

Case, p. 107, line 12. This would weaken the foundation at the point under the pier and would cause a settlement of the west wall of the Voorhees building.

Case, p. 108, line 21. Weakening of the north wall would not be perceptible at once but would become so if permitted to continue.

Case, p. 119, line 16. The Court asked if this situation could not be remedied by removing the Stein piers and replacing them with dirt and footings under the Voorhees building. Witness: "I don't believe that would be practical because the soil when once distributed you can never get the proper bearing power unless you go very deep in the foundation."

Case, p. 111, line 8. If the encroachments were to be sawed off. Witness: "I don't believe that the soil condition would be affected materially by cutting the footing." (This refers to the encroachment at the northwest corner of the Voorhees building.)

Case, p. 112, line 7. Referring to the northwest corner of the Voorhees building, if the encroachment was securely put in the earth, the overloading would be that you are putting two loads on the same soil, part from the Stein column and part from the Voorhees wall.

JOHN H. VOORHEES, witness, testified:

Case, p. 113, line 19. I watched the Stein building in the course of construction. I saw the piers in the Stein building after they were in. They had filled them up, but the cellar floor had not been

put in and I could see them for a height of about eight inches.

Case, p. 113, line 34. I saw where they had cut wall out at an angle, so I could see the whole top of the pier. The piers were partly under the Voorhees building from one to two inches. We could see there some placed a little more than that in some of them on both walls.

Case, p. 114, line 14. Encroachments were 18 inches wide.

Case, p. 114, line 28. The piers flared out downward. I think there were ten or twelve piers that were in that same condition.

Case, p. 115, line 28. Piers on northwest corner set diagonally slanting downward, encroaching on the Voorhees property about eight inches.

Case, p. 116, line 7. Column 17 in entirely within the Voorhees wall.

Case, p. 117, line 8. The tops of piers were 12 x 18. I could see eight inches of the piers that were out of the ground. The piers flared out one inch in these eight inches.

Case, p. 118, line 33. The pier at the northwest corner of the Voorhees building crossed the corner of the Voorhees building under the Voorhees wall.

Case, p. 119, line 25. Top of piers encroached two inches into Voorhees wall and the flare at the bottom was in addition thereto.

JAMES FISCHER testified:

Case, p. 120, line 20. I noticed that at the point where these piers were located the wall or footings of the Voorhees building had been cut out.

Case, p. 121, line 16. I should say the piers were four inches into the wall of the Voorhees

building. The footing of the Voorhees building was cut at a slant.

Case, p. 121, line 31. The cuts into the Voorhees wall were about one to two feet.

Case, p. 122, line 28. The piers fitted in the cut. Some space at top.

J. BRADFORD DAVIS, a witness, testified:

Case, p. 124, line 13. Cuts were chiselled out of the Voorhees wall on both the north and west side cut at a slant for piers.

Case, p. 124, line 38. Piers were 18 inches to two feet wide on the top and extended into the Voorhees wall from two to six or eight inches.

Case, p. 125, line 29. The cutting in the Voorhees building began about six or eight inches above the top of the piers and sloped into the Voorhees building.

Case, p. 126, line 5. The tops of the footings encroached in the Voorhees building about six inches.

Case, p. 126, line 18. The flare of the pier conformed to the slant of the cutting in the Voorhees building. It appeared to me that the composition had been thrown in in a fluid state and that possibly a form had been used. I should judge possibly the foundation had been used as one side of the form running into the Voorhees building and a box around the other three sides.

MABEL V. TAYLOR, witness, testified:

Case, p. 127, line 33. I saw the footing on the Voorhees wall cut out to allow space for the pier of the column so that the pier could go in.

Case, p. 128, line 22. The steel column upon the pier was flushed with the Voorhees wall.

Case, p. 129, line 5. Column 17 was in the Voorhees wall on the north side of the Stein building adjoining the Kean property. The piers were flush against the Kean building and the columns twelve to eighteen inches away from that building.

Case, p. 132, line 32. I saw the cutouts in the Voorhees footing.

Case, p. 133, line 27. Cuttings in the Voorhees building were cut diagonally.

GEORGE B. MEETEER, recalled :

Case, p. 135, line 37. If the encroachment of the Stein piers upon the Voorhees building were one to two inches, and if the piers were fully loaded, the building load there would be a tendency for those buildings to tip inwardly.

Case, p. 139, line 37. Widening of base of piers encroaching into Voorhees wall would give greater stability.

Case, p. 141, line 27. Encroachment of six inches at the northwest corner of the Voorhees wall would lessen bearing power of soil which would tend to go outward.

Case, p. 141, line 36. The wall is not a continuous wall at the northwest corner of the Voorhees building, because defendants cut an opening approximately five feet from the corner that we are talking about.

Case, p. 142, line 23. Have cut openings and stress at the corner increased thereby.

Case, p. 144, line 39. Pressure at the northwest corner of the Voorhees building is 7.6 tons per square foot.

Case, p. 147, line 7. Cost of removing piers and replacing piers which would not encroach would be approximately \$10,000.

Case, p. 147, line 35. Piers might be replaced by wall.

Case, p. 149, line 23. Might place columns in basement alongside of present columns.

Case, p. 151, line 5. Could add to piers on side of Stein building by means of steel, drill off encroachment. Piece of metal to separate.

RUSSELL W. LEWIS, testified:

Case, p. 173, line 14. I saw the Stein building in course of erection, piers and columns. (Line 39) Columns were flush against the Voorhees building.

Case, p. 174, line 4. Footings projected into Voorhees building.

Case, p. 175, line 17. I saw all the piers exposed without any filling around them.

Case, p. 175, line 34. Part of the Voorhees wall was chipped off to permit these broadening piers to go in there.

JOHN H. VOORHEES, recalled:

Case, p. 177. Columns of Stein building were flush with the Voorhees wall on north and west sides.

J. BRADFORD DAVIS, recalled:

Case, p. 177, line 40. Columns were flush with the Voorhees wall.

JAMES FISCHER, recalled:

Case, p. 179, line 13. Defendants had chiselled wall off where it was uneven on column next to Broad Street, so it would fit good and proper.

EDMUND GOERKE, officer of the defendant Company, testified:

Case, p. 193, line 7. Footings for columns 17 and 17-a were made larger than other footings.

RUDOLPH KRUEGER, defendant's witness, testified:

Case, p. 203, line 16. Column 17 is in the wall of the Voorhees building upon which was carried lintels for the opening when the wall—portion of the wall was taken out of the Voorhees building.

Case, p. 205, line 15. 17-a footing extends into the Voorhees wall. The footing was built underneath the wall of the Voorhees property. (Line 30) This could be remedied by cutting off footing which projects under the Voorhees building in rebuilding wall.

Case, p. 206, line 16. The footings of 17 and 17-a extends quite a bit into the Voorhees line. It is one large footing. Simple matter to remove encroachment.

Case, p. 208, line 22. The original footing called for five foot five by two foot deep and was enlarged to take that column 17-a.

Case, p. 210, line 31. Suggestion for removing encroachment. Opening on west wall to a point within two or three feet of where it meets the other wall. The original plans did not show column 17-a.

Case, p. 243, line 30. Suggestion by Mr. Krueger for idea of removing encroachment.

There can be no question but what the various portions of the Stein building extended and encroached into the Voorhees building, from the testimony of the various witnesses including the defendants' own witnesses. All of these witnesses had actual knowledge of the condition that existed here on the ground and saw the encroachments which were made into the Voorhees property.

THE DEFENDANTS CUT INTO THE FOUNDATION WALL OF THE VOORHEES BUILDING IN ORDER TO PROVIDE SPACE FOR THE ENCROACHING PIERS.

This is admitted in the answer of the defendants (Case, p. 18, l. 28), and is covered by the testimony referred to under Point IV.

THE DEFENDANTS MADE EXCESSIVE CUTS INTO THE VOORHEES WALL TO PROVIDE OPENINGS OF EXCESSIVE SIZE BETWEEN THE TWO BUILDINGS.

The defendants in their answer admit these openings as to size (Case, p. 18, l. 31).

Mr. Poggi testified:

Case, p. 62, line 14. Six single openings and two double openings in *north wall*. Basement contains two openings single. First floor, one single and two double openings. Second floor, one single and two double openings, and on the third floor, two single openings, all on north wall (p. 62, l. 30, and p. 63, l. 4). Double openings were 14 feet and 6 inches by 11 feet 2 inches. Single openings, 11 feet 8 inches wide. Double openings, 14 feet 6, second floor, and 12 feet wide.

Case, p. 64, line 4. Single openings, 11 feet 2 inches, third floor, and 12 feet wide.

Case, p. 64, lines 27 and 30. Height of openings in basement, 7 feet 8 inches; first floor, 14 feet; second floor, 11 feet, and third floor, 11 feet.

Case, p. 66, line 20. There are eight openings in the *west wall*. In the basement there are two openings 6 feet wide and 7 feet 3 inches high; on the first floor there are two openings, one 20 feet 6 inches wide and the other 20 feet wide, and they are 9 feet high. On the second floor there are two openings, each 20 feet wide and a height of 12 feet 8 inches. On the third floor there are two openings, one 20 feet 6 inches wide, 10 feet high, and the other 20 feet 4 inches wide and 10 feet high.

The word "connect" as used in the Voorhees lease contemplated a connection as a means of communication, and it would be contrary to common sense to infer that the parties had in mind that the word "connect" would carry with it the right to connect other buildings to the Voorhees building, so that the Voorhees building would not be readily separated from other buildings upon the expiration, surrender or termination of the lease for any reason whatsoever. For the purpose of connecting the Voorhees building with the other building only reasonable openings are necessary, and the number and size of the openings which were made by the defendants in the Voorhees wall were unreasonable and not in contemplation of the parties when the lease was entered into.

HORIZONTAL GIRDER EXTENDED INTO VOORHEES BUILDING AND ATTACHED TO COLUMN NO. 17.

Mr. Poggi testified (Case, p. 79, l. 10): The beams or girders supporting three floors of the Stein building were connected to a column known as No. 17 which were within the area of the north

wall of the Voorhees building. (P. 79, l. 17): In the first and third floors and roof, but no testimony that it was disconnected at the second floor. (P. 71, l. 5): There is no tie between columns along the line of the north wall of the Voorhees building in the center of the Stein building. This is poor construction. The testimony proves that the girder on the second floor was never disconnected. The steam heating pipes of the Stein building are connected with the steam heating pipes and boilers in the Voorhees building, thereby using and overburdening the Voorhees boiler to heat the Stein building (Case, p. 55, l. 40).

BOILERS.

Case, p. 56, line 12. There are two boilers in the Voorhees building which are used for the purpose of heating the Voorhees building and the other the Stein building. Both boilers are in the vault of the Voorhees building under West Jersey Street sidewalk, (and on line 37) the boilers are taken in as a unit. Steam pipes, main and return line, pass through vault wall. Defendants do not contradict this allegation in the bill of complaint or the testimony which proved that the Stein building is heated from the heating plant in the Voorhees building. The heating plant in the Voorhees building is the property of the complainant and the defendants have no right to use these boilers and connect up with the pipes in the Voorhees building for the purpose of heating another building. The effect of heating both buildings from the Voorhees boiler is to overburden the boiler and pipes and prevent them from lasting as long as they would last and constitutes waste.

ROOF OF STEIN BUILDING CONNECTED WITH WALL OF VOORHEES BUILDING, AN ENCROACHMENT OF CEILING OF STEIN BUILDING INTO VOORHEES WALL.

Sub-section "k" of paragraph "11" of the bill of complaint (k., p. 7, l. 32), By connecting the roof of said building to the property of said Stein with and into the wall of complainant's building.

The defendant answers this paragraph (k., p. 21, l. 16). Defendants admit the allegations of sub-division k of paragraph 11 of complaint, but aver that by reason thereof the building on complainant's property had been conserved and protected, and further avers that said work was done pursuant to the right of the defendant by virtue of the lease.

Mr. Poggi testified (p. 57, l. 12): The roof of the Stein building is connected with the Voorhees building. (Line 30): A portion of the ceiling of the Stein building is carried into the Voorhees building on the west wall, all the way from an inch to three inches. It extends in. It is a support supporting the ceiling. The supports supporting the ceiling of the third floor of the Stein building are extended into the walls of the Voorhees building for a distance of three inches.

This testimony and admission in the answer clearly indicate that these encroachments were actually made by the defendants into the wall of the Voorhees building.

THE PIPES OF THE SPRINKLER SYSTEM OF THE STEIN BUILDING EXTEND THROUGH THE BASEMENT WALL OF THE VOORHEES BUILDING, AND A SUPPORTING BEAM OF THE SPRINKLER TANK EXTENDS OVER THE ROOF OF THE VOORHEES BUILDING TWO FEET.

Mr. Poggi testified: "I noticed a six inch pipe leading from the sprinkler system pipe of the Stein Building which carried through the rear wall of the

Voorhees building from overhead" (Case, p. 59, l. 14). He further testified (Case, p. 77, l. 34): "There is a ladder extending from the top of the Voorhees building around the platform of the Stein building," and (Case, p. 78, l. 14), this witness testified: "The beam supporting the tank on the Stein building overhangs the Voorhees building two feet." These encroachments are admitted by the appellants in their brief, but they attempt to justify the encroachments as being privileged under the Voorhees lease.

THE WEST WALL IS IN A DANGEROUS CONDITION CAUSED BY MAKING THE OPENINGS TOO LARGE, LEAVING CENTER PIER OF INSUFFICIENT STRENGTH, RESULTING IN BUCKLING AND DEFLECTION OF THE PIER, AND THE OVERLOADING OF FOOTINGS AND CAUSING OF CRACKS IN THE FIVE STORIES OF THE REAR WALL.

WEST WALL.

Case, p. 66, line 15. Basement 2 openings 6' wide 7' 3" high each. First floor 2 openings 20' 6" wide 9' high each. Second floor 2 openings 20' wide 12' 8" high each. Third floor 2 openings 20' 6" and 20' 10" wide, 10' high each.

Case, p. 67, line 30. Brick pier between openings on each floor.

Case, p. 68, line 12. Not proper construction.

Case, p. 69, line 17. Footings overloaded at given points.

Case, p. 70, line 11. Would cause cracks if footings sank or piers would bend.

Case, p. 70, line 24. One pier has bent—plaster has cracked first, second and third floors $\frac{1}{8}$ to $\frac{3}{16}$ th".

Case, p. 71, line 16. Due to bending of brick pier.

Case, p. 72, line 17. Remedy remove piers and put in steel columns all the way up.

Case, p. 73, line 4. Wall not safe as holes are now cut in it.

Case, p. 81, line 34; Case, p. 82, line 3. Cracks in Voorhees building on upper floor. Some can be seen inside and some on outside. From windows.

Case, p. 82, line 20. Cracks show that center pier (west wall) is not strong enough to carry concentrated load.

Case, p. 83, lines 6 and 25; Case, p. 85, line 21. Cracks that show outside are above third floor. Wall was cut out 20 feet long without bracing.

Case, p. 86, lines 30 and 40. Pier in west wall is not built as a pier would be. Is part of old wall.

Case, p. 87, line 27. A real pier properly bonded would be stronger than remnant of old wall.

Case, p. 89, line 8. Pier is bending $\frac{1}{8}$ to $\frac{1}{4}$ ". Greatest bend at second story.

Case, p. 90, lines 18-20. Deflection in topmost of openings and a bend in the pier.

GEORGE B. METEER:

Case, p. 98, line 17. West wall conditions very bad. Brick work overloaded. Pier has a load of 18 tons per square foot. Limit for such a pier 10 tons. Lineal or lateral percentage of openings 59% is excessive. Limit is 50% if pier of good construction.

Case, p. 98, line 33; Case, p. 99, line 17. Remedy is bonded brick pier of increased thickness, or steel column from first floor to third floor. Wall above is cracked now.

Case, p. 100, line 14. Present pier of improper construction. Violation of every code.

Case, p. 100, line 21. Pier fails by bulging. Strength dependent on unsupported height of least dimension 16".

Case, p. 101, line 10. Pier has bulged on second floor. Cracks above third floor outside Voorhees building.

Case, p. 101, line 22. Cracks due to any one of four things: (1) Lack of shoring in alterations. (2) Insufficient strength of beams above openings. (3) Overloading floors. (4) Settlement of footing under northwest corner of building. Weight there 13 tons to square foot.

Case, p. 103, line 25; p. 104, line 10. Plans show encroachment of pier at northwest corner. Over-weighted there now. Stress under foundations 4 tons per square foot.

Case, p. 107, line 20. Would cause a settlement of west wall of Voorhees building.

Case, p. 108, line 27. Weakening of north wall would not be perceptible at once, but would become so, if permitted to continue.

GEORGE P. METEER, recalled:

Case, p. 156, line 35. Ultimate strength of pier (in west wall) 10 by 200 pounds per square inch reduced by height and least dimension.

Case, p. 157, line 33. Pier as is, where bulged on second floor, 4 feet wide, 20" thick, 13' 6" between floors.

Case, p. 158, line 11. 100 tons to square foot.

Case, p. 158, line 33. Openings beneath are taken care of by increase in size of wall.

Case, p. 159, line 20. Consider it unsafe.

Case, p. 160, lines 10-20. Cracks due to settlement in Voorhees wall.

Case, p. 161, line 10. Not dangerously overloaded on first floor. Not good practice.

Case, p. 161, line 20. All right in basement.

Case, p. 162, line 20. Cellar 28" thick; first floor, 24".

Case, p. 163, lines 15-25. Width of pier on second floor reduced to 4' 6" and thickness 20", whereas same openings and width of pier on first floor but 24" thick.

Case, p. 164, lines 10-20. Cracks not due to natural deflection of girders.

Case, p. 165, lines 5-15. Repairing west wall cost \$10,000 with shoring.

Case, p. 166, line 10. Plaster cracks third, fourth and fifth floors, and right through wall on sixth floor, $\frac{3}{8}$ " maximum.

Case, p. 167, line 20. Cracks extend from window openings.

Case, p. 168, lines 20-30. Wall above third floor is in a dangerous condition, due to overload and vibration of roof tank directly over weakened pier.

Case, p. 169, lines 20-40; p. 170, line 10. Diagram offered. Exhibit C-4.

EDMUND GOERKE's testimony:

Case, p. 193, line 22. Two or three minor cracks in another wall.

Case, p. 194, lines 27-30. Found plaster cracks on the side of the west wall on the fourth and fifth floors.

Case, p. 196, line 33. The most easterly crack on the north wall was about 2' of being over the opening.

Case, p. 197, line 34. Showed plaster cracks on the inside, as shown on map.

Case, p. 198, line 20. Plaster cracks found on inside of west wall.

MR. KRUEGER'S testimony (defendants' witness):

Case, p. 211, lines 23-40; Case, p. 212, line 10. Openings cut in west wall, leaving a part of the west wall still adjoining the north wall. Buttress on northwest corner of Voorhees wall stressed to 12 tons per square foot. Usually allow higher stress on a buttress and wall of that type.

Case, p. 214, line 10. Made test to see if bearing capacity of buttress at that corner was sufficient to take care of load thrust upon it. Margin of safety is 10 at that point.

Case, p. 217, lines 15-30. Here a buttress at northwest corner is the remains of old wall.

Case, p. 218, lines 30-40. Factor of safety is diminished by opening in west wall.

Case, p. 219, line 32 to p. 220, line 10. Pier or buttress at northwest corner carry more of a load than they were reasonably contemplated to carry by reason of openings. No reinforcement was supplied in aid of the pier.

Case, p. 220, line 30. Found that pier was slightly overstressed due to additional load.

Case, p. 223, lines 1-10. Found plaster cracks on inside of west wall on second and third floor alongside steel columns.

Case, p. 226, lines 1 and 10. Found two cracks in another wall. At fifth and sixth floors first crack about 15 feet from Broad Street. Second about half way in building.

Case, p. 226, line 30. Cracks in north wall did not follow line of bricks. Were irregular.

Case, p. 227, lines 11 and 20. Nearest opening on another wall is 17 or 18 feet from Broad Street, extends down to the fifth floor. Another crack about 50 feet from Broad Street.

Case, p. 228, lines 12-20. The second crack from Broad Street goes through the wall.

Case, p. 231, line 32. Found interior cracks on this westerly wall.

Case, p. 232, line 30. Said cracks were on the fifth and sixth floors mostly. They were plaster cracks.

Case, p. 233, line 20. Did not remove plaster to see if cracks on west wall went further than plaster.

Case, p. 234, line 25. Cracks on west wall were due to improper shoring at time of cutting openings.

Case, p. 236, lines 20-35; Case, p. 237, line 25. Impossible to shore up west wall but may shore up floors. The exterior of the west wall is plastered up. If there had been a curve in the wall, it would have been possible to plaster that to produce a straight edge.

Case, p. 244, line 30. The weight on the northwest pier was 15 tons to square foot.

Case, p. 247, line 1. Weight of west wall and floors now carried on two points by virtue of openings.

Case, p. 248, line 1. Three feet left at northwest corner as pier or buttress for west wall.

Case, p. 251, line 35; Case, p. 252, line 15. There is more than one-half the weight above the openings that is cast on the northwest corner.

Case, p. 252, lines 20-30. I found pier overstressed. Actual weight is over 250 pounds per square inch. There must be about 350 or 360 pounds per square inch actually on the pier and the allowable weight is 250.

Case, p. 253, line 10. Factor of safety is reduced from 10 to 6. Factor of safety of 6 is not good engineering.

Case, p. 257, lines 30-40. Witness contradicts himself on the strength of bonded pier, stating that it would be better, although previously testi-

fied that the present pier being old, for that reason is stronger.

Case, p. 264, line 40 to Case, p. 265, line 20. At northwest corner does not know how deep footings were placed at the northwest corner of Voorhees Building. If they were put deeper it would disturb the soil at that point and deprive the Voorhees Building of some of the lateral support.

Case, p. 267, line 10. It would be possible that the crack on north wall was caused by opening under it.

Case, p. 268, lines 12-20. Witness insists that opening in north wall was not cut through from first floor to third floor, only to floor lines. Changed his opinion under cross-examination.

Case, p. 270, lines 30-40. Did not take into account weight of water tank on northwest corner of Voorhees Building in figuring weight.

Case, p. 271, lines 25-40. On the cross-examination witness testified that there was no plaster on the inside of the west wall on the sixth floor, which he had previously testified to were plaster cracks, and therefore cracks on sixth floor could not be plaster cracks, and witness then expressly admitted they were not plaster cracks.

MR. DiSTASIO (defendants' witness):

Case, p. 273, lines 12-22. Suggest method for removing encroachment of No. 17 pier.

Case, p. 278, line 10. Witness figured stress at about 260 to 265 pounds to the square inch. Found this pier on northwest corner overstressed.

Case, p. 279, line 40; Case, p. 280, line 10. Found two cracks on north wall Voorhees building, one about 16' from Broad Street, the other about 76'

from Broad Street, starting on roof and extending down two stories.

Case, p. 281, line 30. Found cracks on interior of west wall.

Case, p. 281, line 40. These cracks looked to witness as structural cracks, but could not see them from the outside. These cracks may be due to overstressing of the lintels, may be due to improper shoring up during construction when the openings were made.

Case, p. 283, line 10. Cracks on interior of west wall look as though they might go through the brick wall.

Case, p. 283, line 40. Allowed only 140 pounds stress per square inch on the pier at northwest corner of Voorhees building.

Case, p. 285, line 10. It is not best engineering practice to use the remnant of an old wall as pier.

Case, p. 285, line 35. The new pier is overstressed.

Case, p. 286, line 20. It would be good engineering to have factor of safety of 1 to 10, whereas on the northwest corner the factor of safety is only 1 to 5.

Case, p. 287, line 10. In accordance with good engineering practice the northwest pier is overloaded.

Case, p. 288, line 10. Northwest pier is not adequate.

Case, p. 288, line 40. If pier started to give it would all give. Witness suggests method of remedying condition on northwest wall.

Case, p. 289, line 27. Gives approximate estimate of cost of remedying.

The testimony recited in this point amply justified the lower Court in finding that forty of the ninety feet of this wall (being the west wall of the Voorhees building) on each of the three floors

was removed for doorways, each 20' in width, and a remnant of the wall 4' 6" wide retained as a pier to support the upper three stories, which is the only support and is out of plumb. This is poor construction so both sides say, and the stress is too great for the size of the pier; as it is the safety factor is five and should be double that in scientific construction. There are no present indications of weakness of the pier, but there are cracks in the walls above, and the proof is that collapse from overstress is sudden, without warning and the remedy is simple; suitable columns on either side of the openings resting on the basement wall; that wall is safe to carry the load so the builders say, Case, p. 40, and also was ample justification for the order of the Court on this particular matter which provides that the defendant, Goerke-Kirch Company, within the time above mentioned, erect and construct in a good workmanlike manner, sufficient and adequate supports for safely carrying the west wall of the building on the complainant's land, at the point of opening to connect the said building with the Stein building. Case, p. 45, line 34.

INSUFFICIENT FIRE INSURANCE FURNISHED.

Contract calls for fire insurance in full insurable value of the building; the amount furnished is \$225,000. The amount required in order to comply with the contract is \$286,548. Testimony of John J. Byrnes, Case, p. 182, line 18, fixes the value of the building after allowance for depreciation as of April, 1924, at \$286,545, to which should be added architects' fees and engineers' fees as part of the cost of the building. He says that since 1924 the increase in the cost of building would about equal the value of depreciation.

This testimony is not contradicted, and is ample justification for that portion of the decree, Case, p. 46, requiring the defendants to furnish insurance in the sum of \$286,548.

POINT I.

The encroachments made by the defendant in the Voorhees building and property during the erection of the Stein building constitute waste and are not permitted by the terms of the lease.

ENCROACHMENTS.

An encroachment is an unlawful gaining upon the right or possession of another. 1 Corpus Juris, page 1207. The maintenance of such an encroachment is a continuing trespass or nuisance.

Note 52, page 1208, Volume 1, Corpus Juris, *Milton v. Puffer*, 207 Mass. 416, 93 N. E. 634: "That projecting the stones of the foundation of a building into the lands of an adjoining owner without right or license from such owner is a wrongful act and their maintenance in such position is a continuing trespass or nuisance."

Volume 1, Corpus Juris, page 1208, Section 17: "An adjoining owner may invoke the aid of the Court of Equity to enjoin the maintenance of the encroachment or compel its removal, or the restoration of plaintiff's premises to their original condition as near as may be, although no actual damage is sustained, and although the encroachment was made without a direct assertion of right merely for the purpose of provoking legal proceedings to determine defendant's right to make the same. Relief by injunction will not be refused on the ground that plaintiff has been guilty

of laches or that he declined to sell the strip of land upon which the encroachment exists, nor is he estopped to compel removal by permitting the construction to proceed, if he were not aware that it encroached.”

Kirschberg v. Flusser, 87 Equity 588: Where the defendant has encroached upon the plaintiff's land by building a wall thereon, and it appears that the wall cannot be removed without danger or damage to the defendant's property, a mandatory injunction may be granted by the Court to compel the defendant to remove.

See also *Lehigh Valley Railroad v. New York and New Jersey Water Company*, 76 Equity 504.

D. L. & W. Railroad v. Breckenridge, 57 Equity 154: Equity has jurisdiction to enjoin one from using pipes for transporting oil across a railroad right of way without the owner's consent.

Harry Kirch v. Zemel, 96 Equity 208: This is a case where beams of one building projected into the beams of another building, making the two buildings practically one, said buildings being owned by different parties. This action was brought to remove the encroachment on the building into which the beams extended. The Court held, on page 211, “that with these encroachments unmoved I think a cloud would be cast upon the marketable title of the complainant's property, and I further believe that the damage resulting therefrom cannot be readily ascertainable in a Court of Law. One prospective purchaser might be willing to take the title at a reasonable price with the encroachments. On the other hand, another might refuse altogether. This, it seems to me, creates irreparable damage which should be enjoined by this Court.”

The Court of Errors has decided that one has a right to his land free and clear from encroach-

ments, and this Court will by mandatory injunction restrain the continuance of the encroachment, which, unremoved, casts a cloud on the marketable title of the property.

Capone v. Ranzulli, 99 Equity, 627. Where encroachments to defendant's building on complainant's land constituted irreparable injury, mandatory injunction will issue to restrain continuance thereof.

STATUTE PROVIDES:

"That no tenant for life or years, or for any other term, shall, during the term, make or suffer any waste, sale or destruction of houses, gardens, orchards, lands or woods, or anything belonging to the tenements demised, without special license in writing, making mention that he may do it."
Vol. 4 C. S. page 5790, Sec. 2.

281.

It has been held to constitute waste for a tenant to tear boards from farm buildings and destroy the fences; to remove wainscot, floors or other things once fixed to leasehold; or to drill holes into a brick wall, and drive wooden pegs therein for the purpose of attaching a sign, when such use would cause the brick in that part of the wall to become loose or misplaced.

27 R. C. L. Tit. Waste—Par. 10.

A tenant has no right so to exercise the privilege of placing signs on the walls of the building as to cause material injury to the building; thus a tenant has no right to insert wooden plugs into a brick wall to which to attach a sign if this would do considerable damage to the wall.

16 R. C. L.—Tit. Landlord & Tenant—
Par. 226.

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WASTE.

Waste is a spoil or destruction in houses, gardens, trees, or other corporal hereditaments to the disherison of him that hath the remainder or reversion in fee simple or fee tail.

2 Bouvier's Law Dict.—2 Bl. Comm.—281.

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16 R. C. L.—Tit. Landlord & Tenant—Par. 226.

It was the rule of the early common law that any alteration of the buildings on leased premises by a tenant for years was waste, regardless of whether the alteration was beneficial to the owner of the reversion. And many of the modern cases are practically in accord with this old common law rule. Some of the modern cases, however, take the view that in order for alterations in a building by a tenant for years to constitute waste they must be of a material and permanent character and must so change the property as to depreciate the value of the remainder.

16 R. C. L.—Tit. Landlord and Tenant—
Par. 225.

In a word, any alteration on the part of the tenant which changes the character of the premises is waste.

Underhill on Landlord and Tenant—Sec.
439.

Cutting a door through party wall of leased premises to connect with adjoining premises is waste. (Citing *Klie v. Von Brook*, 56 Equity 18.)

Underhill on Landlord and Tenant—Sec.
439.

In construing a covenant against waste, the nature of the alterations made in the premises by the tenant must be carefully considered.

Underhill on Landlord and Tenant—Sec.
439.

The consequences of waste do not attach unless substantial damage is done to the inheritance, which may be either—first by diminishing the value of the estate; secondly by increasing the

burdens upon it; or thirdly by impairing the evidence of title.

Kerr on Inj., 239.

Tenants for life as well as for years must not commit waste, which is the doing or suffering that to be done upon the premises which essentially injures or impairs the inheritance of the estate occupied by the tenant.

Washburn on Real Property (6th Ed.),
Sec. 270.

Where a brick building erected on leased premises by a tenant is a fixture and not removable by the tenant during his term, then the opening of a passageway through the closed wall onto adjoining premises without the landlord's consent would constitute waste, restrainable by injunction.

Boyle v. Johnson, 80 N. J. Eq. 293.

It is waste for a tenant to make improvements or alterations which materially and permanently change the nature of the property although the value of the premises is thereby enhanced. While a change or alteration in a building may constitute technical waste, still it will not be enjoined, or constitute grounds of forfeiture, if it does not cause permanent injury to the inheritance, or is, in effect, ameliorating change rather than a depreciating one.

40 Cyc., 505.

An injunction will lie to restrain waste.

The remedy by injunction is, generally speaking, applicable to every species of waste, includ-

ing permissive waste, * * *. An injunction will be granted in all cases where a legal action would lie to recover possession of the land wasted or to recover damages. It will also be granted in many instances where no legal action can be maintained, although the interest of the injured party is legal, and where the estate of the injured party is wholly equitable, and where the waste itself is entirely "equitable"; that is, where, by the terms of the will, deed settlement, or lease the tenant holds the land without impeachment of waste.

27 R. C. L., Tit. Waste, Par. 38.

A landlord may enjoin the making of material alterations by a tenant.

Underhill on Landlord and Tenant, Sec. 439.

The commission of waste by the tenant upon the premises demised is also sufficient ground for invoking the extraordinary aid of equity by injunction, whether such waste consists in an actual abuse or misuse of the premises, or in their conversion to uses repugnant to the terms of the lease.

1 High on Inj., Sec. 434.

The tenant is put into possession by the landlord and thereby obtains control of the demised premises. His possession is that of his landlord. It is inequitable that he should be permitted so to use his possession as to destroy the landlord's reversion, leaving him to an action at law for his remedy.

The Court said: "There is also in the bill a suggestion as to a restoration of this hardware building as it was before the defendant severed

it. As to that, I think a sufficient remedy can be obtained by the recovery of damages. I am not willing to advise the issue of a mandatory injunction for restoration. If relief for damage done is sought, the complainant has a complete remedy in the courts of law.”

Fortesque v. Bowles, 55 N. J. Eq., 741.

If there is a privity of estate between the party applying for injunction and him who is doing or about to do the act, such as exists between tenant for life or years and the reversioner, it is not necessary that the set should work irreparable injury to induce the Court to grant it.

Washburn on Real Property (6th Ed.),
Sec. 309.

In the present state of the law, however, the most usual remedy resorted to by the reversioner against a tenant for life or years in respect to waste is by application to chancery to obtain an injunction restraining him from committing it.

Washburn on Real Property (6th Ed.),
Sec. 307.

When a tenant improperly makes alterations to a building the landlord is entitled to immediate relief, and is not obliged to wait until the end of the term.

Klie vs. Von Broock, 56 N. J. Eq., 18
at 33.

In some states there has been some amelioration of the strict English rule as to alterations made to a building by a tenant but the New Jersey rule is the same as was the rule at common law.

When a tenant partially destroys a party wall by cutting an opening for a door to connect with adjoining premises, the test is not alone whether a material injury is done to the building, but whether it is altered in a material manner and to an extent beyond what is fairly implied from the terms of the original contract of letting.

Klie vs. Von Broock, 56 N. J. Eq., 18 at 29.

There has been no amelioration of the strict English rule regarding alterations made by a tenant to a building on the demised premises although some treatise-writers state that there has.

Klie vs. Von Broock, 56 N. J. Eq., 18 at 29 *et seq.*

The encroachment of a building upon adjoining premises is a continuing trespass and if allowed to remain renders the title to said premises defective and equity will order the removal of the encroachment.

When a lot owner intrudes his foundation walls into the land of an adjoining owner, the intrusion is a continuing trespass. 1 Dec. Dig., Tit. Adjoining Owners, Sec. 9 (1) J. (Citing *Rahn vs. Milwaukee Electric Railway and Light Co.*, 103 Wis. 467, 79 N. W. Rep. 747.)

The erection of a brick wall on adjoining land to the extent of three or four inches constitutes an encroachment thereon of sufficient magnitude to enable the adjoining owner to maintain an equitable action to compel its removal. 1 Dec. Dig. Tit., Adjoining Landowner, Sec. 9 (2) j. (Citing *Mulrein vs. Weisbecker*, 56 N. Y. Supp. 240.)

Encroachment of a building located on adjoining premises of two to four inches, renders the

title to the land encroached upon defective. (Citing *Elinsky vs. Berger*, 87 App. Div. 484, 84 N. Y. Supp. 483.) So also does an encroachment of five inches at the most, gradually growing less. (Citing *Kaplan vs. Bergman*, 122 App. Div. 876, 107 N. Y. Supp. 423.)

So a building encroaching two inches on adjoining premises renders the title to the land on which the building is located unmarketable; and this is true although the encroachment has existed for twenty-five years, where during part of the time, the land encroached upon has been owned by minors. (Citing *Wilhelm vs. Federgreen*, 2 App. Div. 493, 38 N. Y. Supp. 8; affirmed without opinion in 157 N. Y. 713, 53 N. E. 1133.) But an encroachment does not affect the marketability of a title where, by adverse possession, the right is acquired to maintain the encroachment. (Citing *Harrison vs. Platt*, 35 App. Div. 536, 54 N. Y. Supp. 842; affirmed in 158 N. Y. 712, 53 N. E. 1126.)

38 L. R. A. (N. S.), 33.

A mandatory injunction will ordinarily issue against the maintenance by a landowner of an encroachment on the land of an adjoining owner, to compel the removal of such encroachment. If the encroachment was intentional, the absence of present damage to the owner of the land encroached on will not defeat his right to an injunction.

1 R. C. L., Title Adjoining Owners,
Par. 12.

A suit in equity is generally the only adequate remedy for trespasses continually repeated, because constantly recurring actions for damages

would be more vexatious and expensive than effective.

Bispham's Equity (7th Ed.), Par. 435.

A lessee of one tract who is also lessee of an adjoining tract gains no rights in the first tract by virtue of being the lessee of the adjoining tract other than those which the owner of the adjoining tract has and, therefore, any remedy which may be pursued against such adjoining owner may be pursued against such lessee.

This question must be precisely as if that work had been done by the Hoboken Land and Improvement Company itself, and the defendants were not tenants of that building, for I cannot see that the defendants have the right to add their right as lessees of No. 39 to that as lessees of No. 35, or stand in any better light before the Court on this part of the case than would their landlord of No. 39.

Klie vs. Von Broock, 56 N. J. Eq., 18, at 25.

In cases of waste a mandatory injunction will issue to compel restoration and especially when the acts are deliberate, are a breach of express agreement or are done after notice to desist.

If the injury is of so serious or material a character that the restoring things to their former condition is the only remedy which will meet the requirements of the case, or if the act complained of is in breach of an express stipulation, the (mandatory) injunction will issue notwithstanding the amount of inconvenience to the other party. If the act complained of is continued or carried on after clear and distinct notice that it is objected to, the jurisdiction will be exercised more freely

than in cases where complaint is not made until after it is completed.

Kerr on Inj. *231 (k and l).

A mandatory writ of injunction will issue where there is a deliberate, unlawful and inexcusable invasion by one man of another's land for the purpose of a continuing trespass for the trespasser's gain or profit and there has been neither acquiescence nor delay in applying to this Court for relief.

Broome v. N. Y. and N. J. Telephone Co.,
42 N. J. Eq. 141.

A mandatory injunction will be allowed when the injury is material, the complainant's right clear and there is an urgent necessity to prevent that degree of irreparable damage which otherwise would have ensued.

Savage vs. Port Reading R. R. Co., 73
N. J. Eq. 308.

In case of waste the authorities justify the use of a mandatory injunction (citing *Vane vs. Lord Bernard*, 2 Vern. 738 (1 Salkheld, 161), known as the Raby Castle Case, and *Rolt vs. Lord Somerville*, 3 Eq. Cas. Abr. 759).

Klie vs. Von Broock, 56 N. J. Eq. 12.

The defendant on the marriage of the plaintiff, his eldest son, with the daughter of Morgan Randyll and £10,000 portion settled (*inter alia*) Raby Castle on himself for life without impeachment of waste (subject to the two several yearly sums of £800 and £200, payable to the plaintiff on the events, and in manner therein mentioned,

R. L.) remainder to his son for life, and to his first and other sons in tail male.

The defendant, the Lord Bernard, having taken some displeasure against his son, got two hundred workmen together, and of a sudden, in a few days, stripped the castle of lead, iron, glass doors, and boards, &c., to the value of £3,000.

The Court, upon filing the bill (and plea and answer put in by Lord Bernard), granted an injunction to stay committing of waste, in pulling down the castle; and now, upon the hearing of the cause, decreed, not only the injunction to continue, but that the castle should be repaired, and put into the same condition it was in, in August, 1714; and for that purpose a commission was to issue to ascertain what ought to be repaired, and a master to see it done at the expense and charge of the defendant, the Lord Bernard; and decreed the plaintiff his costs.

Vane vs. Lord Bernard, 2 Vern. 738
(English Reports, Full Reprint, p.
1082).

Counsel for appellant relies upon the case of *Klie vs. Van Broock*, 56 Eq., page 18, holding that the tenant has use, but not dominion of the property, and from the decision handed down by the Vice-Chancellor in *Klie vs. Van Broock*, it does not appear to us that the common law rule on waste has been relaxed in the slightest.

The fact that the Goerke-Kirch Company is lessee of the Voorhees property and also the Stein property does not change the relationship of the owners to each other, nor the relationship of the owners of the various parcels with relation to the tenants of the adjoining property. The complainants tenant by leasing the adjoining property

would not give the owner of that property any right under the terms of said lease, which would justify the owner of the adjoining property to permit a trespass upon the complainant's property, or any right which the owner of the adjoining property would not have if the complainant's tenant did not have a lease on both properties.

The Court in *Schultz vs. Byers*, 53 N. J. L. 442, says it is almost unnecessary to say that juxtaposition of lease gives any right of support to building erected thereon unless conferred by grant, conveyance or statute; therefore, there being no duty owing to the tenant of the Stein building by the complainant, other than contained in the lease, the appellant attempts to justify the encroachments and various acts of waste committed by them by the terms of the Voorhees lease, which provides (Case, p. 295, l. 20):

“It is further expressly understood and agreed that at any time during the term of this lease or renewal thereof, if there should be a renewal, the said party of the second part shall have the right to connect any building on the demised premises with any building upon the adjoining premises; in case such connection be made, however, the same is to be removed and the building restored to its original condition before the termination of the lease or such renewal.”

This is the only provision of the lease as we understand it that appellants rely upon as justification for the encroachments complained of, and the word which the appellants rely on in this paragraph is the word “connect”. The words “connect the building on the demised premises with any building on the adjoining premises” could not by any stretch of the imagination justify the Goerke-Kirch Company in erecting the building

on the adjoining property and make one building of the Voorhees and Stein buildings. The mere fact that the same tenant happens to occupy the adjoining premises places them in no better position than if tenants of both properties were strangers, except for what may be agreed upon between the parties and contained in the lease. Surely, the right to connect the Voorhees building to other buildings, as described in the lease, would not justify the Goerke-Kirch Company in encroaching on the Voorhees building by placing foundation, sticking piers, girders, ceilings and roofs of Stein building in the Voorhees wall, and various other matters complained of in this suit. It will be noted that the contract was "connect any building on the demised premises with any building on any adjoining premises". It was contemplated at the time the lease was entered into that the building on the adjoining premises would be a complete building, and not a building without two walls; the omission of the south and east walls of the Stein building gives the defendants at least 18" to 2' of space for the entire length and depth of the Stein building, and Stein, the owner of the adjoining lot, was benefitted in that he was actually paid \$5,500 for the omission of said wall when the building was being erected, and the Goerke-Kirch Company was also benefitted because the payment of \$5,500 was much less than the rental value of 2' of space on Broad Street and West Jersey Street, in the City of Elizabeth. When the lease was entered into, it was not the intention of the parties that the defendant would have absolute control over the building; the tenant was to have the use of the building, but was not justified under the lease in committing waste as shown in this case. It is the complainant's contention that the word "connect" as contemplated by the parties

to the lease meant to make a passageway from the Voorhees building to a complete separate adjoining building. Counsel in their brief state that it is common knowledge that large retail stores in order to secure sufficient accommodation are obliged to engage contiguous properties in order to secure sufficient space to display their wares and carry on their trade. This, without doubt, is true. We are informed that L. Bamberger & Co. of Newark, which Company is at the present time erecting a sixteen story department store, had to lease various parcels of property from different property owners; surely the owners of the various parcels upon which the Bamberger building is erected provided in their lease for the erection of one large building and set forth in detail their respective rights and did not merely insert in their lease that the Bamberger Company could "connect" that part of the building which is located upon their property with that part of the building which is erected on the various other tracts. An illustration of what might be meant by the word "connect". In Newark, the Prudential Insurance Company has one large office building on the south side of Bank Street at Broad Street, and another large office building on the North side of Bank Street at Broad Street; these two buildings are connected by an archway over Bank Street; this archway can be called nothing other than a connection between the buildings, and we think that this is a good illustration of what was within the minds of the parties when the lease in question was drawn; not that an archway should be built, but that there should be an entrance or opening from the Voorhees building to another store which would be located on adjacent property.

The lower Court in its decision construed the word "connect" in a very liberal manner, in jus-

tifying the opening between the building, and further held that the word "connect" does not include the right to heat the Stein store from the boiler in the Voorhees building. The landlord is entitled to a reversion of the boilers in as good condition as reasonable wear and tear would permit, such as would come from heating the demised premises only. In this respect the tenant is incapacitated from performing the covenant of surrender. The pipe of the Stein sprinkler system improperly enters the Voorhees basement for about twenty feet before it again returns to the Stein building; the beam supporting the water tank overhangs the Voorhees building. The erection of an independent wall to eliminate the encroachment of the roof and ceiling of the Stein building and the use of the exterior wall of the Voorhees building for the interior wall of the Stein store seems inevitable. None of the encroachments find justification to the right to connect the Voorhees building with the one adjoining. The right to connect is not to be conjugated with the right to encroach; by fair intent it is limited to opening, as already indicated; the encroachments were made to save the expense of the interior wall, upon agreement with Stein, and omitting it from his building for the time, for compensation, they were deliberately made and covertly under protest and no attempt at justification is admissible. *The encroachments are waste by the tenant aided and abetted by Stein.*

POINT II.

Insurance.

The tenants have not kept the building insured pursuant to the terms of the lease. The lease (Case, p. 293) states that the tenant shall keep the buildings on or hereafter erected upon the premises insured for the benefit of the party of the first part to the full insurable value thereof.

The testimony of the witness John J. Byrnes was not contradicted by the defendants and he fixed the value of the building, after allowing for depreciation, at \$286,545.00, to which should be added architect's fees and engineer's fees as a part of the cost of the building, and says that since 1924 the increase of the cost of the building would about equal the depreciation. The witness, Mr. Poggi, testified that the standard rate of compensation for architects and engineers being six per cent., it would make the total additional cost to be added to Mr. Byrnes' cost of \$19,875, so that the present insurable value would be \$306,420.00. The defendants did not attempt to contradict this testimony.

The remedy at law to require the tenant to furnish the rent is inadequate. There is no provision in the lease which authorizes the Landlord to have insurance written for the full insurable value and to charge the tenant for the same. The lease merely states that the tenant shall keep the building insured for the benefit of the Landlord to the full insurable value thereof, and furthermore, equity having jurisdiction over the other matters involved in his suit has ample jurisdiction to require the defendants to furnish the insurance.

POINT III.

Counsel fees.

The counsel fees allowed in this matter are not excessive.

The Court below allowed a counsel fee of \$3,500. This case was tried before Vice-Chancellor Backes over a period of several years. The first hearing was held on May 19, 1926; the trial continued on May 20, 1926; further testimony was taken on June 30, 1927, and the final testimony was taken on October 31, 1927. As it will appear from an examination of the bill of complaint and the other pleadings (Case, p. 1), the preparation of the bill of complaint absorbed a great deal of time because of the details in connection therewith. The Solicitors of the Complainant were required to file several briefs with the Vice-Chancellor, prepare forms of decree and appeared in court on numerous occasions other than the four days which were actually taken for the trial, and the Court will take notice that in a case of this nature counsel is repeatedly consulted prior to the actual filing of the bill of complaint, and the allowance of \$3,500 was only a reasonable allowance considering the time and effort which was required in the preparation and the trying of this case. Furthermore, the wrongs committed by the defendant were deliberately made, covertly and under protest and no attempt at justification is admissible (Opinion Vice-Chancellor, Case, p. 41, l. 25). The defendants proceeded in their strong handed method of violating the rights of the complainant without any regard whatsoever to whether they were right or wrong, without consulting the complainant; their plans clearly showing that they intended to

encroach before they actually started the work, and there is no equity or justice in the defendants' objection to the counsel fee and we respectfully submit that the counsel fee should stand as allowed.

POINT IV.

Respondent is not in laches.

Complainant is not in laches. The defendant did not submit the plans to the complainant before the building was started. The complainant should not be required to presume that when a building is being erected on adjacent property that it will encroach upon one's property. As soon as the complainant had any notice whatsoever of the encroachment, the complainant immediately objected to the defendant as the correspondence with the defendant will appear from the exhibits contained in the State of Case, page 320, &c. and also objected verbally.

The complainant did everything possible to stop the defendant from committing the waste and other violations of the complainant's rights and the testimony sustains the opinion of the court where it is held that the encroachments were deliberately made, covertly and *under protest* and no attempt at justification is admissible. That prior to the filing of the bill of complaint the complainant attempted to prevent the encroachments and other wrongs committed by the defendant, but these efforts failed and this suit was immediately started.

The cases cited by the complainant under this Point do not apply to the matter involved in this action. The case of *Smith v. Spencer*, 81 Eq. 389,

and the other cases cited by our adversaries, are cases all of which involve the construction of buildings in violation of building restrictions. We admit that the court of Chancery has on numerous occasions held that an application for an injunction to prevent the violation of a restrictive building covenant must be applied for promptly. This rule, however, is confined entirely to applications for injunctions to prevent the violation of building restrictions and involves only the question of compelling a person to use his own property in accordance with the restrictions affecting the same, and the rule does not involve injuries done to property by persons other than the property owner and, therefore, does not apply to the case at bar. The defendants had no right to encroach upon the complainant's property and there is no reason in law why the complainant should be required to notify the defendants to stop encroaching upon its property; and if the complainant had failed to notify the defendants not to proceed with the said encroachment, the situation would have been no worse because the defendants had no license in law to commit such waste and trespass.

The complainant did more than was required to do in an effort to save the defendants the unnecessary expense of rebuilding that part of their building which encroached upon the complainant's property and which violated the terms of the lease and gave notice that they were encroaching and not erecting their building properly and, notwithstanding such notice, the defendant proceeded with its building. The mere delay of a short period of time in bringing an action against the trespasser and one who encroaches upon another's property could not possibly operate as laches to deprive the complainant of its remedies, and in fact, if an action had been brought at any time

within twenty years after the construction of the said encroachments on the complainant's property, the complainant would not have been guilty of laches.

It is respectfully submitted that the decree appealed from should be affirmed.

WHITTEMORE & McLEAN,
Solicitors of Respondent.

May Term, 1929.

New Jersey Court of Errors and Appeals

UNION COUNTY TRUST COM-
PANY, a corporation, Trustee,
etc.,

Complainant-Respondent,

and

THE GOERKE COMPANY, a cor-
poration, *et al.*,

Defendants-Appellants.

*On Appeal
from Chan-
cery.*

REPLY BRIEF FOR DEFENDANTS- APPELLANTS.

The brief filed in behalf of the respondent seems to require a reply.

The early part of the brief sets forth and repeats the Opinion of the Vice-Chancellor which is printed in full at Case, p. 38. It emphasizes again the Vice-Chancellor's findings favorable to the respondent, some of which findings are not supported by any evidence, even the slightest; such for instance, as reference to the fact that what was done by the appellant has affected the marketability of the demised premises. No witnesses offered even a suggestion to that effect.

On page 7 of the brief for the complainant-respondent, there is repeated the words of the Opinion that the wear and tear on the boilers and pipe system for the heating of the building is greater than that which was in the contemplation of the parties, and that the tenant was incapacitating itself from performing the covenant of surrender. As to this, there was not even a guess or a conjecture of evidence offered by any

witness for either party at any time, and certainly it is not a matter which may be gratuitously assumed in the absence of any proof.

As a matter of fact, all the proof on this subject which is touched upon only in the record at Case, p. 55, l. 25, p. 56, l. 5, p. 57, l. 3 and p. 95, l. 22, shows that two boilers were placed in the vault under the sidewalk in the Voorhees building, and one of them supplies heat to the Stein building. It is clear that when the Voorhees building was built in 1911, a proper heating plant was installed and when the Stein Building was built a decade later an additional boiler was placed in the vault of the Voorhees Building and used to heat the Stein Building.

It was just such a use as this which the parties would normally have had in mind in entering into such a lease as the Voorhees lease, which gave the tenant the right to connect this building, which he was to use for a department store, with any other building or buildings that might adjoin it. The parties might have easily limited the broad, generic term "to connect" and specified the particular type and kind and limitation of connection. No such thing was done. The right was given the tenant to connect the Voorhees Building with any other building which would make its department store more perfect for its operation. It seems to us much more arguable to say that to take out a wall of the Voorhees Building was not a connection, but was technically a disconnection. To argue that electric wiring running from one building to another was not a connection, seems to us a departure from the proper understanding of the terms and very highly technical limitation which the parties had not made for themselves.

If the Goerke Company had leased for sixty years the Voorhees Building, then being the owner of the Stein property next door and had permitted a beam from its own property to extend over its property in which it had the entire interest for sixty years, it seems to us not sound equity and not good law to order the owner to saw off the beam which extended over the property in which it had the sixty year interest.

The elimination of the independent wall in the Stein Building can in no way, be a cause of complaint to the Voorhees people. All the parties seem to concede that cutting through the openings from one building to the other is unobjectionable, and how it would benefit the Voorhees people to have the cut made through two walls rather than one is not clear to us. If there was a complaint that the columns in the Stein Building did not get their share of soil support from the Stein property, there might be objection on that score, but this fact is definitely found against the Voorhees people in the Opinion (Case, p. 39, l. 2, etc.).

The Opinion (p. 39, l. 20) states that "The right to connect the building with one adjoining was not intended to be limited to passageways." No proof was offered by any party with reference to this subject, but the long term, the fact that the tenant built the building that was to be used for a department store, etc. were all considered by the Court as going to show what the parties intended.

As a matter of fact, there is nothing in the case, either by way of evidence or intendment or reasonable inference, to lead to the assumption that there was to be any limitation whatsoever on the right to connect. It might be considered

that the tenant could do anything whatever with the Voorhees Building, which it had built, that a man could do with his own property.

To protect itself, the lessor, on behalf of the owners of the reversionary interest, inserted a firm, binding covenant to be operative at the end of the term, under which the tenant was obligated to restore the building in the same condition that it was at the beginning of the term, excepting only reasonable wear and tear.

The landlord, however, as a matter of fact, inserted no provision whatsoever as to the kind, type or style of building to be erected. It did not provide that it should be stone, brick or wood—merely to be at least three stories in height, with a vault under the sidewalk, etc. It was given a six-story building, apparently twice what it was legally entitled to. From the incomplete and often misleading extracts of the testimony set out in the respondent's brief from p. 9 to p. 30, there would seem to be a complete failure of a building already a shattered wreck of a building, cracked, out of plumb, over the line and waving in every breeze; this all while it is seeking a mandatory injunction as to the pages of relief asked for in the bill.

When, however, we come to the failure of the tenant to perform its covenant to keep the property fully insured, the Voorhees people called John J. Byrnes (p. 182), who tells us that the building has a replacement value of over \$331,000.00, and that "the building is in very good shape and it was well built" (Case, p. 182, l. 30).

We have been unable to find in any jurisdiction any case whatever in which a tenant erecting a building upon another's land, and given the right to connect it without limitation with adjoining

property, was held liable to make changes that should run into the thousands of dollars because a wall seemed out of plumb, or cracks had appeared. The landlord has a complete and perfect legal remedy on a covenant which it had inserted, under which it is entitled to receive back the building at the end of the term, in its original shape.

It should be noted that there is nowhere in the pleadings or the proof any suggestion that the tenant is not very strong financially or anything that would reflect upon the practical value of the covenant; nor is there any suggestion that any security is wanted or needed. The Court in its Opinion, refers to the fact that everything needed for the landlord could be covered by security and it refers to the fact that security would be "a matter for negotiation between the parties." Not so. The Court of Equity has the power to impose terms under which it will either grant or refuse injunctive relief and if security were in any way needed for the protection of the reversionary interest, it would be sound equity to provide that security should be provided or mandatory injunction issue.

The Court of Chancery seems not to have followed this course because of the wilfulness of the tenant. We feel that a review of the correspondence set forth in Exhibit C. 5 and followed at Case, pp. 320 to 344, shows that there was no element of wilfulness. The Goerke Company was represented by William E. Lehman, a well-known, most reliable architect, and legally by Saul & Joseph E. Cohn, lawyers of the broadest, soundest experience in this type of case. The letter at page 339 was addressed to them by the Union County Trust Co. (offered p. 341). It may have been that the architect and the legal advisers of

the tenant were in error in judgment. We firmly believe not, but if so, that should not run against the tenant as an element of wilfulness on its part.

As a matter of fact, on the 8th of June, 1922, William E. Lehman advised the Union County Trust Company that he had issued instructions for the removal of a column of the Stein Building that had been set on the Voorhees property. On the 10th of June, 1922 (see p. 326) the Trust Company advised the Goerke Company regarding the foundations of the Stein Building extending over on the Voorhees property. In August of that same year, the Trust Company had its engineer and architect, Poggi and Meeteer, examine the property and in spite of the extracts from the testimony set out in the respondent's brief, these two experts—who were sent for the purpose of examination—testified that they did not see encroachments or flares extending over on the Voorhees property. If they existed at the time, it was the duty of the complainant, while the building was in progress and while the exact condition could have been determined without relying on haphazard guessing of a layman, to have proceeded with immediate dispatch if it desired the extraordinary relief of a mandatory injunction. Letters were passing back and forth; claims were being asserted and reasserted by one and the other and it is not until August 1st of the following year—fourteen months after the letter of page 326, that the bill was filed in this case (Case, p. 1 top).

There is referred to in our main brief, the clear and sound Opinion of Vice-Chancellor Howell in *Smith v. Spencer*, 81 N. J. Eq. 389. The Court there found that a delay from October

to December was fatal to the relief sought. No possible reason is suggested in the present case to explain the delay in excess of a year.

The honest belief of the tenant as to its right to connect the buildings in any way, provided it restored at the end, should remove any criticism that its course was a wilful one.

But even if the foundations of the Stein Building went under the Voorhees Building, it would seem, under the evidence in this case, that the utmost committed by the tenant was a trespass. This was the view of the trial court during the progress of the case (p. 208, l. 10), "I understand it all relates to the footing. You are trespassing by the footing." The tenant may object to some one else coming in, under or going over with a beam upon its property, but it could hardly be considered as a trespass against itself. But in the meantime, it has been given the express privilege to connect, without limitation, and it is under a firm and binding covenant to disconnect without limitation and at the end of the term to return the property in the self-same condition that it was in at the commencement of the term, save only the reasonable wear and tear. Nowhere has a reason been suggested why the covenant does not provide an absolute, adequate remedy at law and in the light of this continuing obligation, there can of course be no weight to respondent's contention that it has no adequate remedy at law.

The landlord might have provided where a foundation should go, the width of openings and the size of the heating pipes that might pass through the wall, but no such thing was done, and while the question of the reasonableness of the size of the openings from the wall was con-

sidered in this case in the trial below, it was found in favor of the tenant. We earnestly urge that if the wall of the Voorhees Building had been entirely taken down so that the Voorhees Building and the Stein Building on the one or two sides gave the appearance of but a single building, that would have been unobjectionable legally and equitably so far as the tenant was concerned.

If the building is structurally impaired to the point that it is a menace, the Building Department provides a complete and perfect remedy, but it is noted that no member of this Department was asked any question regarding the safety or soundness of the building, although the Department was subpoenaed to produce plans, etc.

Apparently efforts from time to time must have been made by the parties to adjust matters in dispute, for although the bill was filed almost six years ago, the cracks and the bulges and the possibility of the falling of the wall were at that time held forth as imminent dangers crying for immediate relief, and yet the department store is apparently in full use and serving its every purpose at this date and day. Surely six years of winter and summer, storm and stress, wind and rain, is ample to have given a full test of the strength of the structure. Business prudence, on behalf of the tenant, as well as the performance of a duty by the Building Department of Elizabeth, would seem to provide factors which would make it unnecessary to give the landlord the extraordinary right of supervision, and the incidental power of demanding modifications in the building throughout the sixty years contemplated in the lease.

No law exactly applicable can be cited to this Court, because no such a situation has ever before arisen.

The citations of the testimony in the respondent's brief can be of trifling value. The experts sent while the foundations were being laid, were unwilling to testify to any encroachments (Case, p. 85, l. 20, p. 86, l. 23, p. 95, l. 13). The evidence of the lay witnesses, who were without rule or measuring rod or surveying instrument, have no practical value.

The brief of the respondent, on the law, is in the same posture. On page 37 of respondent's brief, there is a citation of *Fortescue v. Bowles*, 55 N. J. Eq. 741, as though it was a case in point in favor of respondent, whereas on the only point as to which there is any similarity to the case in hand, Chancellor McGill definitely refused to issue a mandatory injunction for restoration. Moreover, that was not a case in which the landlord had expressly permitted the tenant to make connections with any other building, the covenant of restoration being inserted for the relief and protection of the remainderman and to accomplish the remedy which would be provided by waste where a tenant was in effect committing an irreparable injury to the reversionary interest.

Again, the citation of *Broome v. N. Y. & N. J. Telephone Co.*, 42 N. J. Eq. 141, is referred to, but that case is of course in no way applicable to the present situation, for the Goerke Company committed no "deliberate, unlawful and inexcusable invasion of another's land." It was and is in possession of the Voorhees property and has the right to continue to be there for a period longer than the life of the ordinary man, and on ceasing its possession, it must restore. In the

Broome case, there was neither acquiescence nor delay. In the present case, there was express consent under the tenant's view of the covenant to connect and there was a delay of considerably more than a year.

The case of *Savage v. Port Reading*, 73 N. J. Eq. 308, is also cited as another case in which the Court of Chancery refused relief. The citation refers to "an urgent necessity to prevent that degree of irreparable damage which otherwise would have ensued." It is impossible to conceive of any irreparable damage that can ensue through the concrete beneath the two buildings being joined, even if it is joined. But there can be no rights obtained against the landlord where the tenant at the end of the lease must restore. There is, in other words, in the present case the complete absence of urgent necessity or irreparable damage. It would seem to a casual observer, that where the lease gave the tenant "the right to connect any building on the demised premises with any building upon the adjoining premises," there would be a more irreparable damage through cutting forty or more feet of brick wall out of each floor, than in joining a foundation for a pier deep down in the earth.

We have said that the landlord could have limited the right to connect, but did not do so; relying apparently, as it well might, on the covenant of restoration.

We respectfully urge that there is no word of proof of any damage to the boilers or of any injury to the reversionary interest through a beam extending over on the land. It is also contended that there is no competent proof of the concrete in the Stein Building flaring over on the soil of

the Voorhees property. The landlord did not specify any thickness of walls, any design of building or any continuing obligation to maintain in any given condition at any given year.

On the facts and under the law, we respectfully urge for a reversal of the decree of the Court of Chancery.

LUM, TAMBLYN & COLYER,
Solicitors for Defendants-Appellants.

RALPH E. LUM,
SAUL COHN,
Of Counsel.

