

## INDEX

Judgment Record .....	1
Requests to Charge .....	12
Notice of Appeal .....	13
Grounds of Appeal .....	15
Exhibit P-1 .....	19
Exhibit P-2 .....	20
Exhibit D-1 .....	34
Order Appointing Statutory Receiver .....	23
Order for Sale .....	26
Petition for Sale .....	27
Order .....	29
Petition .....	30
Motion for Direction of a Verdict .....	67
Charge .....	73

### PLAINTIFF'S WITNESSES.

Harry Salzman	Direct .....	36
Herbert L. Elins	Direct .....	37
Hannah Linke	Direct .....	38
	Cross .....	46
	Redirect .....	48
Otto Linke	Direct .....	65
	Cross .....	65

### DEFENDANT'S WITNESSES.

Adolph Greenfield	Direct .....	50
	Cross .....	53
Isidore Schaeffer	Direct .....	58
Samuel Van Poznak	Direct .....	61
	Cross .....	63

NEW JERSEY SUPREME COURT,  
UNION COUNTY.

HANNAH LINKE,	} <i>Judgment Record</i>	10	
<i>Plaintiff.</i>			<i>Action at Law</i>
—vs—			<i>On Postea</i>
ADOLPH GREENFIELD,	} <i>JOHN P. OWENS</i>	10	
<i>Defendant.</i>			<i>Attorney.</i>

Adolph Greenfield, the defendant in this cause was summoned to answer unto Hannah Linke, the plaintiff therein in an action at law upon the following complaint:

(Summons issued March 29, 1926.)

Hannah Linke, the plaintiff, residing in the City of Plainfield, in the County of Hudson and State of New Jersey, says that: 20

FIRST COUNT.

1. In the month of March, 1920, she entered into a written lease with the Ideal Music Company, a New Jersey Corporation, wherein she rented the store in the building No. 227 West Front street, and the basement thereunder, in the City of Plainfield, New Jersey, to the said Ideal Music Company, for the term of five years from April 1, 1920, at the yearly rental of \$3,120.00, payable in equal monthly installments of \$260.00, in advance, on the first day of each month, with an option to renew said lease upon the same terms for a further period of five years from the expiration thereof, upon receiving notice from the said Ideal Music Company, before January 1, 1925, of its intention to exercise said option. On December 29, 1924, the plaintiff received notice from the said Ideal Music Company of its intention to renew said lease. A copy of said lease and notice is hereto attached and made part hereof. 30 40

*Judgment Record*

2. Under and by virtue of said lease the said Ideal Music Company entered into the possession of said premises and continued in possession thereof until October 13, 1925. On said date one Harry Salzman came into possession of said premises, as receiver of said Ideal Music Company, by virtue of an order of the Court of Chancery of New Jersey, and remained in possession thereof, and paid the rent therefore, until October 26, 1925.

3. On October 22nd, 1925, the said Harry Salzman, as such receiver, upon order of the Court of Chancery of New Jersey, sold all the right, title and interest of said Ideal Music Company in and to said lease, to Adolph Greenfield, the defendant herein, for the sum of \$200.00; that said sale was confirmed by the Court of Chancery on October 23, 1925, and by virtue thereof the said defendant entered into the possession of said premises on October 26, 1925, and on and from said date became liable to the plaintiff for the faithful performance of the terms of said lease.

4. The defendant remained in possession of the said premises until February 15, 1926, and has refused to pay unto the plaintiff the rent due her upon said lease for the said period.

5. The defendant is now indebted to the plaintiff in the sum of \$948.67 as rent for said premises from October 26, 1925 to February 15, 1926, as follows: The sum of \$34.67 which became due on October 26, 1925; the sum of \$260.00 which became due on November 1, 1925; the sum of \$260.00 which became due on December 1, 1925; the sum of \$260.00 which became due on January 1, 1926, and the sum of \$130.00 which became due on February 1, 1926.

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*Judgment Record*

The plaintiff demands judgment in the sum of \$948.57, on the first count.

SECOND COUNT.

1. Paragraph 1 of first count is repeated.

2. Paragraph 2 of the first count is repeated.

3. Paragraph 3 of first count is repeated.

4. Under the terms of the said lease the defendant became obligated to heat the said store premises and the flats over the same, at his own expense, and to furnish a supply of heat as would be adequate to heat the said flats which were occupied by other tenants of the plaintiff.

5. The defendant neglected and refused to heat the said flats as agreed, and as a result thereof one of plaintiff's tenants moved from the said flats, on or about November 10th, 1925, and the plaintiff was compelled to heat the said premises and flats at her own expense.

6. By reason of the defendants neglect and refusal to heat said premises and flats the plaintiff suffered the loss of four months rent of said flat for the months of November, 1925, December, 1925, January, 1926, February, 1926, amounting to the sum of \$260.00, and also the sum of \$9.95 in endeavoring to rent the said premises, and was further obliged to expend the sum of \$281.50 for the supplying of coal and help for the heating of the said premises until she was able to rent the same on February 15th, 1926.

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*Judgment Record*

7. The defendant is indebted to the plaintiff for damages in the sum of five hundred and fifty-one dollars and forty-five cents (\$551.45).

The plaintiff demands the sum of \$551.45 on the second count.

10 Plaintiff demands the sum of \$1,500.12 on both counts.

JOHN P. OWENS,  
*Attorney for Plaintiff.*

20 THIS INDENTURE, made this \_\_\_\_\_ day of March, in the year one thousand nine hundred and twenty between Hannah Linke, wife of Frank Linke, of the City of Plainfield, in the County of Union and State of New Jersey, party of the first part,

AND Ideal Music Company, a New Jersey corporation of the same place, party of the second part:

30 WITNESSETH, that the said party of the First Part does hereby demise and lease unto the said Party of the Second Part, the store located in the building known as number 227 West Front street, Plainfield, N. J., together with the basement there-  
under and the small two-story building directly in the rear of said store with its basement (known as the old washhouse) with the appurtenances, and the sold and uninterrupted use and occupation thereof (except as hereinafter mentioned) for the term of five years from the first day of April, 1920, for the yearly rent of three thousand one hundred and twenty (\$3,120.) dollars payable in equal monthly installments of two hundred and sixty (\$260.) dollars in advance on the first day of every month during  
40 the term hereof, commencing April, 1920.

*Judgment Record*

AND the said party of the second part does hereby agree to pay the said party of the first part, her heirs, assigns, agents or attorneys, the said yearly rent of three thousand one hundred and twenty (\$3,120.) dollars at the time and manner aforesaid.

10 AND the said party of the first part does further agree that the said party of the second part may make such alterations and improvements in said premises as it may desire during the term of this lease, provided that all such alterations and improvements as may be structural in character shall first be consented to by the party of the first part in writing, and provided further that all such structural alterations and improvements shall revert to  
20 and become the property of the party of the first part upon the termination of this lease or extension thereof. The party of the second part shall have the right to remove all fixtures and booths erected or installed by it upon the termination of this lease or extension thereof.

AND the said party of the first part hereby gives and grants to the said party of the second part an option to renew this lease upon the same terms for a period of five years from the expiration thereof, provided that the party of the second part, if it  
30 decides to exercise said option of renewal, shall notify the said party of the first part or her assigns of such intention in writing before the first day of January, 1925.

AND the said party of the second part further agrees to heat said building and premises above the store at its own expense by means of the large heater situated in the basement of the store building, said  
40 heat to be adequate in amount so that all the flats

Judgment Record

above the store shall be comfortable in the cold season.

10 AND the said party of the first part hereby agrees to allow the party of the second part an annual sum of \$100 toward the expense of heating said building aforesaid. This allowance shall be deducted from the rent due for the month of January in each year.

20 AND the said party of the second part does further promise and agree that the said party of the first part, her heirs, assigns, agents or attorney, may enter with agents or employees, into and upon said premises at reasonable hours in the day time, to examine the same, or to make such repairs or alterations therein as shall be necessary for the preservation thereof; and to exhibit them at any time during the last three months of the said term, from ten o'clock in the morning to five o'clock in the afternoon (Sundays excepted), to any person or persons; and put up notices "To Let" or "For Sale" on the outside wall thereof. If the said premises shall become vacant, or be deserted, during said term, the said Party of the Second Part does hereby authorize the said Party of the First Part, her heirs, assigns, agents or attorney, to re-enter the same, at her option, and re-let them and receive and apply the rent so received to the payment of the rent due by these presents.

40 AND the said Party of the Second Part does further agree to keep the premises in as good repair as the same shall be at the commencement of the said term (wear and tear arising from a reasonable use of the same, and damages by the elements excepted); and at the expiration of said term to yield up the peaceable possession thereof to the said party

Judgment Record

of the First Part, her heirs, assigns, agents or attorney.

10 AND the party of the second part does further agree to pay all the water rates assessed upon said premises hereby demised during said term as additional rent, payment to be made promptly when said water rents fall due and before any penalties or interest are chargeable thereon, and if the party of the second part fails herein, the party of the first part must pay the same and recover the same on demand or evict the party of the second part as in other cases of non-payment of rent.

20 AND the party of the second part agrees that it will not let, sell, under-let, or assign the premises or any part thereof, and will not use them, nor permit any part thereof to be used, for any other business or purpose than as a store for the sale of talking machines, records, supplies, musical instruments and similar articles, nor for any business or purpose extra-hazardous without the written consent of the party of the first part, her heirs, assigns, agents or attorneys.

30 AND it is agreed that upon the breach of any of said covenants the party of the second part shall forfeit said term, and the party of the first part may, at her option, re-enter and recover immediate possession of said premises, and shall also have an action for all damages arising from such breach.

40 IN WITNESS WHEREOF, the said Party of the First Part has hereunto, in duplicate set her hand and seal and the party of the second part has hereunto affixed its corporate seal attested by the signa-

*Judgment Record*

ture of its officers thereunto duly authorized the day and year first above written.

Sealed and delivered in }  
in the presence of }

10

Hannah Linke,  
Ideal Music Company  
By Albert Valmer, Prest.

Attest:  
(SEAL)  
Albert Valmer, Sec'y.

New York, N. Y., December 29, 1924.

20 Mrs. Hannah Linke,

Plainfield, New Jersey.

Dear Madam:

Pursuant to the terms of a lease between you and this company dated March 26th, 1920, we hereby notify you of our intention to exercise the option of renewal contained in said lease for a period of five  
30 (5) years from April 1st, 1925.

Yours very truly,

IDEAL MUSIC COMPANY,  
By Albert Valmer,  
*President.*

(Filed April 9, 1926.)

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*Judgment Record*

The defendant, Adolph Greenfield, reserving all manner of objection to the complaint herein, and the right to move to strike out said complaint, at or before trial, on the ground that the same does not set forth a cause of action, in either of any of the counts therein set forth, for answer thereto says:

10

FIRST COUNT.

1. He has no information or knowledge of the truth of the allegations contained in the first paragraph, and therefore neither admits nor denies the same.

2. He has no information or knowledge of the truth of the allegations contained in the second paragraph, and therefore neither admits nor denies the same.

20

3. He denies the allegations in paragraph 3.

4. He denies the allegations in paragraph 4.

5. He denies the allegations in paragraph 5.

SECOND COUNT.

1. He has no information or knowledge of the truth of the allegations contained in the first paragraph, and therefore neither admits nor denies the same.

30

2. He has no information or knowledge of the truth of the allegations contained in the second paragraph, and therefore neither admits nor denies the same.

3. He denies the allegations in paragraph 3.

40

*Judgment Record*

- 4. He denies the allegations in paragraph 4.
- 5. He denies the allegations in paragraph 5.
- 6. He denies the allegations in paragraph 6.
- 7. He denies the allegations in paragraph 7.

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FIRST SEPARATE DEFENSE.

On October 23rd, 1925, this defendant acquired from Harry Salzman, the receiver of the Ideal Music Company of Plainfield, a corporation of the State of New Jersey, all the assets of said company, for the price of two thousand (\$2,000.00) dollars, which sale was confirmed by the order of the Court of Chancery on said October 23rd, 1925, and thereafter, on or about October 28th, 1925, this defendant sold all the assets so acquired and any right, title or interest in the lease for the store of the premises No. 227 West Front street, Plainfield, New Jersey, to one Nathan Fisher, who accepted the same, and any liability of the said defendant for the payment of rent for said premises, and the performance of the covenants of the aforesaid lease was terminated on the aforesaid 28th day of October, 1925.

20

KRAEMER & SIEGLER,  
*Attorneys for Defendant.*

30

(Filed April 27, 1926.)

The plaintiff denies every allegation in the defendant's answer.

JNO. P. OWENS,  
*Attorney of Plaintiff.*

40

(Filed May 3, 1926.)

*Judgment Record*

This case was tried before Judge Peter F. Daly, with a jury, at the Union County Circuit Court on May 24th and 25th, 1927.

The jury rendered a general verdict in favor of the plaintiff, and against the defendant, for the sum of \$948.67.

10

Whereupon it is adjudged that the plaintiff Hannah Linke do recover of the said defendant, Adolph Greenfield the sum of nine hundred forty-eight dollars and sixty-seven cents damages together with her costs which have been taxed at the sum of fifty-six dollars and seventy-eight cents making in the whole the sum of one thousand and five dollars and forty-five cents.	20
\$948.67	
56.78	
\$1,005.45	

WILLIAM S. GUMMERE, C. J.

Judgment entered May 28, 1927.

30

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*Requests to Charge*

NEW JERSEY SUPREME COURT,  
UNION COUNTY.

10	HANNAH LINKE, <div style="text-align: right;"><i>Plaintiff.</i></div>	}	<i>Action at Law</i>
—vs—			
ADOLPH GREENFIELD, <div style="text-align: right;"><i>Defendant.</i></div>	<i>Requests to Charge.</i>		

The defendant respectfully requests the Court to charge as follows:

- 20 1. That the assignment of the lease or his interest therein by the defendant to another person terminated the privity of estate between the defendant and the lessor, the plaintiff herein, and the liability of the defendant for rent accruing thereafter.
2. That if the Jury should find that on October 24th 1925 the defendant assigned his interest in the lease to Nathan Fisher by the instrument, Exhibit D-1, that such assignment terminated the defendant's privity in the estate and his liability for the rent under the lease accruing thereafter.
- 30 3. That it is the duty of the Jury to accept the testimony of the defendant, Adolph Greenfield, regarding the assignment of the lease made by him on October 24th, 1925, to the defendant Nathan Fisher, unless it is inherently improbable, unless it is discredited by circumstances which appear in the case or by evidence, impeaching the veracity of the witness.

Respectfully submitted,

40 KRAEMER & SIEGLER,  
*Attorneys for Defendant.*

*Notice of Appeal*

NEW JERSEY SUPREME COURT,  
UNION COUNTY.

HANNAH LINKE, <div style="text-align: right;"><i>Plaintiff.</i></div>	}	<i>Action at Law</i>	10
—vs—			
ADOLPH GREENFIELD, <div style="text-align: right;"><i>Defendant.</i></div>		<i>Notice of Appeal</i>	

To JOHN P. OWENS, Esquire, Attorney of Plaintiff, or to Whom It May Concern:

Sir:

20

PLEASE TAKE NOTICE that the defendant in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause.

Respectfully yours,

KRAEMER & SIEGLER,  
*Attorneys for Defendant.* 30

Dated: June 2nd, 1927.

40

Notice of Appeal

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

HAROLD SPEISER, being duly sworn according to law on his oath deposes and says :

10 That he is connected with the law offices of Kraemer & Siegler, attorneys for the defendant in the within cause. That on the 2nd day of June, 1927, he did serve upon John P. Owens, Esq., attorney for the plaintiff herein, a copy of the within notice of appeal, by leaving the same with the young man in charge of the office.

HAROLD SPEISER.

20 Sworn and subscribed to before me this 2nd day of June, 1927.

JENNIE MICHELSTEIN,  
A Notary Public of New Jersey.

30

40

Grounds of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS.

HANNAH LINKE,  
Plaintiff-Appellee,  
—vs—  
ADOLPH GREENFIELD,  
Defendant-Appellant.

On Appeal 10  
Grounds of Appeal

To: JOHN P. OWENS, Esquire,  
Attorney for Plaintiff-Appellee.

Sir: 20

TAKE NOTICE that the grounds of appeal in the above-entitled appeal are as follows:

1. That the learned trial judge erroneously admitted a letter from Harry Salzman, Receiver, to Hannah Linke, the plaintiff, Exhibit P-1.

2. That the learned trial judge erroneously admitted the testimony of Hannah Linke, that Adolph Greenfield, the defendant-Appellant, bought the lease. 30

3. That the learned trial judge erroneously admitted a letter to William Harris, attorney of Receiver to Hannah Linke, the plaintiff, Exhibit P-2.

4. That the learned trial judge erred in refusing the defendant's motion to direct a verdict in

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*Grounds of Appeal*

5. That the learned trial judge erroneously charged the jury, in substance, that the evidence was that Adolph Greenfield, the defendant, was in possession, or some person for whom he was responsible, was in possession, until December 10th, 1925.

10

6. That the learned trial judge erroneously charged the jury, in substance, that if he, the defendant, took possession and either kept possession, or put some person in possession for whom he was liable, he was responsible for the other person's possession and liable to pay for the trespass until the landlord, the plaintiff, should rent the premises to some other person.

20

7. That the learned trial judge erroneously charged the jury, in substance, that if the defendant got possession by operation of law, that that operation of law put him in the legal position as the original tenant.

8. That the learned trial judge erroneously charged the jury, in substance, that he, the defendant, was responsible for rent as long as he continued in occupancy, and if he gave up before he was entitled to give up the occupancy, he, the defendant, would be responsible for such time as the landlord obtained a tenant through her reasonable efforts.

30

9. That the learned trial judge erroneously charged the jury, "Why did he, (defendant) assign this lease? He had no right to assign this lease to Fisher without the consent of Mrs. Linke, the plaintiff. And the right to assign subject to the consent of Mrs. Linke."

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*Grounds of Appeal*

10. That the learned trial judge erroneously charged the jury, in substance, that he, the defendant, was responsible for such time of his occupancy, plus such time as Mrs. Linke, the plaintiff, could reasonably get a tenant.

11. That the learned trial judge erroneously refused to instruct the jury in accordance with the defendant's request as follows: 10

"1. That the assignment of the lease or his interest therein by the defendant to another person terminated the privity of estate between the defendant and the lessor, the plaintiff herein, and the liability of the defendant for rent accruing thereafter."

20

12. That the learned trial judge erroneously refused to instruct the jury in accordance with the defendant's request as follows:

"2. That if the jury should find that on October 24th, 1925, the defendant assigned his interest in the lease to Nathan Fisher by the instrument, Exhibit D-1, that such assignment terminated the defendant's privity in the estate and his liability for the rent under the lease accruing thereafter."

30

13. That the learned trial judge erroneously refused to instruct the jury in accordance with the defendant's request as follows:

"3. That it is the duty of the jury to accept the testimony of the defendant, Adolph Greenfield, regarding the assignment of the lease made by him on October 24th, 1925, to the defendant Nathan

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*Grounds of Appeal*

Fisher, unless it is inherently improbable, unless it is discredited by circumstances which appear in the case or by evidence, impeaching the veracity of the witness."

Respectfully submitted,

KRAEMER & SIEGLER,  
*Attorneys for Defendant-Appellant.*

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*Exhibit P-1*

Phones Mulberry 6780-1-2 113-115 Leonard Street  
New York City

"Wholesale Exclusively"

THE WHOLESALE RADIO EQUIPMENT CO.

37-39 William Street

Newark, N. J.

10

October 28, 1925.

Mrs. Hannah Linke,  
Road Ending,  
Plainfield, N. J.

Dear Mrs. Linke:

This is to advise you that we are no longer responsible for the rent on the Plainfield store, occupied by the Ideal Music Co., as all our right, title and interest to the lease has been sold to Mr. A. Greenfield, Market street, Newark. Of course your rent for October as per the statement which you recently sent us will be paid.

20

Yours very truly,

By HARRY SALZMAN,  
*Rec. for Ideal Music.*

30

HS:CVA  
Ex. P-1  
5-24-27  
J. W.

40

Exhibit P-2

WILLIAM HARRIS — Harry H. Koehler Israel B. Greene Herbert L. Elins Aaron Sobo	Cable Address "Wilhar" Phone Mulberry 2523- 2524-2660 Suite 605-606-7-8-9-10 Kinney Building
---	--

10 Ex. P-2  
5-24-27  
J. W.

Law Offices  
of  
WILLIAM HARRIS

Newark, N. J., Nov. 4, 1925.

20 Hannah Linke,  
Road Ending,  
Central Avenue,  
Plainfield, N. J.

Dear Madam:

30 On behalf of Harry Salzman, Receiver in Chan-  
cery of the Ideal Music Company of Plainfield, I  
herewith enclose rent for the premises covering the  
period Mr. Salzman was in occupancy as receiver.  
Mr. Salzman went into possession as receiver under  
order of the court on October 13th and remained in  
possession until October 26th. This check covers that  
period mentioned and also the water rent. As to the  
rent due you prior to this time, under the Chancery  
rules you have to file a priority claim either with  
myself or with the receiver. When this is done I  
believe you will realize the full rent due you and will  
not lose anything thereby. As I mentioned there is  
sufficient money in the estate to pay you.

40 The purchaser of the lease communicated with me

Exhibit P-2

and informs me that although the lease is very valu-  
able because of the fact that you seemed to object to  
his occupying the premises, that he will return the  
lease to you for the amount he paid for it, said sum  
being \$200.00. You no doubt realize that as the  
lease contained no bankruptcy or insolvency clause,  
the purchaser may remain in full possession of the  
full term of the lease. If you do not desire to have  
him in possession, I suggest you send me a check  
to cover the value of the lease and I shall return the  
lease to you forthwith. 10

For your convenience I am herewith enclosing a  
Chancery priority proof of claim which I suggest  
you have executed before a lawyer or a Notary Pub-  
lic. This should be done immediately as the time  
within which to file claims will expire within the  
next two weeks. 20

Kindly address all communications to Mr. Elins  
of this office.

Very truly yours,

WILLIAM HARRIS.

Dic. by Mr. Elins. 30

40



*Order Appointing Statutory Receiver*

defendant from exercising its corporate franchises and privileges and for the appointment of a statutory receiver should be granted. It is on this 13th day of October, 1925, on motion of William Harris, Esq., of counsel with said complainant,

10 ORDERED, ADJUDGED AND DECREED that the said Ideal Music Company of Plainfield, a corporation is and is hereby declared to be insolvent and is not able to resume its business in a short time with safety to the public and its creditors and advantage to the stockholders, and it is further

20 ORDERED, that an injunction issue against the defendant corporation according to the prayer of the Bill of Complaint and that the said corporation, its officers, servants and agents absolutely desist and refrain and they are hereby enjoined and restrained from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects except to a Receiver appointed by this Court; and it is further

30 ORDERED that Harry Salzman of the City of Newark, in this State be and he is hereby appointed receiver for the creditors and stockholders of the said corporation with all powers incident thereto and that he do perform all the duties imposed upon him by the statutes of this State in such case made and provided, and it is further

40 ORDERED that the said Receiver before entering upon his duties as such receiver take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey in the sum of \$3,000. condi-

*Order Appointing Statutory Receiver*

tioned for the faithful performance of his duties, to be approved as to form and security thereof by any one of the special masters of this Court, and it is further

10 ORDERED that the creditors and stockholders of the said defendant corporation show cause before this Court on the 20th day of October, 1925, at ten o'clock in the forenoon at the Chancery Chambers, Prudential Building, Newark, New Jersey, or as soon thereafter as the matter can be heard, why the said Receiver should not be continued or why some other person should not be appointed receiver in his place or with him as co-receiver;

20 And that a notice of this order (which need not be certified) be mailed to all creditors and stockholders of the defendant corporation, whose names and addresses the said receiver shall be able to ascertain at their last know post-office addresses within three days from the date hereof.

Respectfully advised,

MAJA LEON BERRY, V. C.  
E. R. WALKER,  
C. 30



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

HARRY SALZMAN, being duly sworn according to law upon his oath deposes and says that:

10 1. I am the petitioner named in the foregoing petition.

2. I have read the contents of the said petition and the same is true to the best of my knowledge, information and belief.

HARRY SALZMAN.

Sworn and subscribed to before me this 14th day of October, 1925.

20 HERBERT ELINS,  
*Attorney at Law of New Jersey.*

30

40

Order

IN CHANCERY OF NEW JERSEY

Between	}	<i>On Bill, &amp;c.</i>	10
HARRY SALZMAN, Receiver in Chancery of IDEAL MUSIC COMPANY, a corporation,			
<i>Complainant.</i>			
—and—		<i>Order.</i>	
IDEAL MUSIC COMPANY OF PLAINFIELD, a corporation,	}		
<i>Defendant.</i>			

This matter being opened to the court by William Harris, Esq., attorney for the receiver herein, and it appearing that the assets of the defendant corporation were sold pursuant to the order of this Court, and that the highest bid received was in bulk as a going concern for the sum of \$2,000.00, and it appearing to the Court that this sum is a reasonable value of the assets of the defendant corporation, and due cause being shown for the granting of this order, it is in this 23rd day of October, 1925, on motion aforesaid, 20

ORDERED that the said sale of the assets of the defendant corporation in bulk for the sum of \$2,000.00 be, and the same is hereby in all respects ratified and confirmed, and it is further, 30

ORDERED that the receiver be, and he is hereby directed and authorized to execute and deliver to the said purchaser proper instruments of transfer.

Respectfully advised,

ALONZO CHURCH, V. C. E. R. WALKER, C. 40



UNITED STATES OF AMERICA, }  
DISTRICT OF NEW JERSEY. }ss.

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

10 HARRY SALZMAN, being duly sworn according to law on his oath deposes and says; that he is the petitioner named in and who executed the annexed petition; that he has read the said petition and knows the contents thereof, and that the same is true, excepting as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HARRY SALZMAN.

20 Sworn and subscribed to before me this 23rd day of October A. D., 1925.

HERBERT L. ELINS,  
*An Attorney at Law of New Jersey.*

30

40

I, THOMAS BARBER, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the ORDER APPOINTING STATUTORY RECEIVER, filed September 3, 1925; ORDER FOR SALE, filed October 4, 1925; (SEAL) PETITION FOR SALE, filed October 14, 1925; PETITION AND ORDER TO EXECUTE, filed October 21, 1925, in the cause wherein HARRY SALZMAN, Receiver in Chancery of the Ideal Music Company is complainant, and Ideal Music Company, of Plainfield, a corporation is defendant, now on the files of my office. 10

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 23rd day of May, A. D. nineteen hundred and twenty-seven. 20

THOMAS BARBER,  
*Clerk.*

30

40

*Exhibit D-1*

Telephone Market 2627

ADOLPH GREENFIELD

197-199 Market St.,

Newark, N. J.

10

October 24, 1925.

In and for the consideration of twenty-two hundred dollars (\$2,200), I, the undersigned, sell all my right title and interest of the Ideal Music Co. assets of 227 W. Front St., Plainfield, N. J., which I have purchased from Harry Salzman, Receiver, to Nathan Fisher of Newark, New Jersey, Five hundred dollars received as deposit and balance to be paid as the goods are sold, but not later than November 15, 1925, this includes everything I bought from the receiver.

20

ADOLPH GREENFIELD ( Signed.)

NATHAN FISHER (Signed.)

Witness:

I. SCHAEFFER.

30 Ex. D-1  
5-24-27

40

*Plaintiff's Witness, Harry Salzman, Direct.*NEW JERSEY SUPREME COURT,  
UNION COUNTY CIRCUIT,

May Term, 1927.

HANNAH LINKE,

10

—vs.—

ADOLPH GREENFIELD.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before HON. PETER F. DALY, Circuit Court Judge, and a Jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the twenty-fourth day of May, A.D., 1927, at 2.30 P. M.

20

*Appearances:*

JOHN P. OWENS, Esq.,  
*Counsel for the Plaintiff.*

MESSRS. KRAEMER & SIEGLER,  
JOSEPH KRAEMER, Esq., (Present)  
*Counsel for the Defendant.*

(A jury being empanelled and found satisfactory, they were sworn.) 30

(Argument.)

The Court: Application is made to amend paragraph four of the first count so that the same shall read: "The defendant remained in possession of such premises until December 10, 1925, upon which date he vacated the same without notice to the plaintiff, and the

40

*Plaintiff's Witness, Harry Salzman, Direct.*

plaintiff was unable to rent the said premises until February 15, 1926, and defendant has refused to pay plaintiff the rent due her upon said lease for said period from October 26, 1925, to February 15, 1926."

10 Mr. Kraemer: I think that that requires the—

The Court: Have you any objection to that?

Mr. Kraemer: No.

The Court: The amendment is allowed. How much do you claim is due?

Mr. Owens: \$948.67. Paragraph number five asks from October 26, 1925, to February 15, 1926.

The Court: Rent payable in advance?

Mr. Owens: Yes, your honor.

20 The Court: And that \$34.67, the first amount you claim was due.

Mr. Owens: For the balance of—

The Court: I do not think it makes any practical difference. They will get whatever they prove, if they are entitled to anything.

Mr. Kraemer: All right.

(Mr. Owens opens the case for the plaintiff.)

(Mr. Kraemer opens the case for the defendant.)

30 HARRY SALZMAN, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

*Direct Examination by Mr. Owens:*

Q Were you the receiver for the Ideal Music Company of Plainfield?

A Yes, sir.

40 Q I show you a letter addressed to Hannah Linke and ask you if that is your letter and your signature.

*Plaintiff's Witness, Herbert L. Elins, Direct.*

A Yes, sir.

Mr. Owens: I want to mark that for identification.

(Letter marked Exhibit P-1 for identification.)

Q Who was your attorney as receiver?

A William Harris' offices. 10

HERBERT L. ELINS, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

*Direct Examination by Mr. Owens:*

Q You are a counsellor at law?

A Attorney at law.

Q You were such on November 4, 1925?

A That is right. 20

Q Connected with the offices of William Harris of Newark?

A That is right.

Q Do you know he was the attorney of Harry Salzman, the receiver of the Ideal Music Company?

A He was.

Q Who handled that matter in Mr. Harris' offices?

A I did.

Q This letter dated November 4, 1925, addressed to Hannah Linke—did you write that letter? 30

A I dictated it.

Q As attorney or as an employee of Mr. Harris?

A As an associate of Mr. Harris..

Q He was attorney for the receiver of the Ideal Music Company?

A That is right.

Mr. Owens: That is all. I offer this letter.

(Letter dated November 4, 1925, marked Exhibit P-2 for identification.) 40

*Plaintiff's Witness, Hannah Linke, Direct.*

HANNAH LINKE, the plaintiff, being duly sworn according to law, on her oath, saith:

*Direct Examination by Mr. Owens:*

Q You are the plaintiff in this suit, Mrs. Linke?

A Yes, sir.

10 Q You own the premises 227 West Front Street, Plainfield?

A Yes, sir.

Q I show you a paper and ask you what it is.

A That is the lease, yes.

Q What is it?

A The lease.

Q The lease for what premises?

A 227 West Front street.

Q The lease to the Ideal Music Company?

20 A The Music Company, yes.

Q Is that your signature?

A Yes, sir.

Q Is this the signature of the Ideal Music Company?

A Yes, sir.

Q Do you know where these gentlemen are now?

A No, I have no idea where they are.

Mr. Owens: I offer the lease.

30 Mr. Kraemer: Is that the same lease you annexed to the complaint?

Mr. Owens: Yes.

Mr. Kraemer: All right.

The Court: Admitted.

(Lease entered in evidence and marked Exhibit P-3.)

Q That lease was for a term of five years?

A Yes, sir.

Q At a yearly rental of \$3,120?

40 A Yes.

*Plaintiff's Witness, Hannah Linke, Direct.*

Q Payable \$260 in advance on the first day of each month?

A Yes, sir.

Q And the Ideal Music Company remained there for the whole five years of that lease?

A No, not of that lease.

Q I mean the 1920 lease, the first lease. 10

A Yes.

Q I show you a letter and ask you what this is.

A That they wanted to take the lease for the term of the next five years.

Q For five years more?

A Yes, sir.

Q That would be from October 19, five years from April 1, 1925?

A Yes.

Q At the same rent of \$260 per month? 20

A Yes.

(Letter entered in evidence and marked Exhibit P-4.)

Q How long did the Ideal Music Company remain in possession of the premises?

A The second lease or the first?

Q Yes.

A From January 1—

Q The second lease from April 1, 1925.

A From April 1, 1925, to October 1. They went 30 in the hands of the receiver then.

Q And when did the receiver—

A Who was the receiver?

Q (Continuing)—surrender possession to you? Who was the receiver, do you know?

A Mr. Salzman.

Q What happened to the lease? Do you know?

A Mr. Salzman—

Mr. Kraemer: I object to that, if the Court please. 40

*Plaintiff's Witness, Hannah Linke, Direct.*

10 Mr. Owens: If your Honor please, I desire to offer now in evidence certified copies of the order of the Court of Chancery declaring the Ideal Music Company of Plainfield insolvent, appointing Harry Salzman as receiver, a certified copy of a petition for sale of the assets, including the lease of 227 West Front street; and the order for sale; also a petition for confirmation of sale; and an order of a confirmation of the sale of the assets of the Ideal Music Company and the store 227 West Front street.

Mr. Kraemer: Certified copy?

Mr. Owens: Yes.

The Court: It is admitted.

20 (Papers referred to entered in evidence and marked Exhibit P-5.)

The Court: What was the date of the employment of the receiver? October 13?

Mr. Owens: October 13, 1925.

Q Up to what date were you paid by Mr. Salzman as receiver?

A October 26, 1925.

Q I show you a letter and ask you if you received that letter from Mr. Salzman.

30 A Yes, I did.

Mr. Owens: I offer this letter.

Mr. Kraemer: I object, if your Honor please.

The Court: Why?

Mr. Kraemer: That is a letter from Mr. Salzman. It cannot be binding upon this defendant, a letter from Mr. Salzman to the witness.

40 Mr. Owens: A letter from Mr. Salzman as receiver of the Ideal Music Company..

*Plaintiff's Witness, Hannah Linke, Direct.*

The Court: Well, it may help us to arrive at the proper conclusion in this case. I don't know.

Mr. Owens: Relative to the matter at issue here.

The Court: I admit it.

Mr. Kraemer: I beg an exception, if your Honor please. 10

The Court: Yes.

(Letter dated October 28, 1925, previously marked Exhibit P-1 for identification, entered in evidence and marked Exhibit P-1.)

(Mr. Owens reads the letter Exhibit P-1 to the jury.)

Q After that date of October 28, Mrs. Linke, did you see Mr. Greenfield?

A Yes, sir. 20

Q Where?

A He came to my house.

Q Before that were you present at the sale?

A Yes, sir.

Q Of the Ideal Music Company's assets?

A Yes, sir.

Q Where did that sale take place?

A In the store, 227 West Front street.

Q Who bought the lease that day? Did you hear it sold? 30

A Yes, it was the first thing sold, was the lease.

It was the thing was bought and sold.

Q Who bought it?

A Adolph Greenfield.

Mr. Kraemer: I object to that.

*By the Court:*

Q How do you know that?

A It was given over to the sale.

Q Was Mr. Greenfield there?

A Yes, sir, he was. 40

*Plaintiff's Witness, Hannah Linke, Direct.*

*By Mr. Owens:*

Q Did you make any announcement as to the lease that day?

A Yes, I did.

Q What was that announcement?

10 A There is a paragraph in the lease that says it cannot be transferred to anybody without my signature, and I asked the agent—he is here. He testified here a while ago—I asked him to please read the paragraph so nobody would be fooled.

Mr. Kraemer: If your Honor please, I didn't get your ruling on the question as to who bought the lease.

The Court: She said that he bought the lease, that he was there. She saw him there.

20 *By the Court:*

Q Did you hear him bid for it?

A Yes, sir. \$200.

Q That is, Mr. Adolph Greenfield?

A Adolph Greenfield was the man.

Mr. Kraemer: I ask for an exception to the admission of this testimony.

The Court: You may have it.

30 Mr. Kraemer: I want to call your Honor's attention to the fact that I make that objection under the Statute of Frauds, which requires assignments to be in writing.

The Court: Yes.

*By Mr. Owens:*

Q Did you see Mr. Greenfield after that?

A Yes.

Q Where?

40 A I seen him once in the store, one Saturday afternoon.

*Plaintiff's Witness, Hannah Linke, Direct.*

*By the Court:*

Q One minute before you reach that fact, Mrs. Linke.

A Yes, sir.

Q When you requested that the seller who was putting up for bids an assignment of your lease, or sale of your lease when you requested him to announce that there was a provision in your lease that it could not be assigned to anyone without your consent, what was done? 10

A Why, he read the paragraph off before it was sold.

Q Was Mr. Greenfield there when that paragraph was read off?

A Yes, sir, he was.

Q How close was he to the man that was reading it off? 20

A Why, the man that read it off was here last week.

Q Well, how many feet away from Mr. Greenfield?

A He wasn't as far as he is from me now.

Q How far were you from the man?

A I was right there. I stood right to hear what was going on. I was in my own interest, you know, looking after my own interest.

Q In what strength of voice did he make the announcement? 30

A Quite loud. He was an auctioneer.

*By Mr. Owens:*

Q Did you see Mr. Greenfield after that?

A Yes.

Q Where?

A In the store, one Saturday after that, after they bought the lease the day before or two days before. 40

*Plaintiff's Witness, Hannah Linke, Direct.*

The Court: When did the sale take place?

Mr. Owens: October 22, I believe.

Mr. Kraemer: October 23, I think.

Mr. Owens: October 23.

*By the Court:*

10 Q How long afterwards was it, Mrs. Linke, that you saw Mr. Greenfield?

A Why, it was the next Saturday. He was sitting in the store as I passed by and I see two men inside, and I went in and the place was—

Q You went in what store?

A My lease.

Q The store that was leased?

A Yes, Judge. I went in and the place was so dilapidated looking that it grieved me, and I asked him why they wouldn't clean up the paper. I was

20 afraid of fire, and he was smoking cigars there with another man. The place was in a terrible condition. I asked him then, he wanted to know if I wanted him for a tenant. I said, "Yes, I want you for a tenant. They tell me you are a very rich man." He says, but I said, "You will have to live according to the lease." And he says, he said then to me, he said, "Well, I tell you," he says, "I sell you the lease." I says, "No, I don't want the lease. You are respon-

30 sible. You bought it in the sale." And he says, he told me then that he would not be afraid of my building. He would put a candle in the back and small lights in the front. He would put in an organ, and I would not want him to be in the place. I said, "You might do that in Europe, but you are in Plainfield now. You will have to live according to the neighbors of this section." I said, "You live according to your lease, Mr. Greenfield." Then he

40 went on, he asked me would I collect the rent. I told him I would collect, or he send it to my house,

*Plaintiff's Witness, Hannah Linke, Direct.*

but he never sent it to my house, or he never asked if I wanted the rent or anything else, but simply went around to sell the lease.

*By Mr. Owens:*

Q How much did he want for the lease?

A He wanted three hundred first, and then he wanted two hundred. He paid two hundred for it, because it was the first thing sold. 10

Q Did he pay any rent for the balance of October?

A No rent whatsoever.

Q Did he pay any rent for the balance of November?

A No.

Mr. Kreamer: For the balance of November? 20

Q For the month of November.

A No, he paid no rent at all. He didn't offer to pay any rent, only the one time he asked me where he should send a check.

Q Did you ever receive a key back for the premises?

A I did.

Q When?

A I think around the tenth of December.

Q 1925? 30

A 1925. They came by mail.

Q Did you receive any rent for the month of December, 1925?

A No, sir.

Q How long were the premises vacant after December 10, 1925?

A Until the fifteenth day of February, 1926.

Q Did you receive any rent from the month of January, 1926? Did you receive any rent for February, 1926? 40

*Plaintiff's Witness, Hannah Linke, Direct.*

A No, sir.

Q How much rent does Mr. Greenfield owe you altogether?

A I have no idea. There is a bill there for it.

Q He owes you for the balance of October?

A October, November, December, January, and  
10 to February 15.

Q He owes you for four days in October; it amounts to \$34.67?

A Yes.

Q \$260 for November?

A Yes.

Q \$260 for December?

A Yes.

Q \$260 for January, 1926?

A Yes.

20 Q And \$130 up to the fifteenth of February, from the first to the fifteenth?

A Yes.

Q Has he paid any part of that?

A No, sir.

Q Under the lease, Mrs. Linke, who was to furnish heat?

Mr. Kraemer: I object to that.

The Court: Who was what?

Mr. Owens: Who was to furnish heat?

The Witness: The owner of the lease.

30 The Court: I thought you waived that. I thought you said you waived the second court.

Mr. Owens: I will waive that.

*Cross Examination by Mr. Kraemer:*

Q Mrs. Linke, how many times after the sale did you see Mr. Greenfield?

A Once in the store, and he came to my house. They came to my house twice to sell the lease, one  
40 night about eight o'clock singing, "Where is the old

*Plaintiff's Witness, Hannah Linke, Cross.*

woman? Where is the old woman?" He scared me around the house, and we live in a lonely place anyway.

Q When was it that you saw him in the store?

A I have no idea. It was a few days after the sale.

Q I thought you said it was Saturday morning? 10

A I think it was. It was Saturday and it was raining. I know that very well, but I can't recall whether it was the first or the second Saturday, but the place was in a dilapidated condition.

Q Now, did he come to your house before or after that?

A After.

Q Do you recall how long after that?

A Possibly a week. I don't know the exact date.

Q Alone or with somebody? 20

A One afternoon. One afternoon.

Q Alone or with somebody else?

A No, he had a man with him all the time.

Q When you came in the store on that Saturday that you mentioned, there was a man in there, wasn't there, outside of Mr. Greenfield?

A The same man that was always with him.

Q Do you recall the man's name?

A I don't know his name from Adam.

Q After December 10 what did you do in connection with the store? 30

A After December 10?

Q I think you said it was December 10 that you received the keys for the store.

A Well, I had the place cleaned up. The fire authorities got after me, and I had to have the place cleaned, which cost me an awful lot of money, and I tried to rent it but was beyond renting time, because until the fifteenth of January; then I rented it to Mr.

40

*Plaintiff's Witness, Hannah Linke, Cross.*

Dreyer. It was gone beyond renting time at that time, you know.

Q On December 10 or shortly thereafter. And after you got the key you went into possession of the store?

A I had to do something with it, of course, and  
10 I couldn't leave it as Mr. Greenfield. Why, nobody would go upstairs or nowhere with the dirt of the place.

Q What did you do about cleaning it up?

A I had a truckman to come for two days to clean it out; more than two days. Never seen such dirt. He undone everything and left the dirt for me to clean.

Q What about this material?

A He took out all the material and left. Actual-  
20 ly it was that high (indicating). That took Mr. Burke and Mr. Magow with his truck, he took two truckloads, and I have my own man for three days at it, and the sight distressed me with the grease of the machines.

Q Did you do anything about repairing it?

A I didn't do any painting or repairing. I haven't got no bills for painting or repairing, only for cleaning.

30 *Redirect Examination by Mr. Owens:*

Q Mrs. Linke, did you receive this letter?

A What is that?

Q This note from Mr. Harris, William Harris.

A Yes, I received this letter. Yes, sir, I did.

Mr. Owens: I wish to offer this letter.

Mr. Kreamer: Just a moment. I object to this offer. I would rather have the Court rule on it before you read it to the jury.

40 The Court: What is the basis of your ob-

*Plaintiff's Witness, Hannah Linke, Redirect.*

jection? What are the reasons? What are the reasons for your objection?

Mr. Kraemer: It is hearsay. It is not binding on the defendant. It is unsworn testimony of a man who is not produced in court.

Mr. Owens: If your Honor please, this letter is dictated by Mr. Elins, an attorney of  
10 Mr. Harris' office, who is an attorney for the receiver, and Mr. Elins has been produced in court. He was the second witness called in this case.

The Court: I understand, but you are not answering the point that is made that that letter contains a statement as to what Mr.

Greenfield told Mr. Harris. How can that bind Mr. Harris? There is much in the letter  
20 that is properly evidential. The receiver had taken over the control and the possession of the premises, and there are dates referred to and rent referred to, and it may be very pertinent to a proper determination of this issue. I am going to admit the letter, but I am also holding that anything in that letter that refers to anything said or done by Mr. Greenfield, the defendant, is not binding to any degree upon Mr. Greenfield.

Mr. Kraemer: May I call your Honor's at-  
30 tention to the date of this letter? It is dated November 4, 1925, and the testimony is that lease was sold on November 23.

The Court: That may be so.

Mr. Kraemer: Merely an assertive letter. It is not a record letter of anything that was done in the order of his duty as the attorney for the receiver.

The Court: Why not? It is an admission of what they did do, what the receiver did do.  
40

*Defendant's Witness, Adolph Greenfield, Direct.*

Mr. Kraemer: I say as to that, that it is merely assertive and not testimony.

The Court: No, it is an admission of what they did do.

Mr. Kraemer: Not an admission on the part of the defendant.

10 The Court: Oh, no, and I am holding that the letter is not binding so far as it attempts to prove anything said or done by the defendant, but it may be a very interesting question here as to whether or not the receiver had a right to sell that lease, and the proof that he did actually sell the lease, an admission from the receiver that he actually sold the lease, is evidential if that question is to be passed upon by the Court and jury or either.

20 Mr. Kraemer: I pray an exception to your Honor's ruling.

The Court: You may have it. So far as any reference is made to Mr. Harris, the jury will understand they are not binding on Mr. Harris, and the Court will charge in that respect in case it becomes necessary. I do not mean Mr. Harris. I mean Mr. Greenfield.

(Letter previously marked Exhibit P-2 for identification entered in evidence and marked Exhibit P-2.)

30 (Mr. Owens reads Exhibit P-2 to the jury.)

Mr. Owens: That is all. That is our case.

DEENDANT'S CASE.

ADOLPH GREENFIELD, the defendant, being duly sworn according to law, on his oath saith:

*Direct Examination by Mr. Kraemer:*

40 Q Mr. Greenfield, what business are you engaged in?

*Defendant's Witness, Adolph Greenfield, Direct.*

A Auctioneer.

Q Where?

A At Newark, New Jersey.

Q Will you give me your street address?

A 199 Market street, Newark.

Q How long have you been engaged in that business? 10

A Eighteen years. On these premises since 1895.

Q You attended this sale of the Ideal Music Company at this address in Plainfield at the store owned by Mrs. Linke, the plaintiff?

A I did.

Q Did you speak to Mrs. Linke after the sale?

A I did.

Q Tell me what she said and what you said.

A As the auctioneer was selling—read the conditions of the sale, which is one of the custom in the auctioneers at a bankruptcy or a Court of Chancery sale, to read the conditions of the sale; and there was a statute that has provided as aforesaid by Mrs. Linke, that on account of the—. Well, I can't just exactly explain to you, counsel. It says there in one of the paragraphs in that lease. 20

Q Can't assign the lease?

A Without her consent. And after I bought the entire stock, I then bought the lease separately. I bought the entire stock and then Mrs. Linke said—I went to Mrs. Linke and asked whether, I would like to have an auction sale on Saturday to dispose of this stuff so I would not have to take it down to Newark. Mrs. Linke says, "No, I will not permit you to have an auction sale on these premises." And after she told me this, that she would not leave me conduct the sale on these premises—I have an auction house in Newark—the next day if I remember right I ordered an express man right from Plainfield 40

*Defendant's Witness, Adolph Greenfield, Direct.*

to take out the phonograph and the records and other stuff that I bought in that lot, and left all the fixtures there. And that is the whole thing that happened that day.

Q I show you this paper here and ask who the gentleman whose name is signed underneath is, Mr. Nathan Fisher, is.

A If your Honor permit me, it is a custom when you go to one of these bankrupt sales, or Court of Chancery sales, there are always ten or twelve or twenty bidders, and this Mr. Fisher happened to be there and he also bid on the stuff, and I was the highest bidder and he was the next. I think his bid was around \$1,900, and after I received the report that Mrs. Linke would not give me the store to conduct an auction sale, I went and says, "Here, Mr. Fisher. I will sell you this stock if you give me ten per cent. profit, which is \$200. You can make yourself whatever you want. You can stay in here and do business. Mrs. Linke will not stand for it to have an auction sale." And Mr. Fisher agreed to this, and we have taken the merchandise out of there. The next day I have drawn up that little bill of sale, which business men as man to man, gentlemen of the jury—we don't have to go to a lawyer for a little proposition like this—in and for the consideration of so and so—

Q I didn't ask you to recite that.

A All right.

Q The paper is here. What did you bargain with Mr. Fisher for?

A That he is—

Mr. Owens: If your Honor please, I object to that question.

The Court: What has that do with Mrs. Linke?

(Argument).

*Defendant's Witness, Adolph Greenfield, Direct.*

The Court: I am allowing it.

(Last question read by stenographer.)

A When I have taken the stuff over to Newark the next day, and when I made the proposition that in and for the consideration, that I have already explained, that I would sell all the right, title and interest that I have bought from the Ideal Music Company from the receiver for that consideration, for \$2,200, which he was satisfied.

Q Did you have the key for the store?

A Yes.

Q What did you do with it?

A I give it to Mr. Fisher.

Q Where you ever in possession of that store afterwards?

A No, sir.

The Court: After what date?

Q The date when you made this paper?

A What date is that, sir?

Q October 24.

A Once I have given this bill of sale over to Mr. Fisher, I absolutely have nothing to do with that store whatsoever, and wasn't there.

Mr. Kraemer: Take the witness.

*Cross Examination by Mr. Owens:*

Q You bought the assets on October 23?

A I think that is the date, yes, sir.

Q You sold to Mr. Fisher October 24?

A Yes, sir.

Q You didn't consult Mrs. Linke before you sold it to Mr. Fisher, did you?

A No, sir. I didn't think it was necessary.

Q You didn't consult her at all?

A No, sir.

Q Now, she owned the property?

*Defendant's Witness, Adolph Greenfield, Cross.*

A Yes, sir.

Q You knew you had bought a lease from the receiver, which she had made with the Ideal Music Company?

A Yes, sir.

10 Q You spoke to Mrs. Linke in her store the following afternoon?

A I did, yes, sir, right after the sale.

Q And you went out to her house to see her, didn't you?

A Yes, sir.

Q And you offered to sell her the lease for \$200?

A No, sir.

Q You mean to say you didn't?

A No, sir.

Q When did you go out to her house?

20 A The Sunday following with Mr. Fisher.

Q Why did you go there?

A Because Mr. Fisher wanted to know as to that lease.

Q You had an interest in that lease? You had the lease at that time?

A I had an interest, yes, sir. And Mr. Fisher didn't know where Mrs. Linke was, and he asked me to go out there with him.

Q So you went out there for Fisher's interest?

30 A Not exactly. It is among business men as a favor, the same as I do for you.

Q In your answer you say on October 23 you acquired from Harry Salzman, the receiver of the Ideal Music Company, Plainfield, a corporation of the State of New Jersey, all the assets of the said company for the sum of \$2,000; that is true, isn't it?

A Yes, sir.

Mr. Owens: That is all.

40

*Defendant's Witness, Adolph Greenfield, by the Court.*

*By the Court:*

Q Did you buy the lease or didn't you?

A I didn't, your Honor.

Q If you didn't buy it, what right did you have to sell it to Fisher?

A I haven't sold it to him, your Honor. 10

Q What did you sell him?

A I sold him my right, title, and interest.

Q In what?

A In the Ideal Music Shop. That is what he went to see Mrs. Linke, if your Honor please, to see if he can make arrangements.

The Court: Where is that letter of hers?

Let me have it.

Q Do you know Mr. Harris, the attorney for the receiver? 20

A Mr. Harris, your Honor?

Q Yes.

A I don't know him, no, sir.

Q Did you ever communicate with William Harris of Newark, counsellor at law, at Newark?

A Never.

Q Or anyone at his office as to this lease?

A Never in my life.

Q Did you ever see the young man who came from his office, who was a witness in this case? 30

A They probably know me. I don't remember ever seeing Mr. Salzman on the date of the sale. Then I didn't know he was Salzman, or going under Salzman.

Q Didn't you pay \$200 for this lease?

A No, sir.. If your Honor please, I don't want to get you sore, but the madam announced I bought the lease the first thing.

Q What is that?

A I say, if your Honor please, Mrs. Linke stated 40

*Defendant's Witness, Adolph Greenfield, by the Court.*

here on the witness stand that the first thing was sold was the lease, and that is impossible. A man goes out to buy a stock of merchandise. He is not going to go out and buy the lease the first thing. I pledged my honor I didn't buy the lease.

10 Q Was the lease put up for sale?

A Well, I think it was, yes, sir.

Q What was done with it?

A It was sold first when the single parcel of stock was first offered.

Q Why don't you answer the question?

A I would live to, your Honor, but I didn't quite memorize. I am a man sixty years old.

Q I was sixty years old this week, but that has not affected my memory. Go ahead.

20 A I don't quite remember.

Q Just answer the questions.

A Yes.

Q I asked you if the lease was put up for sale, and you said yes. Now, then, I want to know when it was put for sale what happened as to the lease.

A I really couldn't tell you, your Honor, because if I understand right, the stock was offered first, and then the lease, and then put up in bulk.

Q Whether one was first, or the other was first?

30 A That is it.

Q Then what?

A I didn't buy the lease. My answer is I didn't buy the lease, your Honor.

Q You were there, weren't you?

A Oh, yes.

Q You were very much interested?

A In the lease, if your Honor please?

Q What?

A Interested in the lease, if your Honor please?

40 Q You were very much interested in the sale?

A In the sale, yes, sir, certainly.

*Defendant's Witness, Adolph Greenfield, by the Court.*

Q And you bought the stock?

A Bought the stock.

Q You were the highest bidder. You don't know whether you bought that before the lease was put up for sale or not, do you?

A I don't quite get that.

10

Q You say the lease was put up at one time and the stock was put up at another.

Mr. Kreamer: That is what the record shows.

Q I am asking you. You said that before.

A Yes, your Honor, I bought that in bulk.

Q Bought what in bulk.

A The stock and the lease.

Q Then you did buy the lease?

20

A Well—

Q How much did you include in your bid for the lease?

A Well, the stock was sold first in a single parcel, your Honor, then in bulk, and then put up again together and I bought it for \$2,000 as a whole.

Q That included \$200 for the lease?

A Wasn't stipulated at \$200, your Honor.

Q You bought the whole business, and then you bought the lease?

30

A You can take it that way.

Q I am not taking it that way. You say you bought the lease.

A All right. I misstated, if your Honor please.

Q Just a minute. You say that the stock was put up and the lease was put up, and whether the lease was put up first or the sale of the stock was put up first, you don't know, but that you bought the stock?

A Yes, sir.

Q And then you think the lease was put up and 40

*Defendant's Witness, Isidore Schaeffer, Direct.*

that was included with the stock, and you got both, is that right?

A That is right, your Honor.

Q Then you did buy the lease, did you?

A Well, yes.

10 Mr. Owens: That is all.  
Mr. Kraemer: That is all.

ISIDORE SCHAEFFER, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

*Direct Examination by Mr. Kraemer:*

Q Where do you reside?

A 208 Chadwick avenue, Newark.

20 Q Are you the gentleman who signed this paper as witness?

A Yes, sir.

Q Did you see Adolph Greenfield and this man Nathan Fisher sign that paper?

A That is right.

Mr. Kraemer: I offer it in evidence.

Mr. Owens: I object to its admission because it does not bind Mrs. Linke. Mr. Greenfield took the lease subject to its terms.

30 Mr. Kraemer: You may mark it for identification first.

(Paper marked Exhibit D-1 for identification.)

The Court: You object to this?

Mr. Owens: Yes, if your Honor please.

The Court: Why?

Mr. Owens: Because it doesn't bind Mrs. Linke.

40 The Court: It may not bind Mrs. Linke, but it may be very illuminative to a proper deter-

*Defendant's Witness, Isidore Schaeffer, Direct.*

mination in this case. That paper presumes to contain an appraisal of all the assets which he bought at this sale, and provides that with the terms of payment, and inferentially that the sale shall be completed by November 15. The sale completed where by November 15? Out on the street or in this store? I am going to admit it. 10

Mr. Owens: Will your Honor allow me an exception.

The Court: Yes, certainly. He says that he had no right to the property at all, according to his testimony, and yet here by his written document he is giving somebody else a right to stay there till November 15. I do not see why you object. I allow it.

(Paper previously marked D-1 for identification entered in evidence and marked Exhibit D-1.) 20

Adjourned until tomorrow, Wednesday, May 5, 1927, at 9:30 A. M.

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*Defendant's Witness, Samuel Van Poznak, Direct.*

NEW JERSEY SUPREME COURT,  
UNION COUNTY CIRCUIT,  
May Term, 1927.

10 HANNAH LINKE,  
—vs—  
ADOLPH GREENFIELD,

Transcript of stenographer's notes of evidence in the above entitled cause, taken before HON. PETER F. DALY, Circuit Court Judge, and a Jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the twenty-fifth day of May, A. D. 1927, at 9:30 A. M.

20 Appearances:

JOHN P. OWENS, Esq.,  
Counsel for the plaintiff.

MESSRS. KRAEMER & SIEGLER,  
JOSEPH KRAEMER, Esq., (Present)  
Counsel for the defendant.

The Court: Who was the last witness?

30 Mr. Owens: Mr. Schaeffer.

The Court: What do you want to ask this man?

Mr. Owens: I wanted to cross-examine him as to this bill of sale, where it was signed, who signed it, who was there, what was the consideration, and other things.

The Court: Well, he wasn't cross-examined. Is Mr. Schaeffer here?

40 Mr. Kraemer: I can't get him. He is in Newark somewhere.

*Defendant's Witness, Samuel Van Poznak, Direct.*

SAMUEL VAN POZNAK, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

*Direct Examination by Mr. Kraemer:*

Q What is your business?  
A Auctioneer, sir. 10

Q Where is your place of business?  
A Newark.

Q Do you conduct auctions for the courts?  
A Yes, sir.

Q Did you conduct this auction sale of the assets of the Ideal Music Company?

A Yes, sir.

Q In behalf of the receiver?

A Yes, sir.

Q Will you tell us what occurred at this sale? 20

A The conditions of our sale was read. To conduct the sale we first put up the assets in bulk, the assets consisting of the musical instruments and fixtures, and then we took a bid in bulk. We went to the lease and put up the lease.

Q I didn't get that.

A Then we went to sell the lease.

Q What was the result of the bid in bulk?

A I think it was \$1,500, the first bid, the bulk bid in lots, fixtures, and the instruments. 30

Q And then the sale of the lease?

A And then the sale of the lease.

Q What happened to that?

A There was one bid of \$200, and the party that bought it asked some technical questions.

Q Don't tell me what they were. Tell me what the questions were.

A They asked whether the lease was to be a lease guaranteed that they could take possession, and the

40

*Defendant's Witness, Samuel Van Poznak, Direct.*

receiver answered that he was only selling his right, title and interest. That was what I sold.

Q Who bought that?

A I can't think of the gentleman's name.

Q Was it Greenfield?

A No, sir.

10 Q What happened after that?

A After that I put up the assets in single lots, single parcels. While I was selling the single parcels, Mr. Elins, the attorney, came over and said that the party with the lease didn't want to give any deposit on the lease as there was some technical point about it, and he didn't want to take the lease, and he said that after the sale in single parcels, the first I have to put up the entire assets again, and I did so and the assets in single lots realized about \$1,800, I believe, or thereabouts. And then we proceeded after the single parcels were sold, we proceeded then to go a head with the bid again as the party that bought the lease didn't accept it and we put up the assets in bulk again, the instruments and the fixtures and whatever right, title and interest to the lease, and Mr. Greenfield was the purchaser. I believe he paid \$2,000.

20 Q Do you know Mrs. Hannah Linke, the plaintiff in this suit?

30 A I do, sir.

Q Was she at the sale?

A She was.

Q Did she say anything in reference to the lease?

A She made a statement herself, and some other party was with her an attorney I believe, stated that the lease wasn't transferable, whatever there was, some legal points in the lease I didn't understand, but that she would not accept anybody on the lease, and the receiver, Mr. Elins, I believe, said that they

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*Defendant's Witness, Samuel Van Poznak, Cross*

were going to sell whatever right, title and interest we had in the lease.

*Cross-Examination by Mr. Owens:*

Q You did sell the right, title and interest?

A Yes, sir.

Q You sold it to Adolph Greenfield? 10

A No, sir.

Q Were you in court yesterday?

A Yes, sir.

Q Did you hear Mr. Greenfield tell Judge Daly that he bought the lease?

A I believe he did.

The Court: What does the record show? You have got the record. You have got the record of the insolvency proceeding, haven't you? 20

Mr. Owens: Yes, I have the record.

The Court: I thought you had.

Mr. Owens: I have it here, but the record does not give the name of the purchaser.

Mr. Kraemer: There is no doubt that Mr. Greenfield—

Mr. Owens: Do you admit Mr. Greenfield bought the lease?

*By the Court:*

Q Why do you say that Mr. Greenfield did not buy the lease? 30

A He didn't bid on it, your Honor.

Q You represented the receiver?

A Yes, sir.

Q The receiver says in the letter that he as receiver sold the lease to Mr. Greenfield, and yet you say that Mr. Greenfield didn't buy the lease, is that right?

A He did not, sir. 40

40

*Defendant's Witness, Samuel Van Poznak, Cross*

Q Who did buy it?

A A party I don't know, sir. Some party made the bid on the lease, and then there was some dispute about it, your Honor.

Q After there was a dispute about it?

10 A Then I put up the entire thing; that is, the instruments, the fixtures, and whatever right, title and interest, if any, if the receiver, and the bid was \$2,000 and Mr. Greenfield bought everything there.

Q Don't get us mixed up. You say you first sold in piece meal?

A I first sold the bulk, sir.

Q Then you sold in piece meal?

A And then I sold the lease.

Q Then you sold in piece meal; then you sold the lease?

20 A Including whatever right, title and interest in the lease.

Q Why do you qualify "any right in the lease"? You sold the lease with the rest?

A Not the lease, your Honor, because there was some dispute as to whether we had any rights.

*By Mr. Owens:*

Q You made a report of sale to Mr. Salzman the receiver, didn't you?

A The attorney did, sir.

30 Q You made a report to the attorney?

A The copies of our receipts was turned over to the attorney, sir.

Q Would you recognize the man who was at the store with Mrs. Linke at the time of the sale?

A I have seen some gentlemen there, yes, sir.

Mr. Owens: Stand up.

(A man stands up in the court room.)

Q Is this the man who was there with Mrs. Linke?

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*Plaintiff's Witness, Otto Linke, Direct*

A Might have been. I seen some gentlemen there with her, but I don't know whether it was him or not. I can't say so.

Mr. Owens: That is all.

Mr. Kraemer: That is all. We rest.

OTTO LINKE, a witness produced on behalf of the plaintiff, in rebuttal, being duly sworn according to law, on his oath, saith: 10

*Direct Examination by Mr. Owens:*

Q Mr. Linke, were you present at the sale of the assets of the Ideal Music Company in Plainfield in October, 1925?

A I was.

Q Did you see Mr. Van Poznak there?

A Yes, sir. 20

Q Mr. Van Poznak says he didn't sell that lease to Mr. Greenfield. Is that true or not?

Mr. Kraemer: I object to that.

Mr. Owens: It is rebuttal.

The Court: Do not put it that way. You can't ask one witness to characterize the testimony of another. You can ask him what happened.

Q Was the lease sold that day?

A It was. 30

Q By Mr. Van Poznak?

A Yes.

Q To whom?

A To Mr. Greenfield.

*Cross-Examination by Mr. Kraemer:*

Q What was said by Mr. Van Poznak?

A What do you mean?

Q Well, you say that Mr. Van Poznak sold the lease. What did he say about it? 40

*Plaintiff's Witness, Otto Linke, Cross*

A About the lease?

Q Yes.

A Why, he said he had a perfect right to sell the lease after I asked if he notified the purchasers as to the what the lease contained.

Q What did you tell him the lease contained?

10 A There was some clause about subletting, I think, that I referred him to.

Q I show you this copy of the lease and ask you to read that paragraph, Mr. Linke, the paragraph marked on the side there. That reads, "And the party of the second part agrees that it will not let, sell, underlet, or assign the premises or any part thereof, and will not use them nor permit any part thereof to be used for any other business or purpose than as a store for the sale of talking machines, records, supplies, musical instruments, and similar articles, nor for any business or purpose extra-hazardous, without the written consent of the party of the first part, or heirs, assigns, agents, or attorneys." Didn't you say that under this clause of the lease, the lease wasn't assignable?

20

Mr. Owens: I object to that.

The Court: He may answer that.

A I may have made some remark like that. Of course I can't tell whether it was that clause or not, but I recall afterwards some argument about that paragraph where Mr. Van Poznak's attorney was there, and he says, "You go ahead and sell that lease." He said, "It is perfectly legal."

30

Q This is the original of the lease, isn't it?

A As far as I know, yes, sir.

Q And you attended this sale with Mrs. Linke. Is that your mother??

A Yes.

40

*Motion for Direction of a Verdict.*

Q For the purpose of objecting to the sale of it under this paragraph?

A No, not for the purpose of objecting, no. I was there to find out who was going to do the buying.

Q You did say something about the clause in the lease prohibiting an assignment? 10

A I said something about the lease.

The Court: Mrs. Linke says that she told them they had no right to sell that lease, because there was a clause there it could not be assigned and sublet.

Mr. Kraemer: Why cannot this witness so testify?

The Court: The plaintiff says herself she made that announcement, and they all heard it. 20

Mr. Kraemer: All right. That is all.

Mr. Owens: We rest.

## MOTION FOR DIRECTION OF A VERDICT

Mr. Kraemer: If you Honor please, we move for a direction of a verdict in favor of the defendant on the ground first, that by the records in the case there is no proof that this lease was assigned to Adolph Greenfield by the receiver. Second, that there is no proof that Adolph Greenfield took possession of the premises under the lease. 30

The fact is admitted by Mrs. Linke herself that after the sale when Mr. Greenfield went to her and told her he intended to have an auction there, she said he could not keep the store for that purpose.

Now, this defendant is not charged on a con- 40

*Motion for Direction of a Verdict.*

tract or on a lease under a personal covenant to pay rent. He is merely charged as assignee, and what the Court has called the privity of estate, but there has been no proof here of any privity of estate. Mrs. Linke refused to recognize him as a tenant, and he did not take possession as a tenant. For that reason I move for a direction of a verdict in his favor.

(Argument.)

The Court: The position taken by the counsel for the defendant from the beginning is that this lease was sold to the defendant for \$200, and that the receiver had the right to sell this lease through mere operation of law without the necessity of any consent upon the part of Mrs. Linke. That is your proposition, isn't it?

Mr. Kraemer: The position is a legal proposition, but I didn't say that he paid \$200 for the lease as your Honor states.

The Court: He did not?

Mr. Kraemer: No.

The Court: You did take the position, and you have admitted here this morning, that the lease was sold to Mr. Greenfield.

Mr. Kraemer: I have offered in evidence that the auctioneer sold his right, title and interest in this lease to Mr. Greenfield, and I do not say now that there was no such sale, but I say that in order to charge a person as an assignee there must be more than a mere assignment of the lease. There must be a possession under it, and an acceptance of the assignment.

(Argument.)

*Motion for Direction of a Verdict.*

The Court: Well, it is a question of fact whether he took possession.

What the Court was particularly interested in was whether the receiver had the right, regardless of the wishes of the property owner, to sell this lease. You take the position that he did, that he had that right through the mere operation of the law.

In the case cited yesterday in 84 Law, an opinion written by Justice Swayze, it was there held that where a lease was assigned with the written consent of the landlord, which written consent was necessary because of a clause of the lease making the privilege or right of the tenant or lessee to assign the lease subject to the written consent of the owner, that where such written consent was given, consent to the assignment of the lease subject to all the terms, conditions, and covenants of the lease, such consent as that contained language which was words merely of qualification and not of contract; and that where such assignee subsequently assigned it to somebody else without the consent of the owner, the owner could not follow the person to whom it had been originally assigned because the assignment under which he held contained words that were words merely of qualification and not of contract. It is a common practice where there is such a clause as this in the lease, that the owner of the premises can simply say, "I consent to the assignment of this lease subject to all the terms, conditions and covenants," and nineteen out of twenty of them just simply from a practical view of it would feel that the assignee

*Motion for Direction of a Verdict.*

10 of such a lease was subject to all the terms and conditions that the original lessee was. Yet because there are no words of contract there, there is an entirely different situation here, and the point is made here that there was no privity of estate because there was never any contractual relationship between Mrs. Linke, the owner, and Mr. Greenfield, who bought this lease; and in addition that Mr. Greenfield never went into possession of the lease because his possession was protested on the part of the owner.

20 Now, according to the decisions cited and according to the position taken by the counsel for the defendant, the receiver had the right to make a sale of this lease irrespective of the wishes of the owner. That seems to be a harsh proceeding, that simply because of the bankruptcy of a tenant the receiver can sell to any Tom, Dick or Harry regardless of the wishes or the pleasures of the owner; but since that is the position taken by the counsel for the defendant—and it seems to be indicated by the decision which he cites—we will treat it as being correct.

30 It means then in the view of the Court that there was never any direct contractual relation between Mrs. Linke and Greenfield, and Mrs. Linke never consented to an assignment to Greenfield. According to evidence in this case Greenfield paid \$200 for this lease and the lease was actually sold by the receiver. Oh, this auctioneer comes on the stand and says that he sold all the right, title and interest, as though that play of words meant anything. If he sold all the right, title and inter-

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*Motion for Direction of a Verdict.*

est he sold the lease. If he sold all the right, title and interest which the bankrupt had, then he sold the lease itself, and if he had the right to sell the lease as a matter of mere operation of the law, then whoever bought that lease, not because of the contractual relationship but through the mere operation of the law, took the same position, so far as the landlord was concerned, as the original tenant. That being so if this receiver had the right to sell that lease through the operation of the law, then through the mere operation of the law he was putting the purchaser in the same position that the bankrupt had been in, and it was not like a mere assignment subject to, but was putting him in the place of the original man. Once he agreed to take that place, then it meant what? It meant that he had not only all the rights under that lease, but he also had all the obligations under that lease.

10

20

That is my reasoning of it, and therefore it is a question of fact for the jury whether Greenfield, who bought this lease, who bought it through the mere operation of the law, went into possession. If he did go into the possession, then he took the place that the bankrupt had previous to that so far as the rights and obligations of the lease were concerned.

30

The motion for a directed verdict is denied.

Mr. Kraemer: May I call your Honor's attention to the fact that there is no contradiction of the evidence of the assignment dated October 24, the next day after the alleged assignment of lease?

40

*Motion for Direction of a Verdict.*

The Court: Yes, but Mrs. Linke never consented to that assignment. That hasn't anything to do with it. He might make a dozen assignments, yet once he got into the position of the other man, then he was subject to all the restriction of the other man.

10 Mr. Kraemer: May I ask your Honor to rule on that, my motion being that that terminated the privity of estate if there was any.

The Court: I am going to rule on that that he had no right to assign without the consent of Mrs. Linke.

Mr. Kreamer: May I have an exception?

The Court: You may have it.

(Mr. Kraemer sums up the case for the defendant.)

20 (Mr. Owens begins summation to the jury. During Mr. Owens' summation the following occurred:)

Mr. Kraemer: It cannot be charged against the defendant. That does not prove what he said. Mr. Owens says that the jury should infer from that that Greenfield said certain things. That is not so. That is not the effect of a pleading.

30 The Court: Yes, but the pleading—let me look at it. What you say in the pleading is the same as though he said it himself.

Mr. Kraemer: It is for legal purposes, but it is not an admission of fact.

The Court: Certainly it is an admission.

Mr. Kraemer: I ask for an exception.

(Mr. Owens concludes his summation to the jury.)

40

*Charge*

NEW JERSEY SUPREME COURT,  
UNION COUNTY CIRCUIT,

May Term, 1927.

HANNAH LINKE,

—vs—

ADOLPH GREENFIELD,

10

Court's charge to the jury by HONORABLE PETER F. DALY, Circuit Court Judge, as follows:

Gentlemen of the Jury: The first question of fact for you to pass upon in this case is whether the defendant Greenfield actually bought this lease. If he did not buy this lease, but simply bought the contents of the store and kept in the possession of the store, then he was there simply as a trespasser and he would be responsible to Mrs. Linke for whatever you gentlemen feel was a proper rental value of those premises for the time that he kept in possession of that place, either through himself or through somebody else for whom he was responsible.

20

The evidence in this case is that the sale took place I think October 23, and Mrs. Linke did not get possession of the premises until December 10. If Greenfield was in possession of those premises during that time without having bought the lease, then being a trespasser and there being no fixed rent agreed between them, she would be entitled to whatever you felt reasonably was proper compensation to her for the use of the premises during that period, and if you felt that the reasonable compensation was the same rent as she had been getting before her tenant went into bankruptcy, why of course you would figure it at that amount from the time that she was last paid her rent up to December 10.

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*Charge*

10 If you find that there was no sale of this lease to Greenfield, but that he kept in possession and kept Mrs. Linke out of possession by putting somebody else in there, and you hold that he was responsible for putting somebody else in there since he was the one who took the legal possession, if you so find, in the first place, he would be responsible until such time as he delivered up such a legal possession and made clear or full possession to Mrs. Linke on December 10.

20 If you find that Greenfield actually bought this lease, then the position taken was that the receiver had the right through the mere operation of the law to sell this lease at this sale to the highest bidder notwithstanding the fact that there was included in the lease originally a provision that the tenant could not assign this lease without the written consent of the owner; but if the receiver could sell that lease and did sell that lease to Greenfield through the mere operation of the law, then whoever took it through the mere operation of the law, said operation of the law put him in the same position, so far as his rights were concerned and as far as his obligations were concerned, as the original tenant.

30 The original tenant, if he had never gone into bankruptcy, was responsible for what so far as the rental was concerned? He was responsible for the rental of that place at a fixed price per month, a fixed amount per month during the entire term that he had the right to the lease subject only to this, that if he gave up before the full completion of the term, he was responsible for rent up to the time he left and until such time as the owner of the property through reasonable efforts, diligent efforts, was able to secure another tenant. So if Greenfield actually bought this lease and got it through the opera-

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*Charge*

tion of the law, he, being put in the same position as the original tenant, was responsible for the rent as long as he continued his occupancy or possession; and if he gave it up before the full term that he was entitled to, then it was the duty of Mrs. Linke to use every reasonable, diligent effort to get a new tenant, and he would be responsible for the rent not only for the time of his actual occupancy, but until such time as she through such reasonable, diligent efforts obtained another tenant. 10

She claims in this case that it took her all the time from December 10 to February 15 before she could obtain another tenant, and that she endeavored in an earnest, diligent way, as I get her testimony, to get a new tenant.

20 Now, did Greenfield know that he was specifically buying this lease at the sale of the defendant? He said no. He practically said no. In some places he says yes in this testimony. He was buying the contents. He, an auctioneer, was buying the contents of this place and everything that went with it, but as to a lease, no. The lease was not specifically sold to him, according to his story. There was a sale first of the lease and somebody bought it, according to the auctioneer, and then fell down on his bid or refused to take the lease. Then the stock was put up, or the contents were put in bulk; then it was put up in piece meal; then it was put up in bulk again including any right, title, or interest, as the auctioneer puts it, in the lease. 30

What does the result show? Of what does the evidence convince you as to whether or not Mr. Greenfield knew whether he was buying this lease? And if he did not know that he was actually buying the lease, then why did he assign to Fisher the very next day? If he did not feel that he had the right to the 40

*Charge*

lease, why did he take the position, as he takes by his admission in the pleadings and otherwise as I get it from the testimony, that he is not responsible for rent because he turned the whole thing over to Fisher.

10 He had no right to turn that lease over to Fisher. If he was a trespasser and if he was keeping possession there without ever having bought the lease, he had no right to put somebody else in the legal possession. If he had bought the lease, then under the terms of the lease, although he got it under operation of the law, he had no right to assign that lease to Fisher, if he was the owner of that lease, without the consent of Mrs. Linke under that original provision; because even though from the evidence of the bankruptcy the law holds that the receiver could sell without her consent, yet since the man that bought would be put in exactly the same position as the bankrupt was originally, he would have no right to do anything save exercise rights given to him under the lease, and the right of assignment was subject to the consent of Mrs. Linke.

30 I have explained this therefore to you, and I can say the first question is whether Greenfield actually bought this lease and knowingly bought that lease, and if he did and got it under the operation of the law, then he is responsible for the period of time that he kept in the possession of that property, had the occupancy, had the possession of that property, plus such time as Mrs. Linke was unable to get another tenant, after using reasonable and diligent effort. If he did not buy the lease and was a mere trespasser, then he is responsible for the time that he was actually in possession; that is, from some time in October, 1925, until December 10, at whatever rental you think is a fair and reasonable rental for those premises during that time.

*Charge*

You may take the case.

The requests to charge are refused.

Mr. Kraemer: The defendant excepts to that part of his Honor's charge in which the Court charges that the evidence is that Greenfield was in possession, or through some person for whom he was responsible, until December 10. 10

I further except to that part of the charge in which the Court charges that if he took possession and there kept possession or put some person in possession for whom he was liable, he was responsible for the other person to pay for the occupancy until such other person surrendered possession or Greenfield put Mrs. Linke in possession. 20

I further except to the part of the charge in which the Court charges that if Greenfield got possession by operation of law, that that operation of law put him in the legal position of the original tenant subject to all the liabilities of the original tenant.

I further except to that part of the charge where the Court charges that a defendant was responsible as long as he continued occupancy, and if he gave it up before he was entitled, Greenfield would be responsible for such time until she obtained a tenant through her reasonable efforts. 30

I except to that part of the charge where the Court charges: "Why did he assign the lease? He had no right to turn the thing over to Fisher if he did not buy the lease." And that he had no right to assign the lease without the consent of Mrs. Linke, and the right 40

*Defendant's Requests to Charge.*

to the assignment was subject to the consent of Mrs. Linke.

I also except to the Court's refusal to charge the defendant's requests to charge numbers one, two and three.

## 10 DEFENDANT'S REQUESTS TO CHARGE

(1)

"That the assignment of the lease or his interest therein by the defendant to another person terminated the privity of estate between the defendant and the lessor, the plaintiff herein, and the liability of the defendant for rent accruing thereafter."

(2)

20 "That if the Jury should find that on October 24th, 1925, the defendant assigned his interest in the lease to Nathan Fisher by the instrument, Exhibit D-1, that such assignment terminated the defendant's privity in the estate and his liability for the rent under the lease accruing thereafter."

(3)

30 "That if the jury should find in favor of the plaintiff, the damages should be limited to \$34.67 rent for October, \$260 for November, and \$260 for December, 1925."

40

50 OCT.T.1927

**New Jersey Court of Errors and Appeals**

HANNAH LINKE,  
Plaintiff-Appellee,

*vs.*

ADOLPH GREENFIELD,  
Defendant-Appellant.

Action at Law.

On Appeal from  
New Jersey  
Supreme Court.**APPELLEE'S BRIEF.**

This appeal is taken from the verdict of a jury at the Union County Circuit. The plaintiff was the owner of the premises No. 227 West Front Street, Plainfield, New Jersey. She rented the said premises, by a lease in writing, to the Ideal Music Company for a term of five years from April 1, 1920, with the option of renewal for a further term of five years. The Ideal Music Company took advantage of said option, and continued in possession of said premises, by virtue of said lease, from and after April 1, 1925.

The lease contained the following provision: "And the party of the second part agrees that it will not let, sell, underlet, or assign the premises or any part thereof, \* \* \* without the written consent of the party of the first part, her heirs, assigns, agents or attorneys."

On October 13, 1925, the Ideal Music Company was declared insolvent by the Court of Chancery, and on October 14, 1925, the Court directed the receiver to sell the assets of said company, including the lease of the premises. On October

23, 1925, the receiver, in pursuance of said order, sold the assets of said company, including the lease, to the defendant. At the time of the sale, the plaintiff protested against the sale of the lease, because under the terms thereof, the same could not be sold without her written consent. On said date of October 23 the defendant entered into possession of said premises and continued in possession of the same until December 10, 1925. On October 26 the receiver paid to the plaintiff the rent for said premises up to said date and notified her he would not be responsible for any further rent, as the lease had been sold to the defendant. On December 10, 1925, the keys to the premises were returned to the plaintiff. She immediately had the premises cleaned and endeavored to rent the same, which she did on February 15, 1926. Shortly after the sale of the lease, the plaintiff demanded the rent from the defendant, which he refused. She claimed he offered to sell her the lease for \$200.00, which he denied. This suit was brought to recover the rent due to the plaintiff under the lease, from October 26, 1925, to February 15, 1926. The defendant claimed he was not liable for the rent for said period, because he had sold everything he had bought from the receiver, including the lease, to one Nathan Fisher. The jury found in favor of the plaintiff, and it is from this judgment the defendant appeals.

As the appellant, in his brief, rests for a reversal of the judgment on grounds of appeal Nos. 7, 8, 9, 10, 11 and 12, we can pass over the first six grounds of appeal. We may well consider this action, on his part, as an abandonment of said grounds of appeal and as a frank admission that the learned trial judge ruled correctly upon all the matters referred to in said six grounds of appeal.

The defendant seeks a reversal of the judgment upon the ground that the learned trial judge erroneously instructed the jury that the appellant, by the assignment of the lease to him, assumed all the liabilities of the lease, and further erroneously instructed the jury that the assignment by him to Fisher, without the consent of the plaintiff, was contrary to the provision of the lease, and did not terminate his liability as the assignee.

The appellant, to sustain his contention, cites the case of *Meyer et al., vs. Alliance Investment Co.*, 84 N. J. L. 451. Upon examination of this case it is readily perceived, that it is not in point with the question involved here. In that case, as stated in the opinion, "the lessors *did consent in writing* to an assignment by De Jong to the defendant."

The same may be said of the appellant's reference to citations from 36 Corpus Juris, pp. 375 and 377, and to Ruling Case Law, p. 851, under the title "Landlord and Tenant".

To properly determine the point raised we must not lose sight of the fact that the plaintiff *never consented* to a sale of the lease to the appellant, and that the sale was made despite her protest against the same.

The questions that naturally arise and that must be answered are: "What was the position of the plaintiff and appellant at the consummation of the sale of the lease by the receiver?" and "Did the appellant have the right to assign the lease to Fisher, without the plaintiff's consent?"

The first question was answered in *Fleming vs. Fleming Hotel Co.*, 69 N. J. Eq. 715, 61 A. 157; and also by this Court a few months ago, in *Pappas et al. vs. Broad and East Jersey Realty Co.*, 137 A. 417, in these words:

“In case of appointment of receiver for insolvent petitioner or of trustee for bankrupt, title to property of insolvent or bankrupt passes to receiver; and sale thereafter of leasehold property, even in face of covenant restricting assignment, is not in violation of covenant, since it would be an assignment by act and operation of law.”

The Court practically decided that the plaintiff was in the same position as she was at the time of the execution of the lease to the Ideal Music Company; that the lease was still operative and she was bound by its terms because the said assignment was made by act and operation of law; and that the assignee of the lease, the appellant, was in the same position as the original lessee and also bound by the provisions of the lease.

Surely then there could have been no error in the charge of the trial judge, when he said:

“But if the receiver could sell that lease and did sell that lease to Greenfield through the mere operation of the law, then whoever took it through the mere operation of the law, said operation of the law put him in the same position, so far as his rights were concerned and as far as his obligations were concerned, as the original tenant.”

Now as to the question “Did the appellant have the right to assign the lease to Fisher without the plaintiff’s consent?”

I have been unable to find any decision in New Jersey bearing upon this question. I take leave to refer, however, to the case of *A. E. Miller vs. J. G. Fredeking, et al.*, 46 A. L. R., p. 843 (W. Va. Supreme Court of Appeals), that is almost, if not directly, parallel with the one under consideration.

In that case, it was stipulated in the lease: “It is also agreed that this lease cannot be assigned

without leave of the parties of the first part, and that the said parties of the first part shall have a right to re-enter for default in payment, or for any breach of covenants herein.” It is identical with the case at issue, excepting that the purchaser of the lease at the bankrupt sale sub-let the premises to another.

The court held that the “sale of a lease by a trustee regularly appointed in either voluntary or involuntary bankruptcy proceedings, as a part of the bankrupt’s estate, does not violate a covenant in the lease that the lessee shall not assign without the consent of the lessor.”

And the court also held that “a covenant in a lease that, if the lessee assigns the lease without the consent of the lessors, the latter may re-enter, is not violated by a subletting of the premises by the lessee.”

There was a provision in the lease against the assignment of same without the consent of the lessor, but none against the subletting of the premises, and the court decided that the subletting did not come within the covenant against assignment.

Applying the principle enunciated in the said case to the question under consideration, we are forced to the inevitable conclusion that the covenant against assignment was binding upon the appellant, and that the learned trial judge correctly instructed the jury upon the law, when he charged that the appellant had no right to assign the lease to Fisher without the consent of the plaintiff.

In view of the opinion in the last cited case, and recalling the fact that the plaintiff never consented to the sale of the lease, there can be no merit to the exception of the appellant to the court’s refusal to charge that the assignment of the lease by the appellant to Fisher terminated

the privity of estate between the appellant and the lessor, the plaintiff herein.

It is, therefore, submitted that the defendant's appeal be dismissed.

Respectfully submitted,

JNO. P. OWENS,  
Attorney and of Counsel with  
Plaintiff-Appellee.

OCT. 1. 1927

COZZOLINO PRINTING COMPANY. 265 HALSEY STREET, NEWARK, N. J.

## New Jersey Court of Errors and Appeals

HANNAH LINKE,

*Plaintiff-Appellee,*

—vs—

ADOLPH GREENFIELD,

*Defendant-Appellant.*

*Action at Law  
On Appeal from  
Supreme Court.  
Appellants' Brief.*

The defendant appeals from the judgment of the Supreme Court entered at the Union County Circuit. He was sued as the assignee of a lease for the store premises No. 227 West Front Street, Plainfield, New Jersey, and by the Fourth Paragraph of the plaintiff's complaint, it was alleged:

"That the defendant remained in possession of such premises until December 10, 1925, upon which date he vacated the same without notice to the plaintiff, and the plaintiff was unable to rent the said premises until February 15, 1926, and defendant has refused to pay plaintiff the rent due her upon said lease for said period from October 26, 1925 to February 15, 1926." (As amended on page 35, State of the Case.)

The defendant's answer contained a general denial and a special defense that on October 24th, 1925, he reassigned the lease to one Nathan Fisher, and thereby terminated his liability thereunder.

At the trial it was shown that on October 13th, 1925, the Ideal Music Company, the then lessee of the premises, was adjudged insolvent, and a receiver appointed, who on October 23, 1925, sold the assets of the company in bulk as a going concern to the defendant. The defendant, an auctioneer, attempted to run an auction sale of the merchandise bought, on the premises, but the plaintiff-appellee objected, and he sold out everything he bought, which included the lease, to one Nathan Fisher for a profit of Two Hundred Dollars. There is some evidence that he was seen thereafter on the store premises, but he denies it, and it is admitted that on December 10th, Mrs. Linke received the keys for the store, took possession of it, cleaned it up, and tried to rent it, which she did on February 15th, 1926. (See State of the Case page 47, line 30, et. seq.) The grounds of appeal upon which we rest for a reversal of the judgment are Nos. 7, 8, 9, 10, 11 and 12.

*Argument.*

These are directed to the judge's instructions in his charge to the jury, defining the liability of the appellant as an assignee, for rent, and the extent of his liability as affected by his assignment to Fisher.

The learned trial judge, in his charge, erroneously instructed the jury that the appellant, by the assignment of the lease to him, assumed all the liabilities of lessee, and was liable for the rent of the premises during his occupancy, and thereafter until the plaintiff-appellee, by her reasonable, diligent efforts, rented the same, and further erroneously charged the jury that the assignment by him to Fisher, being without the consent of the plaintiff-appellee, was contrary to the provision of the lease, and did not terminate his liability as the assignee.

The portions of the charge of the learned trial judge under which the above erroneous instructions were given are as follows:

"If you find that Greenfield actually bought this lease, then the position taken was that the receiver had the right through the mere operation of the law to sell this lease at this sale to the highest bidder notwithstanding the fact that there was included in the lease originally a provision that the tenant could not assign this lease without the written consent of the owner; but if the receiver could sell that lease and did sell that lease to Greenfield through the mere operation of the law, then whoever took it through the mere operation of the law, said operation of the law put him in the same position, so far as his rights were

concerned and as far as his obligations were concerned, as the original tenant."

"So if Greenfield actually bought this lease and got it through the operation of the law, he, being put in the same position as the original tenant, was responsible for the rent as long as he continued his occupancy or possession; and if he gave it up before the full term that he was entitled to, then it was the duty of Mrs. Linke to use every reasonable, diligent effort to get a new tenant, and he would be responsible for the rent not only for the time of his actual occupancy, but until such time as she through such reasonable, diligent efforts obtained another tenant."

"The first question is whether Greenfield actually bought this lease and knowingly bought that lease, and if he did and got it under the operation of the law, then he is responsible for the period of time that he kept in the possession of that property, had the occupancy, had the possession of that property, plus such time as Mrs. Linke was unable to get another tenant, after using reasonable and diligent effort."

And as regards the effect of the assignment to Fisher, the learned trial judge charged the jury as follows:

"He had no right to turn that lease over to Fisher. \* \* \* If he had bought the lease, then under the terms of the lease, although he got it under operation of the law, he had no right to assign that lease to Fisher, if he

was the owner of that lease, without the consent of Mrs. Linke under that original provision; because even though from the evidence of the bankruptcy the law holds that the receiver could sell without her consent, yet since the man that bought would be put in exactly the same position as the bankrupt was originally, he would have no right to do anything save exercise rights given to him under the lease, and the right of assignment was subject to the consent of Mrs. Linke."

We submit that these instructions were contrary to the rule laid down by this court in the case of Meyer, et al. vs. Alliance Investment Co., 84 N. J. L. 450, 87 Atl. 476. There an assignee of a lease was sued for one month's rent after a reassignment by him of the lease, and judgment entered against him. The judgment was reversed and Mr. Justice Swayze, speaking for this court held:

"The defense is that there was no privity of contract between the plaintiffs and the defendant, and that, as the privity of estate terminated by the reassignment, the defendant is no longer liable to pay the rent, but the plaintiffs must look to De Jong. The plaintiffs had judgment for one month's rent, which accrued after the reassignment to De Jong."

"The claim of the plaintiffs to recover rent of the defendant rests upon the words of the consent, "subject to all the terms, conditions and covenants contained in said lease." As Lord Denman said in a similar case: "These are words of qualification and not of contract." *Wolveridge v. Steward*, 1 Crompt. &

M. 644. The case is similar to a conveyance of land subject to a mortgage. The grantee is not personally bound unless there are words equivalent to an assumption of the mortgage. There is nothing to add to the argument by which the result in *Wolveridge v. Steward* was vindicated in the Exchequer Chamber. The only suggestion that can be made to the contrary is that, inasmuch as the lease contained a covenant not to assign without consent, and the present defendant took subject to that covenant, it was not possible for it to terminate the privity of estate and its own liability arising therefrom by an assignment without consent, since that would enable it to take advantage of its own wrong. But the law is settled that a lease may be so assigned as to terminate the privity of estate notwithstanding the covenant not to assign. *Paul v. Nurse*, 8 B. & C. 486. *Taylor on Landlord & Tenant*, Sec. 680; 24 Cyc. 984, note 45."

It would seem unnecessary to add to the authority, when this court has spoken, but the application of the rule thus laid down as applied to the instant case is illustrated by the unanimity of the text writers.

In 36 *Corpus Juris*, under the title "Landlord and Tenant" page 375, Sec. 1231, it is said:

"In the absence of a contract assuming further liability, there is privity of estate only between the lessor and the assignee, and the assignee is liable for the rent while such privity of estate exists, and no longer."

And on page 377, Section 1240, it is said:

"Where an assignee of a lease has assumed the covenants of the lease, a second assignment or a reassignment of the lease will not terminate his liability to pay rent, although it is necessary that the covenant by the assignee be supported by a new consideration. *But an assignee of a lease, who has not assumed such covenants, may reassign to whomsoever he chooses, and relieve himself from responsibility; and this is true, even though there is a covenant against assignment without the lessor's consent.*"

And in 16 *Ruling Case Law*, under the Title of Landlord and Tenant, it is said, page 851, Sec. 352:

"It is well settled that the assignee of a leasehold is personally liable for rents accruing while he holds the leasehold, and this is true when the demise is in fee reserving a rent."

And this is supported by numerous cases, among which the case of *Kanawha-Gauley Coal & C. Co. v. Sharp*, in 52 L. R. A. New Series, page 988, et. seq., contains comprehensive annotations.

In accordance with these principles, the defendant requested the court to instruct the jury as follows:

"1. That the assignment of the lease or his interest therein by the defendant to another person terminated the privity of estate between the defendant and the lessor, the

plaintiff herein, and the liability of the defendant for rent accruing thereafter.

"2. That if the jury should find that on October 24th, 1925, the defendant assigned his interest in the lease to Nathan Fisher by the instrument, Exhibit D-1, that such assignment terminated the defendant's privity of estate and his liability for the rent under the lease accruing thereafter."

which the learned trial judge refused.

The effect of the learned trial judge's instructions to the jury, and the refusal to charge as requested, was such that the jury erroneously ignored the assignment by the defendant-appellant to Fisher, and the fact that on December 10th, the plaintiff-appellee received the keys and resumed possession of the demised premises, and returned a verdict for the rent from October 26th, 1925 to February 15, 1926, notwithstanding the limitation of the defendant's liability by reason of these facts.

We submit that the errors complained of unlawfully prejudiced the defendant and entitled him to a new trial, and that the judgment should be reversed.

Respectfully submitted,

JOSEPH KRAEMER,

*Of Counsel.*