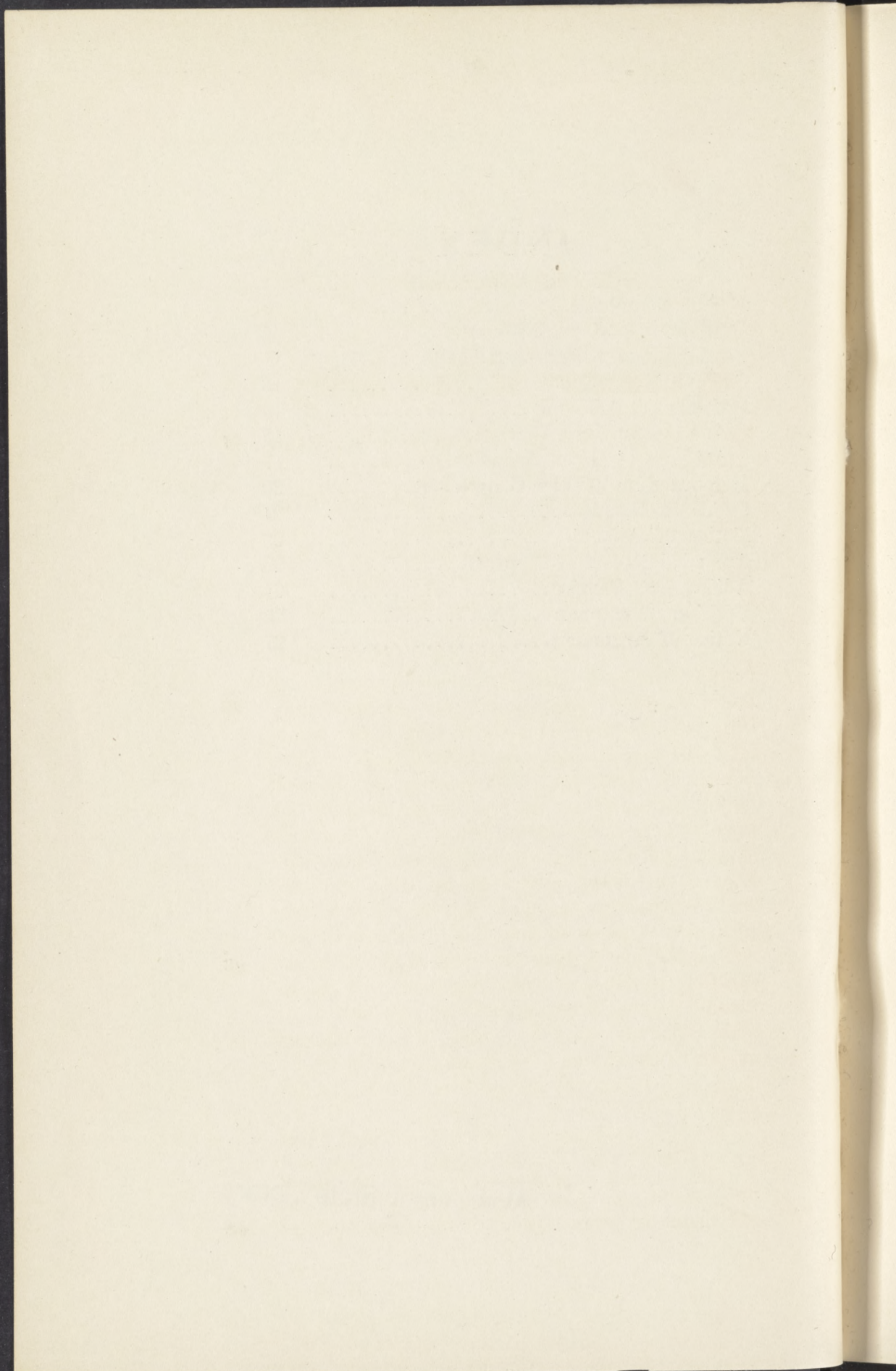


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BILL OF COMPLAINT.

Filed February 24, 1930.

In Chancery of New Jersey

To Honorable EDWIN ROBERT WALKER, Chan- 10
cellor.

Complaining shows unto your Honor, Joan Rafferty, sometimes called Rafters, of the City of Newark, County of Essex and State of New Jersey, that by a lease in writing, dated June 6, 1929, she rented from one Meyer Schutzer premises in the City of Newark, known and designated as 117 New street, of approximately twelve rooms on the first, second and third floors together with use of part of the cellar, 20
four rooms in the basement of said premises not being included in said lease. Said lease was for a term of three years commencing on the first day of July, 1929, at the yearly rent of \$1,080.00, payable in monthly installments on the first day of each and every month in advance. Under said lease complainant deposited \$270.00 with the said Schutzer as security for the faithful performance of the conditions and covenants of said lease with the further provision that at the expiration of the lease said Schutzer was to return to complainant said \$270.00 with lawful interest thereon at 6%. Said lease contained among other things a covenant for quiet enjoyment, and it was further agreed therein, as follows: 30

“The said party of the second part (complainant) does hereby agree that they will not let, sell, or underlet or assign the premises or any part thereof and will not use them or permit them to be used for any 40

Bill of Complaint.

other purpose or business than a rooming and boarding house or for any other business or purpose extra hazardous, unmoral and contrary to law, without the written consent of the party of the first part, his heirs or assigns."

10 It was further agreed that complainant was to supply steam for the entire building. Complainant entered into the possession of said premises, paid the deposit of \$270.00 as the lease provided and used said premises as a place of occupancy for herself and her four children and also rented rooms for the occupancy of regular and casual guests as a rooming house.

20 On or about September 1929, said Meyer Schutzer took possession of the four rooms of the basement which were excepted from said lease and therein opened and conducted a saloon business, actually a speak-easy, the same being a resort for bad and dangerous characters, and open for business at all hours of the day and night. By means of this and the noise and unlawful conduct of the parties patronizing said speak-easy, the same was in fact a disorderly house, and complainant could not in comfort continue to occupy her dwelling or rent her rooms to any advantage because her tenants were constantly moving out and the place of said Meyer Schutzer was raided by the police more than
30 once, adding to the general annoyance and discomfort of complainant's tenants. Numerous disputes arose between the parties, and said Meyer Schutzer desiring to get said complainant out of the house nailed up the cellar door so that she was prevented from getting to the furnace in the cellar to make fire and heat the premises and thereafter when she procured an
40 entrance by battering the door open and got her

Bill of Complaint.

fire burning, he flooded the boiler with cold water so as to prevent the steam from generating, besides this said Meyer Schutzer and one Max Bader, his partner in the business conducted in said premises committed grievous assault and assaults against complainant and said Max Bader and said Meyer Schutzer were indicted therefor by the grand jury of Essex County and said Max Bader was duly convicted and sentenced to pay a fine of \$100.00 and placed on probation for two years by the Essex County Court of Quarter Sessions and said Meyer Schutzer has not yet been tried on said indictment but same is still pending. 10

About December, 1929, one Mrs. Hibbetts applied to this complainant seeking to purchase her lease and furniture and other personal property on said premises and informed said complainant that said Schutzer had sent her to make negotiations for such purchase and that he would be willing to consent to the sale and assignment of her lease to said Mrs. Hibbetts and would return her deposit and she could move to other premises. Complainant was satisfied to do this and said Schutzer expressed himself to her as being willing to consent to the transfer and to return her deposit and she thereupon took from said Mrs. Hibbetts a deposit on account of the furniture, which Mrs. Hibbetts agreed to purchase from her and said Schutzer arranged a conference and met her first at his lawyer, Jacob Silverman's office, and then at his lawyer, J. Victor D'Aloia's office to discuss the details of said transaction. He desired her among other things to appeal to Judge Dallas Flannagan to be lenient with said Bader in his sentence which was pending, but this she de- 20 30 40

Bill of Complaint.

clined to do, and thereafter when said Bader was sentenced to a fine and placed on probation as aforesaid said Schutzer declined to give consent to or permit the sale of the lease to Mrs. Hibbetts. These negotiations continued from December through January and February and in
10 the meantime complainant had lost all her tenants by reason of her inability to heat the premises, and herself and her family were obliged to go to her sister's house to save them from serious illness by reason of the cold.

Said Schutzer had brought proceedings for dispossession against said complainant in the Second District Court of the City of Newark and suggested to said Mrs. Hibbetts that if
20 she would wait a while, he would have complainant put out and then she could have the premises without paying anything to complainant. This he kept secret from complainant and the tenancy proceedings were adjourned from time to time while the sentence of said Bader was pending. This complainant in the meantime interposing her defense thereto to the effect that there had been constructive eviction from the premises and further that by reason of his agreement to sell and to accept the rent from Mrs.
30 Hibbetts, complainant was not obliged to pay the rent while the cause was pending. On February 19, 1930, the said cause was heard before the Second District Court and a jury at which complainant interposed her defense of the constructive eviction by reason of prevention from heating the premises and the estoppel of said Schutzer to proceed against her by reason of his agreement to permit her to sell her said lease and then his refusal to be bound by said agreement which defense was overruled by the
40

Bill of Complaint.

Court and a verdict of the jury for possession was directed by said Court over the objection of complainant. Thereafter an order for possession was entered and process was placed in the hands of one Weil or Weiler, the constable, and he and his helpers and said Schutzer and others appeared to execute the same at the premises on Thursday, February 20, 1930, and on Friday, February 21, 1930 and not being able to obtain immediate entry, threatened that they would return on Monday, February 24, 1930 to dispossess complainant and set her furniture and family out into the street. 10

After this is done complainant will lose her opportunity to sell her lease and recover her deposit as the said Schutzer is endeavoring to prevent her from realizing any benefit therefrom and he is financially irresponsible so that she cannot safely depend on a suit for damages against him to restore her to the full value of her lease agreement and he will profit by his inequitable conduct in first inducing her to believe that he would permit the sale of her lease to the person whom he sent to her and then when she had made all arrangements for the purpose, to refuse to carry out the terms of his agreement with her and she will be put to great loss and privation thereby. 20 30

Complainant is without adequate remedy in and by the rules of the common law and can only obtain relief in this Honorable Court, she therefore prays:

1. That Meyer Schutzer and said Weil or Weiler constable of the Second District Court of the City of Newark, defendants, may answer 40

Bill of Complaint—Affidavit of Joan Rafferty.

this bill of complaint and the things therein contained.

10 2. That a writ of injunction may issue out of this Honorable Court commanding the said Meyer Schultzer and the said Weil or Weiler, constable, as aforesaid, his servants, helpers, abettors and aids to dissent and refrain from executing the writ of possession of said premises issued out of the Second District Court of the City of Newark or elsewhere until the further order of this Court.

20 3. That by a decree of this Honorable Court said Meyer Schutzer may be compelled to consent to the transfer of the said lease to the said Mrs. Hibbetts or other party available and to return to complainant her said deposit in accordance with said agreement.

4. That a writ of subpoena do issue directed to the said Meyer Schutzer and said Weil or Weiler, defendants, commanding them to be and appear before this Honorable Court to answer the premises, as to this complaint and abide by any order or decree therein made.

And your complainant will ever pray, etc.

30 MICHAEL J. TANSEY,
Solicitor for and of Counsel with Complainant.

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

40 JOAN RAFFERTY, sometimes called Rafters, being duly sworn according to law, on her oath deposes and says that she is the complainant named in the foregoing bill of complaint; that she had read the same and knows the contents

Bill of Complaint—Affidavit of Joan Rafferty.

thereof and that the statements therein contained are true.

Deponent further says that by a lease in writing, dated June 6, 1929, she rented from one Meyer Schutzer premises in the City of Newark, known and designated as 117 New street of approximately twelve rooms on the first, second and third floor, together with use of part of the cellar, four rooms in the basement of said premises not being included in said lease. Said lease was for a term of three years commencing on the first day of July, 1929, at the yearly rent of \$1,080.00, payable in monthly installments on the first day of each and every month in advance. Under said lease complainant deposited \$270.00 with the said Schutzer as security for the faithful performance of the conditions and covenants of said lease with the further provision that at the expiration of the lease said Schutzer was to return to complainant said \$270.00 with lawful interest thereon at 6%. Said lease contained among other things a covenant for quiet enjoyment, and it was further agreed therein as follows:

“The said party of the Second Part (complainant) does hereby agree that they will not let, sell, or underlet or assign the premises or any part thereof and will not use them or permit them to be used for any other purpose or business than a rooming and boarding house or for any other business or purpose extra hazardous, unmoral and contrary to law, without the written consent of the party of the first part, his heirs, or assigns.”

It was further agreed that complainant was to supply steam for the entire building. Com-

Bill of Complaint—Affidavit of Joan Rafferty.

plainant entered into the possession of said premises, paid the deposit of \$270.00 as the lease provided and used said premises as a place of occupancy for herself and her four children and also rented rooms for the occupancy of regular and casual guests as a rooming house.

- 10 On or about September, 1929, said Meyer Schutzer took possession of the four rooms of the basement which were excepted from said lease and therein opened and conducted a saloon business, actually a speak-easy, the same being a resort for bad and dangerous characters, and open for business at all hours of the day and night. By means of this and the noise and unlawful conduct of the parties patronizing said speak-easy, the same was in fact a disorderly
- 20 house, and complainant could not in comfort continue to occupy her dwelling or rent her rooms to any advantage because her tenants were constantly moving out and the place of said Meyer Schutzer was raided by the police more than once, adding to the general annoyance and discomfort of complainant's tenants. Numerous disputes arose between the parties, and said Meyer Schutzer desiring to get said complainant out of the house nailed up the cellar door so
- 30 that she was prevented from getting to the furnace in the cellar to make fire and heat the premises and thereafter when she procured an entrance by battering the door open and got her fire burning, he flooded the boiler with cold water so as to prevent the steam from generating; besides this said Meyer Schutzer and one Max Bader, his partner in the business, conducted in said premises, committed griveous assault and assaults against complainant and said Max Bader and said Meyer Schutzer were indicted therefor

Bill of Complaint—Affidavit of Joan Rafferty.

by the grand jury of Essex County and said Max Bader was duly convicted and sentenced to pay a fine of \$100.00 and placed on probation for two years by the Essex County Court of Quarter Sessions and said Meyer Schutzer has not yet been tried on said indictment but same is still pending.

10

About December, 1929, one Mrs. Hibbetts applied to deponent seeking to purchase her lease and furniture and other personal property on said premises and informed said deponent that said Schutzer had sent her to make negotiations for such purchase and that he would be willing to consent to the sale and assignment of her lease to said Mrs. Hibbetts and would return her deposit and she could move to other premises. Deponent was satisfied to do this and said Schutzer expressed himself to her as being willing to consent to the transfer and to return her deposit and she thereupon took from said Mrs. Hibbetts a deposit on account of the furniture, which Mrs. Hibbetts agreed to purchase from her and said Schutzer arranged a conference and met her first at his lawyer Jacob Silverman's office and then at his lawyer, J. Victor D'Aloia's office to discuss the details of said transaction. He desired her among other things to appeal to Judge Dallas Flannagan to be lenient with said Bader in his sentence which was pending, but this she declined to do, and thereafter when said Bader was sentenced to a fine and placed on probation as aforesaid said Schutzer declined to give consent to or permit the sale of the lease to Mrs. Hibbetts. These negotiations continued from December through January and February and in the meantime complainant had lost all her tenants by reason of

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Bill of Complaint—Affidavit of Joan Rafferty.

her inability to heat the premises, and herself and her family were obliged to go to her sister's house to save them from serious illness by reason of the cold.

10 Said Schutzer had brought proceedings for dis-
possession against said complainant in the Sec-
ond District of the City of Newark and suggested
to said Mrs. Hibbetts that if she would wait a
while, he would have deponent put out and then
she could have the premises without paying any-
thing to complainant. This he kept secret from
complainant and the tenancy proceedings were
adjourned from time to time while the sentence
of said Bader was pending. This complainant in
the meantime interposing her defense thereto to
the effect that there had been constructive eVic-
20 tion from the premises and further that by rea-
son of his agreement to sell and to accept the
rent from Mrs. Hibbetts, complainant was not
obliged to pay the rent while the cause was pend-
ing. On February 19, 1930, the said cause was
heard before the Second District Court and a
jury at which deponent interposed her defense of
the constructive eviction by reason of prevention
from heating the premises and the estoppel of
said Schutzer to proceed against her by reason
30 of his agreement to permit her to sell her said
lease and then his refusal to be bound by said
agreement which defense was overruled by the
Court and a verdict of the jury for possession
was directed by said Court over the objection
of deponent. Thereafter an order for posses-
sion was entered and process was placed in the
hands of one Weil or Weiler, the constable, and
he and his helpers and said Schutzer and others
appeared to execute the same at the premises
40 on Thursday, February 20, 1930, and on Friday,

Bill of Complaint—Affidavit of Mrs. E. Hibbetts.

February 21, 1930, and not being able to obtain immediate entry, threatened that they would return on Monday, February 24, 1930, to dispossess deponent and set her furniture and family out into the street.

JOAN RAFFERTY.

10

Sworn to and subscribed before
me at Newark, N. J., this 22nd
day of February, 1930.

FRANCIS J. TANSEY,
Attorney at Law of New Jersey.

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

20

ELIZABETH HIBBETTS, being duly sworn according to law, on her oath deposes and says:

I was sent by Meyer Schutzer to Mrs. Rafferty and complainant in this cause to buy her lease and furniture. Said Schutzer telling me he would consent to the transfer of the lease to me. I then went to Mrs. Rafferty and arranged with her to buy her furniture and buy the lease. I paid her a deposit of \$50.00 and arranged to pay the balance upon the making of the necessary papers. Thereafter I had several conferences with said Schutzer at his lawyers' offices with Mrs. Rafferty to make the necessary transfer of the lease and permit Mrs. Rafferty to receive back her deposit of \$270. and for me to go on with the lease or with a new lease as would be arranged. Some days' delay was caused by reason of said Schutzer waiting until the sentence of one Max Bader who by the Essex County Court of Quarter Sessions had been convicted

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Bill of Complaint—Affidavit of Mrs. E. Hibbetts.

of an assault and battery on Mrs. Rafferty, as
aforesaid, when sentence was imposed on said
Max Bader said Schutzer refused to carry out his
agreement to permit the transfer of said lease
and told deponent he would put Mrs. Rafferty
out with dispossession procedure, and then she
10 could have the lease for nothing without paying
anything to Mrs. Rafferty.

Deponent says that she has been willing to
carry out her understanding with Mrs. Rafferty
and is still willing so to do if the said Schutzer
is compelled to give his consent.

MRS. E. HIBBETTS.

Sworn to and subscribed before
me at Newark, N. J., this 22d
20 day of February, 1930.

FRANCIS J. TANSEY,
Attorney at Law of New Jersey.

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40

ORDER TO SHOW CAUSE.

Filed February 24, 1930.

IN CHANCERY OF NEW JERSEY.

Between

JOAN RAFFERTY,

*Complainant,**and*MEYER SCHUTZER, *et al.,**Defendants.*

10

*On Bill, &c.**Order to
Show Cause.*

This matter being opened to the Court and upon reading and filing the bill of complaint therein and the affidavits thereto annexed, good reason appearing therefor;

20

It is on this 24th day of February, 1930, on motion of Michael J. Tansey, of counsel with the complainant, ORDERED that the said Meyer Schutzer and Weil or Weiler, Constable of the Second District Court of the City of Newark, do show cause before the Chancellor at the Chancery Chambers in the City of Newark on Tuesday the 25th day of February, 1930 why an injunction should not issue in accordance with the prayers of the said bill, and that in the meantime and until the further order of this Court said Meyer Schutzer and said Weil or Weiler, Constable of the Second District Court of the City of Newark, their servants and agents do absolutely desist and refrain from serving or attempting to serve a certain order for possession of premises 117 New street, Newark, New Jersey entered in a suit in the Second District Court of the City of Newark

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40

Order to Show Cause.

wherein said Meyer Schutzer is plaintiff and said Joan Rafters or Rafferty *et als.*, are defendants.

Service of this Order may be made by leaving a true copy thereof, certified by the solicitor of complainant as such with the said Meyer Schutzer and the said Weil or Weiler, constable or at their dwelling house or place of business within one day from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

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Affidavit of John Warner.

DEFENDANTS' AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

JOAN RAFFERTY,

Complainant,

and

MEYER SCHUTZER, *et al.*,

Defendants.

Affidavit.

10

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

JOHN WARNER, being duly sworn, upon his oath deposes and says:

1. I am a Constable of the City of Newark, County of Essex and State of New Jersey.

20

2. On Friday, February 21st, 1930, a warrant of removal was directed to me out of the Second District Court of the City of Newark, in the name of Meyer Schutzer *v.* Joan Rafters and John Rafters her husband.

3. Said warrant commanded me to remove all persons from the premises known and designated as 117 New street, from the first, second and third floors.

30

4. On February 21st, 1930 I went to 117 New street and spoke to Mrs. Joan Rafters and explained to her that I was a Constable of Essex County and that I had a warrant to remove her and all persons from the premises of 117 New street, Newark, New Jersey and I also showed her the warrant. She took the warrant in her hands and read same. This conversation took

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Affidavit of John Warner.

place on the back porch of the premises 117 New street, Newark, New Jersey.

10 5. Mrs. Joan Rafters asked me to step into her kitchen and at the same time she was holding the warrant in her hand. I then told Mrs. Rafters that I was then in possession of the premises, but it being late in the morning and the next day being a legal holiday, Washington's Birthday, and the day following that, being a Sunday, I informed her that I would not put her out, but she would have to be out of the premises by Monday, February 24th, 1930, not later than 10 A. M.

20 7. When I was about to leave the premises Mrs. Rafters told me that she did not care about any Court order or about any constable. That she was going to remain where she was and that her lawyer told her that she could stay on the premises as long as she liked.

30 8. I returned to 117 New street, on Monday, February 24th, 1930 at 10:35 A. M.; and rang the door bell. I then entered the premises and told Mrs. Rafters that she would have to leave the house at once. I started to remove the furniture and as I was doing so, Mr. Michael Tansey, Mrs. Rafter's attorney, served me with some papers, but at that time I was in possession of said premises and had been since Friday, February 21st, 1930.

JOHN WARNER.

Sworn to and subscribed before
me this 25th day of February,
1930.

40 HOWARD I. ISHERWOOD,
Master in Chancery of N. J.

Affidavit of Meyer Schutzer.

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

MEYER SCHUTZER, being duly sworn, upon his oath deposes and says:

1. I am a defendant in the within-entitled matter. I entered into a lease with one Joan Rafters and John Rafters, her alleged husband, on June 6, 1929, by the terms of which they leased all the rooms on the first, second and third floors of the house with part of the cellar of premises, number 117 New street, Newark, New Jersey. 10

2. The said lease was for a term of three years beginning July 1, 1929, at a yearly rental of \$1,080 per year, payable in monthly installments on the first day of each and every month in advance. Under said lease there was deposited with me as security for the faithful performance of the conditions and covenants of said lease the sum of \$270.00, which sum was to be returned at the time of the expiration of the lease. 20

3. The rent was at no time paid on the first of the month as agreed upon and it became necessary in November, 1929, to institute proceedings to dispossess and the rent was paid on the return day of the summons. 30

4. In December, 1929, no rent was paid for said premises until the second dispossess proceedings had been instituted and had actually been reached for trial.

5. In January, 1930, no rent was paid and a third dispossess proceeding was instituted and a judgment for possession was the 17th day of January, 1930, subsequent to which a motion was 40

Affidavit of Meyer Schutzer.

made to open the case, which motion was argued and the case was reopened on February 14, 1930, and the case set down for trial on February 19, 1930.

10 6. Between February 14, 1930, and February 19, 1930, a jury was demanded in behalf of the tenants and on February 19, 1930, the cause was tried before the Second District Court of the City of Newark, Judge Louis Freund presiding and a jury, which resulted in a verdict of possession in favor of myself, as lessor.

20 7. There is now due and owing to me the sum of \$180.00 rent for the months of January and February, 1930, from the complainant herein for said premises and under the verdict rendered in the Second District Court of the City of Newark, I am entitled to the immediate possession of the premises.

8. Since the execution of the lease between the complainant and "John Rafters," her husband, a certain John Rafferty has appeared claiming to be the husband of the complainant and causing much disturbance about the premises.

30 9. Since the appearance of the said John Rafferty in August, 1929, the complainant has been attempting to obtain from me the sum of \$1,500 for her lease, which I have refused to pay, and she has threatened, time and again, to make as much trouble for me as she possibly can.

10. All the matter set forth in her affidavit were adduced upon the trial as matters of defense.

40 11. I have never done anything to interfere with her possession of the leased premises.

Affidavit of Meyer Schutzer.

12. I recall at one time complainant suggested that I accept one Elizabeth Hibbetts as a tenant in her place and stead, but I was not satisfied with the proposition after an investigation which I had made in that regard. I never saw Mrs. Elizabeth Hibbetts at any time nor at any place.

MEYER SCHUTZER.

10

Sworn to and subscribed before
me this 24th day of February,
1930.

G. GEISON ISENBERG,
An Attorney at Law of N. J.

20

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40

MEMORANDUM OF VICE-CHANCELLOR.

COURT OF CHANCERY OF NEW JERSEY.
NEWARK, N. J.

JOHN H. BACKES,
Vice-Chancellor.

10

Rafferty v. Schutzer.

20

Judgment of eviction entered against the tenant Rafferty by the landlord Schutzer is not the subject of restraint. If the eviction is unlawful she has her remedy at law for damages 91 Eq. 307. The right to compel the landlord Schutzer to consent to a transfer of the complainant's lease to another is lost to her by the judgment of eviction for non-payment of rent. It is doubtful that she has an equity to compel the landlord to perform his alleged promise to consent to a transfer of her lease. No irreparable injury will ensue—she can sell her furniture otherwise—there is no peculiar value attached to it or the lease, to make it the subject of equitable cognizance, and for the loss she has an adequate remedy at law if any of her rights are violated. Injunction is denied.

30

40

ORDER TO DISMISS.

Filed March 3, 1930.

IN CHANCERY OF NEW JERSEY.

Between

JOAN RAFFERTY,

*Complainant,**and*MEYER SCHUTZER, *et al.,**Defendants.*

10

*Order to
Dismiss.*

This matter coming on to be heard on the order to show cause and restraining order issued therein and upon the argument of Michael J. Tansey, of counsel with the complainant, and J. Victor D'Aloia, of counsel with the defendant, it appearing to the Court that the order to show cause should be dismissed and the restraint therein vacated,

20

It is on this 3rd day of March, 1930, ORDERED that the said order to show cause heretofore issued be and the same is hereby dismissed and the restraint therein vacated.

E. R. WALKER,

30

C.

Respectfully advised,

JOHN H. BACKES,

V.-C.

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NOTICE OF APPEAL.

Filed March 14, 1930.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>JOAN RAFFERTY,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MEYER SCHUTZER, <i>et al.</i>,</p> <p style="text-align: right;"><i>Defendant.</i></p>	} <i>Notice of Appeal.</i>
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20 Defendant Joan Rafferty hereby appeals to the Court of Errors and Appeals from the order dismissing the order to show cause and vacating the restraint in the above action, from the Court of Chancery.

Dated March 1, 1930.

MICHAEL J. TANSEY,
Attorney for Complainant.

To

J. VICTOR D'ALOIA, Esq.,
Attorney for Defendant.

30

I conceive there is good reason in the law for the above appeal.

MICHAEL J. TANSEY,
Of Counsel with the Complainant.

Service acknowledged March 3, 1930.

J. V. D'ALOIA,
Defendant's Solicitor.

40

AMENDED NOTICE OF APPEAL.

Filed March 24, 1930.

IN CHANCERY OF NEW JERSEY.

*Between*JOAN RAFFERTY,
*Complainant-Appellant,**and*MEYER SCHUTZER, *et al.*,
*Defendants-Appellees.**Amended
Notice of
Appeal.*

10

Complainant Joan Rafferty hereby appeals to the Court of Errors and Appeals from the Order of the Chancellor on the advice of Vice-Chancellor Backes dismissing the Order to Show Cause and vacating the restraint in the above entitled action.

20

This notice is given for the purpose of amending a Notice of Appeal in the above entitled action filed in the office of the Clerk in Chancery on March 14th, 1930.

To: J. Victor D'Aloia, Esq., solicitor for defendants.

30

Dated March 21, 1930.

MICHAEL J. TANSEY,
Solicitor for Complainant.

Service of a true copy of the within amended notice of appeal is hereby acknowledged this 21st day of March, 1930.

J. VICTOR D'ALOIA,
Solicitor of Defendant, Meyer Schutzer.

40

AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

78-94

10	<p><i>Between</i></p> <p style="text-align: center;">JOAN RAFFERTY, <i>Complainant-Appellant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">MEYER SCHUTZER, <i>et al.,</i> <i>Defendants-Appellees.</i></p>	<p><i>Amended Notice of Appeal.</i></p> <p><i>Affidavit of Service.</i></p>
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STATE OF NEW JERSEY, }
COUNTY OF ESSEX, }*ss.*

20 I, Charles A. Reid, Jr., being duly sworn according to law, upon my oath depose and say that on Friday, March 21, 1930, I served an amended notice of appeal in the above-entitled action personally on John Warner, Constable, by leaving a true copy of the same with him at his office at No. 1060 Broad street, Newark, New Jersey.

CHARLES A. REID, JR.

30 Sworn to and subscribed before
me this 26th day of March,
1930.

ELLA TANSEY,
Notary Public of New Jersey.

(Notarial Seal)

40

PETITION OF APPEAL.

Filed April 12, 1930.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

JOAN RAFFERTY, <i>Complainant-Appellant,</i> <i>vs.</i> MEYER SCHUTZER, <i>et al.</i> , <i>Defendants-Appellees.</i>	}	<i>On Appeal from the Court of Chancery. Petition of Appeal.</i>
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

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The petition of Joan Rafferty, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds herself aggrieved by a final order made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the third day of March, 1930, in a certain cause in said Court of Chancery wherein the said Joan Rafferty was complainant and the said Meyer Schutzer, and others were defendants, in this respect, to wit, that the said order adjudges that the Order to Show Cause in said action be dismissed and the restraint therein vacated.

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And petitioner appeals from the order of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it is contrary to law and the practice of said Court of Chancery.

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Petition of Appeal.

Petitioner therefore prays that the said order of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

10 MICHAEL J. TANSEY,
Solicitor for and of Counsel with Appellant.

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NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS
AND APPEALS

JOAN RAFFERTY, <i>Complainant-Appellant,</i> <i>vs.</i> MEYER SCHUTZER, <i>et al.</i> , <i>Defendants-Appellees.</i>	}	<i>On Appeal from the Court of Chancery.</i>	10
		<i>Notice of Argument.</i>	

SIR:

TAKE NOTICE, that the argument of the issue
joined in this cause will be moved before the New
Jersey Court of Errors and Appeals on the third
Tuesday of May, 1930, at Trenton, New Jersey,
at ten o'clock in the forenoon, or as soon there-
after as the said Court can attend to the same.

Dated April , 1930.

MICHAEL J. TANSEY,
Solicitor for Complainant-Appellant.

To: J. Victor D'Aloia, Esq.,
Solicitor for Defendants-Appellees.

Or to whom it may concern.

On appeal from the Order of the Chancellor on
the advice of Vice-Chancellor Backes.

Service of a true copy of the within notice of
argument is hereby acknowledged this 30th day
of April, 1930.

J. VICTOR D'ALOIA,
Solicitor for Defendants-Appellants.

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

New Jersey Court of Errors and Appeals

JOAN RAFFERTY,

Complainant-Appellant,

vs.

MEYER SCHUTZER, *et als.*,

Defendants-Appellees.

*On Bill for
Injunction.*

BRIEF FOR APPELLANT.

Joan Rafferty by lease in writing, dated June 6, 1929, rented from Meyer Schutzer, premises 117 New street, Newark, New Jersey, containing twelve rooms with use of part of the cellar, four rooms in the basement not being rented to her. The lease commenced July 1, 1929, running three years at one thousand eighty (\$1,080) dollars a year payable ninety (\$90) dollars a month in advance. Under the lease Mrs. Rafferty deposited three months' rent two hundred seventy (\$270) dollars with Schutzer as security for the faithful performance of the conditions and covenants of the lease, with the further provision that at the expiration of the lease, said deposit was to be returned to her with interest thereon at 6 per cent. Said lease contained a covenant for quiet enjoyment, and the further covenant that

The said party of the second part (Rafferty) does hereby agree that they will not let, sell or underlet or assign the premises or any part thereof and will not use them or permit them to be used for any other purpose or business than a rooming and boarding house or for any other business or purposes extra hazardous, immoral and contrary to law without the written consent of party of the first part (Schutzer) his heirs or assigns.

It was further agreed that complainant was to supply steam for the entire building.

Complainant entered into possession of the premises, paid to Schutzer the two hundred seventy (\$270) dollars, deposit and used the place as a dwelling for herself and her four children, and also rented rooms for the occupancy of regular and casual guests.

In September, 1929, Schutzer took possession of the four basement rooms excepted from the lease, and therein opened and conducted a speak-easy, a resort at all hours day and night for bad and dangerous characters. The place became very disorderly and was raided by the police several times, and her boarders and tenants were continually moving out after brief occupancy so that her business suffered very considerably. Numerous disputes arose between Mrs. Rafferty and Schutzer, and he, because of her complaints tried to get her out of the premises and she also tried to dispose of her lease and furniture so that it would not be a total loss. Schutzer nailed up the outside cellar door so she could not get in to make a fire in the furnace, and when she battered in the door and got her fire burning, he flooded the boiler with cold water so as to prevent the steam generating. During the troubles said Schutzer and his partner, Max Bader, committed an assault and severe battery upon Mrs. Rafferty and they were indicted and tried and Max Bader was convicted by the Essex County Quarter Sessions and a jury, and sentenced to pay a fine of one hundred (\$100) dollars and placed on probation for two years. Schutzer was subsequently tried by the Court without a jury and found guilty, but his sentence was suspended.

In December, 1929, one Mrs. Hibbitts was sent by Schutzer to Mrs. Rafferty to negotiate for the

purchase of her lease and furniture, and he sent Mrs. Rafferty word that he would consent to the transfer of the lease and would return her deposit to her, and she consented to sell to Mrs. Hibbitts and took a deposit of fifty (\$50) dollars from her. He met Mrs. Rafferty while the negotiations were going on and asked her to appeal to Judge Flannagan to be lenient with Bader (who had been convicted) on the sentence. She declined to do this and Bader was sentenced as aforesaid, Schutzer refused to give his consent to the transfer of her lease to Mrs. Hibbitts, although he had originally sent Mrs. Hibbitts for the purpose, and he told her (see aff. Case, p. 12), that he would dispossess Mrs. Rafferty and then Mrs. Hibbitts could have the lease without paying anything to Mrs. Rafferty for it.

Mrs. Rafferty did not pay the rent ninety (\$90) dollars for January, 1930, as she was expecting to sell to Mrs. Hibbitts, and Schutzer, who had started dispossess proceedings in the Second District Court, adjourned the case from time to time while Bader's sentence was pending, and suddenly after the sentence was imposed, entered judgment for possession in the absence of Mrs. Rafferty and her attorney, although he knew a defence was to be interposed. Thereafter the judgment was opened and Mrs. Rafferty put in her defence before the Court and a jury, alleging constructive eviction by reason of prevention by the landlord from heating the premises, and estoppel of said Schutzer to proceed for possession by reason of his agreement to permit her to sell her lease and his subsequent refusal to consent. These defences were overruled by the Court and a verdict for possession directed over objection. Thereafter an order for possession was entered on the verdict and process was

placed in the hands of one John Warner, constable, and he and his helpers and said Schutzer appeared at the premises to execute the order on February 20th and February 21st, 1930, and not being able to obtain immediate entry withdrew, saying they would return on Monday, February 24, 1930, to execute the writ.

Mrs. Rafferty thereupon filed her bill in the Court of Chancery alleging the foregoing facts, and that she would lose her chance to sell her lease and recover her deposit as said Schutzer was financially irresponsible (he held her premises only on lease for the owner), and that he was trying to prevent her from realizing any benefit from the sale of her lease and furniture, and that he would profit by his inequitable conduct in first inducing her to believe he would consent to the sale and then refusing such consent. She prayed injunction against the execution of the writ and further relief. An order to show cause with restraint was made returnable before the Chancellor on February 25, 1930, and after hearing and argument the Vice-Chancellor dismissed the order and vacated the restraint on the ground that the judgment of eviction was not the subject of restraint. If unlawful, the tenant had her remedy at law; that the right to compel the landlord to consent to a transfer of the complainant's lease to another was lost to her by the judgment of eviction for non-payment of rent and her equity to compel the landlord to perform his alleged promise was doubtful; that no irreparable injury would ensue; she could sell her lease and furniture otherwise, there was no peculiar value attached to it or the lease to make it the subject of equitable cognizance and for the loss she had an adequate remedy at law, if any of her rights were violated. See Case, page 20.

Argument.

Landlord preventing complainant from heating her dwelling excused her from paying or tendering rent.

Higgins v. Whiting, 102 L. 279;

Pabst v. Schwarzstein, 101 L. 431.

It is true the landlord in the cited cases had failed in his covenant to supply heat, but where he actively interferes to prevent the heating by the tenant, the conditions are analogous.

There was in fact a constructive eviction because the complainant had to take her four children to the apartment of friends during the cold weather to prevent them from suffering from the cold.

Defendant landlord had in his possession a cash deposit of two hundred seventy (\$270) dollars, equivalent to three months' rent as security for carrying out the covenants of the lease. He was not entitled to claim a forfeiture of the term for January rent, 1930, particularly in view of his conduct leading complainant to believe that he would consent to a sale of the lease.

Sparks v. Lorentowicz, 106 N. J. E.; 8 Adv. Rep. 178-183.

In that case it is said:

Where a lease contains a condition that the lessor may re-enter and put an end to the lessee's estate, or even that the lease shall be void upon the lessee's failure to pay the rent, at the time specified, it is well settled that a court of equity will relieve the lessee and set aside a forfeiture incurred by his breach of the condition, whether the lessor has or has not entered and dispossessed the tenant. This rule is based upon the notion that such condition and forfeiture are intended merely as security for the payment of money.

Ib. p. 183.

The landlord's acquiescence in the delay in paying the rent would bar him from enforcing a forfeiture against the tenant.

Thropp v. Field, 26 Eq. 82.

His conduct in refusing consent to sell the lease to the party whom he had sent to complainant for the purpose, was inequitable; and particularly in view of the evidence that he said to the prospective purchaser, that she should wait until he had dispossessed complainant and then she could have the lease for nothing.

Ib. p. 84.

The jurisdiction of the Court of Chancery to relieve against such a forfeiture in summary proceedings, without appeal on the merits is undoubted.

Windholz v. Burke, 98 Eq. 471;

Sparks v. Lorentowicz.

The case of *Gann v. LaBreque*, cited by the Vice-Chancellor is not in point, because there the term had ended, and there was no dispute as to the correctness of the judgment for possession.

Sparks v. Lorentowicz.

In the case at bar, there was an alleged waiver on the part of the landlord supported by evidence besides that of the complainant and reliance thereon by the tenant to the latter's disadvantage. The injunction should have been sustained.

Sparks v. Lorentowicz.

The Court will set aside a forfeiture even though the landlord has entered and dispossessed the tenant, as was done here.

Sparks v. Lorentowicz;

Ib. p. 183.

The remedy at law is not adequate. Although deprived of present possession complainant has

still a lease which could be sold if her right to possession could be sustained together with her household furniture; defendant is financially irresponsible.

In such case equity will take jurisdiction and interpose when the remedy is more nearly complete and perfect in equity than in law.

Windholz v. Burke, 98 Eq. pp. 471-473;

Sparks v. Lorentowicz;

Blake v. Smidth, 119 Atl. 306;

Roseberg v. American Hotel Co., 121 Atl. 9.

The order appealed from dismissing the restraint should be reversed.

Respectfully submitted,

MICHAEL J. TANSEY,
Solicitor for and of Counsel
with Appellant.

New Jersey Court of Errors and Appeals

On Appeal from the Court of Chancery Dept. of Defendants-Appellants	}	John Kavanagh Complainant-Appellee vs. Mrs. Schuster et al. Defendants-Appellants
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BRIEF

MICHAEL J. YANOSKY,
Solicitor for and of Counsel for Appellant.

J. VICTOR D'AMICO,
Solicitor for and of Counsel with Appellant.
Real

New Jersey Court of Errors and Appeals

JOAN RAFFERTY,
Complainant-Appellant,

vs.

MEYER SCHUTZER, *et al.*,
Defendants-Appellees.

On Appeal
from the
Court of Chancery.
Brief of
Defendants-Appellees.

The defendant-appellee, Meyer Schutzer, was the landlord and the complainant-appellant, Joan Rafferty, was his tenant. The landlord obtained a judgment of eviction for non-payment of rent. The tenant filed a Bill of Complaint praying for injunctive relief seeking to restrain the landlord from evicting her. Upon the return of the Rule to Show Cause the matter was argued before Vice Chancellor Backes and his decision is found on page 20 of the State of the Case. Subsequently an Order was entered thereon dismissing the Rule to Show Cause and vacating the restraint. (Case page 21). This appeal is from that Order.

On the opening day of this term, the solicitor of the appellant marked this case "Briefs", but, to date, and this is the last day to file briefs in this Court, no points or brief has been served upon the undersigned.

The appellees respectfully submit that the Order appealed from should be affirmed for the reasons stated by the learned Vice Chancellor in his decision below and this appeal, taken simply for the purpose of delay, should be dismissed.

Respectfully submitted,

J. VICTOR D'ALOIA,
Solicitor for and of Counsel with
Defendants.

DATED: OCTOBER 31st, 1930.

New Jersey Court of Errors and Appeals

On appeal from the Court of Chancery, in the case of ...

The plaintiff ... the defendant ... the court ...

It is the duty of the court to ... the law ...

The court is of opinion that ... the law ...

Respectfully submitted,

J. VICTOR ...

