NOTICE AND GROUNDS OF APPEAL.

(Filed Oct. 25, 1917)

NEW JERSEY SUPREME COURT.

ANCONA PRINTING COMPANY, *Plaintiff and Appellant,* vs. WELSBACH COMPANY, *Defendant & Respondent.*	NOTICE AND GROUNDS OF APPEAL.

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To Messrs. Bleakly & Stockwell, Attorneys of Defendant and Respondent:

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Take Notice that the plaintiff, Ancona Printing Company, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. The Court refused to strike out the testimony of a witness, Sidney Mason, produced on the part of the defendant, who was permitted to testify that he was told by another that there had been prepared by plaintiff a form of renewal lease.

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2. The Court, against objection made on behalf of plaintiff, admitted in evidence testimony as to the value of fixtures and buildings left on the property of the plaintiff, by defendant, when the defendant vacated the premises in question.

New Jersey State Library

3. The Court, against objection on behalf of the plaintiff, permitted a witness to testify as to the nature of the business of the plaintiff and what was its business when the written lease expired.

4. The Court refused a motion, after both sides had rested, to direct a verdict in favor of the plaintiff.

10 5. The Court refused to charge the plaintiff's 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th requests.

6. The Court improperly charged the jury as follows:

> "There was, however, in the lease a provision authorizing the tenant to remove the fixtures at the expiration of the lease. My examination of the law both in England and of a number of
> 20 states in this country, leads me to the conclusion that that gave to the defendant a right to remove the fixtures within a reasonable time. It did not, however, give the defendant a right to exclude the plaintiff from those premises. The right to remove the fixtures must be limited to the reasonable necessities of such right. If I have a piece of property on your land and I have the right to go remove it, it doesn't mean that I have the right to exclude you from the
> 30 whole possession of your property only insofar as it may be necessary for me reasonably to occupy it for the purposes and for the time contemplated in the lease, namely, a reasonable time for removal."

7. The Court improperly charged the jury as follows:

"Now, it justifies that to you or seeks to justify it as far as this case is concerned, upon one or two grounds or both, first, that it had a legal right to remain in there by reason of the acquiescence and tacit consent of the plaintiff, the Ancona Company, that the defendant should remain in possession * * * * and the defendant's contention is based upon that line of testimony, and it is, as I have already said, to the effect that the landlord acquiesced in the continued possession of the property by the defendant and thereby created a new relation which precluded the defendant from bringing this action. The defendant also claims, gentlemen, that even if that be not the case it believed it had such a right, that it had a right to occupy this property, and that believing so it remained in possession. An analysis of this statute will clearly show you that not only must the deprival of the landlord of his property be illegal, but it must also be wilfully done; that is to say, the tenant must not only deprive the landlord against his legal right, but must do so with knowledge that he has that legal right, that the landlord's legal right exists to the possession and that he has deprived him of it."

8. The Court improperly charged the jury as follows:

"As I have stated, the defendant's second contention is that there was a belief on the part of the defendant that it had this right. Well, gentlemen, around those two questions has developed largely the testimony in this case. The

plaintiff (defendant) claims that by the acts and conversations of the plaintiff through its officers legally authorized or lawfully authorized there was a remaining over in the property by the consent and with the acquiescence of the landlord."

9. The Court improperly charged the jury as follows:

10 "The other side contending first that it had a legal right, and secondly that it believed it had a right. Now, either one of the latter conditions would prevent a recovery by the plaintiff in this action, because, as you have already been told, it must be established that there was not only a legal right being kept from the plaintiff, but that legal right of possession must have been kept away from the plaintiff by the defendant knowingly and conscious of the fact that the

20 legal right existed."

10. The Court improperly charged the jury as follows:

"The preliminary question, gentlemen, for you to consider is first, did the defendant have a right in these premises after the first of June? (July) If it did, then all of this proceeding goes for nothing, because the plaintiff's claim is predicated upon the fact that the lease terminated

30 with the term stated in the written agreement. Secondly, if they did not have the right, did they believe they had such a right? If they did, why, then, the plaintiff's claim goes for nothing, because the statute is based upon wilful action in violation of the plaintiff's rights. The third thing that the plaintiff must establish is notice

and its service in accordance with the statute. If you pass any one of those against the plaintiff, then your verdict is no cause of action in this case.''

11. The Court improperly charged the defendant's third request to charge as follows:

''That would be true, gentlemen, if that is the fact, that it was not authorized by the company. You will observe, however, that the company is here resting its action upon that notice.'' 10

12. The Court improperly charged the defendant's fourth request to charge as follows:

''That is all true, gentlemen, but let me remind you again that it is in proof in this case that the defendant held this property for the purpose of manufacture; they did not hold it simply for the purpose of removing fixtures. While they had a perfect right to remove the fixtures and to use 20 a reasonable time for that purpose, that gave them no right to exclude the plaintiff from the property for uses that were not inconsistent with that right.''

13. The Court improperly charged the defendant's twenty-first request to charge as follows:

''There could be no wilful holding over while the right of the defendant was doubtful in point of law. 30

''I suppose that would be true if in point of fact the right was in doubt, there would be necessarily a basis for an honest belief.''

14. The Court improperly charged the defendant's twenty-seventh request to charge as follows:

"Gentlemen, in the twenty-seventh request I am asked to say to you that the action in the District Court and in the Supreme Court were not conclusive of the present issue. That in substance is the request. I don't think I have dealt with that and I now say that is a fact. Otherwise, they are charged, I think, as fully as
10 I feel called upon to do."

15. The Court improperly charged the jury as follows:

(In speaking of the photographs introduced in evidence.)

"But it does not establish anything, gentlemen, as to the measure of liability or the right of liability in this case."

WESCOTT & WEAVER,
20 *Attorneys of Plaintiff-Appellant.*

[ENDORSED]

Due and legal service of the within notice and grounds of appeal, is hereby acknowledged.

30 Bleakly & Stockwell,
Attorneys of Defendant and Respondent.

JUDGMENT RECORD.

(Filed Nov. 2, 1917)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ANCONA PRINTING COMPANY, vs. WELSBACH COMPANY.	ACTION AT LAW. ON POSTEA. BLEAKLY & STOCKWELL, ATTORNEYS.

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Welsbach Company, the defendant in this cause, was summoned to answer unto Ancona Printing Company, the plaintiff therein, in an action at law upon the following complaint: 20

(Summons issued April 20, 1917.)

Plaintiff, Ancona Printing Company, a corporation of the state of New Jersey, says that:

1. On March 7, 1914, plaintiff and defendant executed a lease, by which plaintiff leased to defendant for one year from the 30th day of June, 1915, certain 30 property known as the Ancona Print Works, lying between Ellis Street and the Delaware River and between land formerly of the Gloucester Manufacturing Company and Mercer Street, in the city of Gloucester, and also a tract of land in the same place, beginning at the southwest corner of King and Essex

Streets, thence southwardly fronting on King Street 180 feet, and extending thence westwardly between parallel lines of that width, 128 feet, more or less, to Ellis Street, at the yearly rent of $10,000, payable quarterly commencing on the 30th day of September, 1915, and the payment of all taxes properly assessed and levied upon the premises therein leased, including one-half of all taxes for the year 1916. Said agreement being an extension of a prior lease made
10 the 26th day of September, 1904, and a supplemental lease made the 14th day of March, 1905.

2. Defendant's right of possession expired on the 30th day of June, 1916.

3. Defendant wilfully held over said premises after the determination of its term for a period of six months, and after demand made and notice in writing given for delivering the possession thereof by plain-
20 tiff.

4. Plaintiff claims at the rate of double the yearly value of the premises so detained for a period of six months, according to statement of claim annexed.

5. Defendant has not paid the same.

6. At the time herein stated the defendant was and still is a corporation of the state of New Jersey.
30 Plaintiff claims damages as $11,144.50, with interest from January 1, 1917.

WESCOTT & WEAVER,
Attorneys of Plaintiff.

STATEMENT OF CLAIM.

Welsbach Company,
To—Ancona Printing Co.—Dr.

Rent, July 1st, 1916, to Dec. 31st, 1916, 6 months, $5000. x 2,	$10,000.00
Proportion of taxes, July 1st to Dec. 31, 1916, ½ of $2,289 x 2,	2,289.00
	$12,289.00
Less proportion of taxes paid 6 months,	1,144.50
Amount due	$ 11,144.50

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Wescott & Weaver,
Attorneys of Plaintiff.

(Filed April 21, 1917)

The defendant, a corporation, having an office and place of business at Gloucester City, county of Camden, state of New Jersey, answering the said plaintiff, says:

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1. It admits the allegations in this paragraph.

2. The statements in this paragraph are denied.

3. The statements in this paragraph are denied.

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4. It denies that the plaintiff is entitled to recover from the defendant double the yearly value of the said premises for the period named, or any part thereof.

5. It admits the allegations in this paragraph.

6. It admits the allegations in this paragraph.

7. Defendant denies that plaintiff is entitled to recover the sum of $11,144.50, mentioned in the complaint, or any part thereof.

FIRST DEFENSE:

The complaint does not set forth a legal cause of
10 action against the defendant.

SECOND DEFENSE:

Upon the expiration of the written lease between the plaintiff and the defendant, mentioned in paragraph 1, of the complaint, defendant became and thereafter remained a tenant at will of the plaintiff up to December 31, 1916, when it vacated the said premises, and was in lawful possession of said premises during said period.

20 BLEAKLY & STOCKWELL,
Attorneys for Defendant.

(Filed May 10, 1917)

This case was tried before Honorable Frank T. Lloyd, with a jury, at the Camden Circuit, on October first, nineteen hundred and seventeen.

The jury rendered a general verdict against the plaintiff and in favor of the defendant, with costs for the defendant.

30 Whereupon it is adjudged that the complaint of the plaintiff be dismissed, and that the defendant recover of the plaintiff, its costs, which are taxed at thirty-nine dollars and ten cents.
Costs $39.10.

Judgment entered October 4, 1917.

WM. S. GUMMERE, C. J.

I, William C. Gebhardt, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also a copy of the judgment entered in the above-stated cause as the same remains on file and of record in my office.

In testimony whereof I have set my hand and the seal of said court at Trenton, this twenty-ninth day of October, A. D. nineteen hundred and seventeen. 10

WM. C. GEBHARDT,
Clerk.

(Seal)

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TESTIMONY.

NEW JERSEY SUPREME COURT.
Camden County Circuit.

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Ancona Printing Company, vs. Welsbach Company.	Action at Law.

September Term, 1917.

Appearances:

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For the plaintiff: Wescott & Weaver, Esqs.
For the defendant: Bleakly & Stockwell, Esqs.

Before Lloyd, J., and a Jury.

THE CASE FOR THE PLAINTIFF.

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(Mr. Weaver opens the case for the plaintiff to the jury.)

(Mr. Stockwell opens the case for the defendant to the jury.)

Mr. Weaver: I offer in evidence a lease bearing date the 26th day of September, 1904, between the Ancona Printing Company and the Welsbach Company.

The Court: For what period?

Mr. Weaver: For a period expiring the 30th day of June, 1915, executed under the common seal ——

10

The Court: Is there any dispute about the lease?

Mr. Stockwell: No.

The Court: Let it be offered.

Mr. Weaver: I want to get it on the record.

The Court: Your whole lease is on the record; you need not make any recitals of it. Let it be admitted.

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Mr. Weaver: Then I offer in evidence three leases.

The Court: What is the next one?

Mr. Weaver: The next one is a lease dated the 14th day of March, 1905.

The Court: The plaintiff to the defendant?

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Mr. Weaver: The plaintiff to the defendant.

The Court: To what time?

Mr. Weaver: To the 30th day of June, 1915.

The Court: For what premises?

Mr. Weaver: For part of the same premises; and lastly a supplemental lease dated the 7th day of March, 1914, between the same parties, commencing on the 30th day of June, 1915, and expiring on the 30th day of June, 1916.

(Said leases are marked respectively Exhibits P1, P2, and P3.)

10 The Court: The last lease covers the other two properties?

Mr. Weaver: Covers both properties, yes.

The Court: And their price for the rental was the same as the action now brought?

Mr. Weaver: Yes.

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Roy M. Snyder, sworn.

By Mr. Weaver:

Q. Mr. Snyder, I show you a notice and ask you if that is a copy of the notice you served?

A. Yes.

Q. Who did you serve it on?

A. Mr. Sidney Mason, president of the Welsbach Company.

30 Q. Where?

A. Gloucester City, New Jersey, at the Welsbach Company.

Q. When?

A. July 7, 1916.

No cross-examination.

Mr. Weaver: This notice is offered in evidence.

(Said notice is marked Exhibit P4.)

Mr. Wescott: That is the notice to deliver the property, is it?

Mr. Weaver: Yes.

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Mr. Weaver: I want to call on the other side for the letters dated September 24, 1915, signed by Mr. Oswald Chew ——

Mr. Bleakly: Use it; go ahead; put your copies in.

Mr. Weaver: I offer in evidence a letter dated September 24, 1915, addressed to Sidney Mason, president, signed by Oswald Chew, secretary; a letter dated December 23, 1915, addressed to Sidney Mason, president, signed by Oswald Chew, secretary. The next is January 22, 1916, addressed to Samuel T. Bodine, signed by David S. B. Chew; the next is dated March 3, 1916, addressed to Sidney Mason, president, signed by Samuel B. Scott, secretary pro tem. The next is dated June 13, 1916, addressed to Sidney Mason, president, signed Samuel B. Scott, secretary. The next is dated June 30, 1916, addressed to E. G. C. Bleakly, signed by Samuel B. Scott. Now, I will offer in evidence the proceedings in the District Court of the city of Camden, certified under the seal of the clerk and dated the 22nd day of September, 1917; that is the date of the clerk's certification.

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(Said last exhibit is marked Exhibit P5.)

Mr. Stockwell: It is understood that the writ of certiorari which was issued in this court comes in as part of this record, is that correct?

Mr. Weaver: I have no objection to the writ of certiorari.

10 Mr. Stockwell: It is in the printed book we have here; we can take it out and put it in.

Mr. Weaver: We can agree on that.

The Court: It is admitted that the defendant remained in then until the 30th day of December following?

Mr. Stockwell: Yes, we admit that we remained, 20 but not under the statement of facts as given by Mr. Weaver.

The Court: I don't mean that; I mean just simply that you were there in possession.

Mr. Stockwell: Yes.

Mr. Weaver: Mr. Stockwell, will you admit that the taxes for the year 1916 were $2289 and that you 30 paid them?

Mr. Stockwell: Yes.

The Court: Is it agreed, gentlemen, that the fair value is the term of the lease, the terms of the lease? The plaintiff seems to rest it upon the theory that

the terms of the lease which you had already fixed was the fair rental value of the property. Is there any criticism on that, any controversy on it?

Mr. Stockwell: Well, the whole scrap has been over what was the fair rental value of the property.

The Court: Now, on their theory, they seem to accept your contention, that is to say, that the property is not worth more than you have been paying. 10

Mr. Stockwell: That would seem to be indicated by their declaration.

The Court: Yes, and you accept that, do you?

Mr. Stockwell: Well, no.

The Court: You think it ought to be more?

Mr. Stockwell: No, if we get down to that we say less, but we hardly think that is in issue here. 20

The Court: No, I am trying to make progress in the case; I suppose the plaintiff must show what the value is, and I was trying to determine whether or not you admit that that is a fair value, the rental you had been paying?

Mr. Stockwell: No, we don't admit that. 30

The Court: Do the taxes figure in it at all, Mr. Weaver, except as a reduction?

Mr. Weaver: It is part of the rental value.

The Court: Yes, I understand, but if they paid it it is out, isn't it—you can't recover it again?

Mr. Weaver: No, because we give them credit for payment—that is, double the amount of the taxes would be twice the amount.

The Court: I see what you mean; $10,000 plus the taxes is the rental value?

10

Mr. Weaver: Yes.

David S. B. Chew, sworn.

By Mr. Weaver:

Q. Mr. Chew, where do you live?
A. 19 South 21st Street, Philadelphia.
20 Q. And are you connected with the Ancona Printing Company?
A. Yes, sir.
Q. How long have you been connected with the Ancona Printing Company?
A. Thirty years.
Q. And in what capacity?
A. Secretary, treasurer and president.

The Court: Just a moment, gentlemen, don't some 30 of these letters here indicate an offer of a higher sum than the rental that had been paid?

Mr. Stockwell: Yes.

The Court: Well, why is this controversy over the value?

Mr. Weaver: That is the only purpose this witness is being offered for.

The Court: Well, I supposed so, but if the other side were willing to pay more surely this admission of its being worth less ought not to be the subject of criticism. Well, go on, if you cannot agree.

Q. Are you acquainted with the Ancona Printing works in Gloucester? 10

A. Yes, sir.

Q. Have you been engaged in the past few years in the rental of property, both real property and house property in the city of Gloucester?

A. Yes.

Q. Now, what mills in the city of Gloucester have you rented and had charge of?

A. Gloucester Iron Works and Gloucester Gingham Mills.

Q. And this plant? 20

A. And this plant.

The Court: Gentlemen, I suppose if these figures run up much above this amount the declaration may be changed. Go on.

Q. What in your judgment, Mr. Chew, is a fair annual rental of the Ancona Printing works for the year 1916?

Mr. Stockwell: I object to that on the ground that it is immaterial and irrelevant to this issue. 30

The Court: The objection is not sustained.

(Exception noted for the defendant.)

A. $15,000 to $20,000.

Cross-examination.

By Mr. Stockwell:

Q. It is considered to be worth more than had been paid by the Welsbach Company theretofore?

A. Very much, yes, sir.

Q. Have you rented it since the Welsbach people got out?

10 A. No, sir.

Q. Have you rented it at any figure since they got out?

A. No, sir.

Q. Haven't you tried to get a tenant for the property since they left the premises?

A. I have.

Q. And you have advertised extensively in Philadelphia papers for that purpose?

A. I have advertised it.

20 Q. And the premises are vacant at this time?

A. Yes.

Q. And they have been vacant ever since the Welsbach Company left the property?

A. Yes, sir.

Q. $5,000 in cash was tendered to you at your office in Philadelphia on December 30, 1916?

(Objected to as not cross-examination.)

30 (Objection sustained.)

Mr. Stockwell: It has already been admitted ——

The Court: The objection is sustained.

Mr. Stockwell: May I make this suggestion? It has already been admitted at the suggestion of the

Court that the taxes were paid. I think I have a right to examine this witness with reference to it.

The Court: The objection is sustained.

Mr. Stockwell: He has not been asked that question because it was admitted in advance.

The Court: You cannot go beyond his direct examination. 10

Mr. Stockwell: We ask an exception.

Q. The tax money for 1916, that was paid by the Welsbach Company, has not been refunded, has it?

A. What?

Q. Has the money paid by the Welsbach Company for the taxes for the year 1916, that is, for the six months from June 30th to December 30th, 1916, been refunded by you to the Welsbach Company? 20

A. They didn't pay that money to the company.

Q. I didn't ask you that.

A. They have made no claim for it and it was not due them.

Q. Have you paid the company that money, the Welsbach Company?

A. Certainly I haven't paid it.

Q. That is an answer; that is all.

30

The Court: Gentlemen, I don't want to be misunderstood in my ruling on Mr. Chew's testimony; I was only ruling on the objection that was made, not on the question of his competency. No objection

was made on the ground of competency. I was only ruling on the question of relevancy.

Mr. Stockwell: We stated our objection just as we intended.

The Court: Yes, I did not want any confusion to exist in counsel's mind.

10 PLAINTIFF RESTS.

Mr. Stockwell: If your Honor please, we want to move for a non-suit on several grounds.

1. There is no evidence before the Court to show the authority of Samuel B. Scott to serve the demand for possession under date of July 6, 1916, and no evidence to show his authority to execute any such 20 demand.

2. There is no evidence to show that the defendant held over wilfully, or that any such holding over was intentional and knowingly and wilfully wrongful.

3. The payment of taxes ——

The Court: Let's see the notice of July 6th.

Mr. Stockwell: The payment of taxes and the ac-30 ceptance and retention of the benefit thereof by the plaintiff is a recognition by the plaintiff of the relation of landlord and tenant between the parties, and a waiver of any right in the plaintiff to sue for the penalty under the statute.

The Court: I don't quite catch that.

Mr. Stockwell: I will elaborate on these, if your Honor please, if you would like to have me.

The Court: As I gather, the testimony shows that the defendant paid the taxes for 1916?

Mr. Stockwell: Yes, it was a part of the rental.

The Court: A purely voluntary payment as far as this evidence discloses. 10

Mr. Stockwell: Well, we consider otherwise and I will argue that to your Honor in a few moments.

4. Plaintiff cannot accept and retain any money for the use and occupation of the premises and at the same time sue for the penalty under the statute.

5. It is shown by the introduction of the record of Camden City District Court and the record of the Supreme Court insofar as it relates to the writ of certiorari granted therein, that a certiorari was 20 allowed by Justice Garrison to the Supreme Court to review the judgment of the Camden City District Court, which of itself shows that there was a doubt as to the law with respect to the authority of the secretary to bind the company by the service of the notice in question.

6. Under the terms of the 1904 lease, which was the last preceding lease and which lease was adopted in all its terms with the exception of the amount of rental and term by the last lease I say that lease, it 30 was provided that the defendant Welsbach Company had a right at the termination of that lease to remove all fixtures which had been placed by them on the premises within the period of any of these leases, and there is no showing that the retention of the premises by the defendant was more than was

reasonably necessary for the removal in question. It is not shown—there is no evidence ——

The Court: I want to get in my mind clearly the points you are making.

Mr. Stockwell: There are quite a number of them.

10 The Court: I understand; I am trying to follow them but I want to get them clear as we go along.

Mr. Stockwell: May I take them up seriatim as soon as I get them on the record?

The Court: All right.

Mr. Stockwell: So I won't forget them, because some of these are in my mind and not on paper. Next, 20 there is absolutely no evidence adduced by the plaintiff to show a wilful holding over by the defendant after the expiration of the lease and after the service of any demand for possession under the statute; that the word wilful in the statute means that the defendant must have held over intentionally and knowingly, wilfully, wrongfully.

Next, the plaintiff cannot recover in this action unless it shows that the holding over was wrongful, and more than that it must show that it was with the 30 knowledge that it was wrongful, and virtually that it is a quasi-criminal complaint against the defendant. I think that covers it all, your Honor. A tenant is liable only where there is clear contumacy in the tenant; if there is any doubt about it the tenant is not liable for the penalty.

The Court: What authority is that?

Mr. Stockwell: I will give them to you, your Honor, in just a minute; I have the authorities right here. If the defendant had any fair ground of defence, and that defence was bona fide taken, defendant was not subject to the penalty. I think that covers them all. Now, if your Honor please, first on the question of the authority of Mr. Scott. We contend that the mere signing of a demand, "Ancona Printing Company by Samuel B. Scott, secretary," does not show authority on the part of the secretary to make the demand or to serve the demand. 10

The Court: Just a moment; ought that not to be cleared up, Mr. Weaver?

Mr. Weaver: That had the seal of the company on.

The Court: Well, that may be, but it is a very simple matter, is it not, to establish ——

20

Mr. Weaver: Yes, we have here the same proof as the Supreme Court determined that on.

Mr. Stockwell: We say there is no inherent authority in the secretary of a corporation to make such a demand or to serve such a demand; there must be express authority conferred and that must be proved. In the next place this Landlord and Tenant Act, your Honor, insofar as it relates to this particular proceeding, is taken verbatim from an old statute in England, 47 something—I will give it to your Honor—taken verbatim, and under the cases in England it is absolutely necessary that the plaintiff in order to recover under that statute shall bring his case clearly within the terms of the statute, because it is a penal action, and it is not an action 30

for the recovery of the value of the premises. It is held in those cases that the word wilful means more than intentional holding over, it means that the holding over was wrongful in the first place and that the tenant knew it was wrongful.

The Court: What is the citation there in 75 and 77 in the statute there—it is in the notes here?

10 Mr. Stockwell: Your Honor will not find any New Jersey cases on the subject.

The Court: It is in the notes—what pages?

Mr. Stockwell: Yes, but it does not touch this.

The Court: I know, but I would like to look at them. Won't you tell me what they are; you have them right there before you?

20 Mr. Stockwell: Oh, yes, I understand; I thought you wanted me to produce them. The first one is 21 Law.

The Court: No, 77 Law.

Mr. Stockwell: 75 Atlantic, 4552; 77 Law, 365.

The Court: Is this Ivins vs. Ivins?

30 Mr. Bleakly: Which one, 77?

The Court: Yes.

Mr. Stockwell: No, Haurand vs. Schorb, 77 Law, 365. I don't think your Honor will find either of

those cases bearing upon the subject. On the other hand here is an authority which shows that the statute here is the same statute as the old English statute. There is one case in England on that statute and that is directly in point. In the case in question, which is taken from 5 Esp., page 203, etc., which is Wright vs. Smith, there the plaintiff owner sued under this statute. The plaintiff showed that the term according to a written lease expired, that it gave notice to the defendant, the tenant, to get 10 out, the tenant did not get out, he held over, and that the plaintiff had to bring ejectment proceedings to get him out, and did bring ejectment proceedings, got him out by a judgment of the Court, ouster proceedings. Then he stopped and he came up before the Court on his facts. The Court held as follows—there is a lot of talk here by various counsel as there always is in these cases—and then the Judge, Lord Chief Justice MacDonald, delivered the opinion of the Court, and after stating the case said, "The ques- 20 tion therefore is whether an action under these circumstances is maintainable. The title of the act is to prevent frauds committed by tenants, but the act would never be meant to apply to a case where no fraud was intended and where the resistance to possession was under a fair claim of right. The true construction of the act appears to be that where there is clear contumacy in the tenant he shall be within the penalty of the act, for if there is any doubt, if he had any fair ground of defence and that defence was bona 30 fide taken, it would be a hard construction to subject him to a penalty, for so it is called in the act, for a fair assertion of his title." The Court goes on to say, "Was there any contumacy here?" and says, no, there was none shown. Now, there is a very pertinent suggestion by counsel which seems to have

been adopted by the Court; he said that to constitute a wilful act it must be wilful at the time it was done; there could be no wilful holding over wrongfully while a doubt was existing in point of law. Now, if there were no other point in the case on which we could rest this motion, we could safely rest it on the point that Mr. Scott, as we claim, was not authorized to make the demand and that Justice Garrison of the Supreme Court, as shown by the writ offered
10 in evidence, certified that there was doubt about that point of law, certified it to the Supreme Court for its determination. But that is only one element in the the case; if your Honor will look at the lease you will see we have the right to remove our fixtures. There is no showing here that more than a reasonable time was taken to do that. Beside, the burden is on the plaintiff to bring himself within the act; he is the one to prove wilful conduct.

20 The Court: What have you to say as to these preliminary letters which show clearly the purpose on the part of the plaintiff to require possession of the property?

Mr. Stockwell: They show no more, your Honor, than that upon their contention we intended to remain.

The Court: I see a book here; has that those
30 letters in?

Mr. Stockwell: Yes.

The Court: If you have one to spare, you might let me have that. Don't you think there would be a state of wilful mind that could be inferred where

it is shown that a tenant after the expiration of his term and in defiance of communications of various sorts and particularly a notice to that effect—don't you think a jury might be permitted to conclude that there was a wilful refusal to vacate?

Mr. Stockwell: I don't think any such inference could be drawn in the first place, your Honor, and I don't think the jury has the right to infer; I think it is up to them to prove. 10

The Court: What would be evidence in your mind that would be required to establish wilfulness?

Mr. Stockwell: That is a burden for the plaintiff to prove, and I don't think it is possible for them to prove it. Your Honor will see right here that there are no cases on this subject——your Honor can look through the books in England and elsewhere, and this is the only case on the subject; you can scratch the 20 law bare and you will not find a case where conviction has been had under this act.

The Court: That does not get me very far with an answer to my question.

Mr. Stockwell: Your Honor would not want me to show you how they could prove that my own client committed a fraud, would you?

30

The Court: Oh, no. What is the letter that precedes this letter of Mason of October 6, 1915?

Mr. Bleakly: It is not in evidence in the case, your Honor; it is in the book, but they did not offer it in this case.

The Court: Is the letter of October 6, 1915, offered, to Ancona Company from Mr. Mason?

Mr. Bleakly: No, it wasn't offered.

The Court: Well, have you said all you wanted to?

Mr. Stockwell: I stated the points, your Honor; I can elaborate on those if you wish me to do it.

10

The Court: The first point made was that the notice did not come from the company?

Mr. Stockwell: That there was no showing that there was any authority to serve it and the law requires that it shall be made and served by the landlord or by its officer or agent thereunto lawfully authorized.

20 The Court: Mr. Weaver, what have you got to say on this question?

Mr. Stockwell: I might say this, your Honor, that no matter what Mr. Scott might testify to now it wouldn't change this fact, that the very certification by Justice Garrison to the Supreme Court that there was a doubt upon the testimony which he gave before on a question of law, was sufficient justification for retaining possession, apart from anything else. He
30 might testify now to the same facts or other facts, but it wouldn't change the mental attitude of the plaintiff at that time with respect to this notice.

The Court: I don't quite get the point of that objection. I do not see how Judge Garrison's ruling on the regularity and sufficiency of these proceedings

to get possession as a technical matter could bear upon the wilfulness of the defendant in holding over.

Mr. Stockwell: As your Honor knows, certiorari cannot be granted by a Justice of the Supreme Court unless there is a doubt upon the facts or the law involved; then he certifies it to the Supreme Court for them to resolve that doubt in some way or another. It is upon a technical matter usually.

10

The Court: But that is a technical matter in that proceeding, not some other proceedings.

Mr. Stockwell: Yes, but that is the same notice as in this proceeding.

The Court: No, I am not dealing with that at all; I am calling attention to the fact that Judge Garrison's ruling, as I gather it, was upon some sufficiency of proceedings in a landlord and tenant judgment which is obtained in the District Court. That does not deal at all with the good faith of the defendant; it simply deals with the legal rights of the parties, the right to hold the possession of the property. Now, in determining, if you please, that there was evidence that the demand and affidavit I think you read, wasn't it, the affidavit made by Scott ——

20

Mr. Stockwell: Well, the demand was part of the affidavit, but it is the demand back of the affidavit that was the point in dispute, and so Mr. Weaver has already outlined to the jury.

30

The Court: I did not so understand; I understood the point before Judge Garrison was whether the

affidavit made in that case was sufficient upon which to base the proceedings, and Mr. Scott had sufficient authority from his company to take the step he did, bring the action.

Mr. Stockwell: I can clear that up in just a minute, if your Honor will permit me to explain how this thing came about. Under the landlord and tenant proceedings in order to oust the defendant,
10 the tenant, he must have shown first the service of a demand for possession, in other words, this or some other demand. We challenge the sufficiency of that demand and we challenge it in this way, that it was embodied in the affidavit, the moving affidavit of the plaintiff forming the starting point of the landlord and tenant proceedings, which is the jurisdictional fact in the case, because, as your Honor knows, you cannot certiorari to the Supreme Court under landlord and tenant proceedings except upon a juris-
20 dictional point, and that was the jurisdictional point, that it was based upon the moving affidavit; that one essential part of that affidavit was that there was a certain demand served by the plaintiff. We said that demand was not sufficient, and we produced the testimony of Mr. Scott himself given at the trial before Justice Garrison, and Justice Garrison said there was a doubt about it, and granted the certiorari. That is the very point in issue. This was the only demand considered by the Court.
30
The Court: Let me see the demand, will you? I understood it was an affidavit.

Mr. Weaver: Well, it was an affidavit too; the affidavit was involved.

The Court: (After examining paper) Well, Mr. Weaver, it does appear, though, that there was quite considerable evidence in that case that is not in this.

Mr. Weaver: Our answer to that is, that in such a record in the District Court as in evidence there, the Court decided that they were trespassers, that it is res adjudicata in this case. We have offered evidence here in record that shows conclusively Scott's authority, because the Supreme Court said his authority was sufficient. Now, it is not necessary to put Scott on the stand to prove all that was testified to in the former case, because that is res adjudicata in this case. 10

Mr. Stockwell: If there was a wrongful verdict by the jury in that case, we had no remedy in that action; we had to go at it in another way. Now, in reference to that case, this case shows if there is any doubt upon any proposition involved, and if the defendant fought it out on the assumption that he was right and he did it bona fide, then there can be no recovery of penalty in this case. The very fact that Justice Garrison certified that there was a doubt gives us a clean bill of health on the question of doubt; it itself shows we were defending that with a fair claim of right; therefore, there could be no wilful, fraudulent holding. 20

The Court: I don't gather any such result from any such ruling. It is undoubtedly true that a man may act in good faith upon a supposed legal right which does not exist; it is also true that he may set that up to somebody and not mean it. 30

Mr. Stockwell: But there is no right to assume anything like that; that must be proven.

The Court: That depends on proofs: Now, if it appear in the case that a man has been notified to vacate a property that belongs to another, he has previous knowledge repeatedly given him that no extension of time would be allowed and that person still in defiance of such demand by the owner insists on remaining in possession, does not that become a jury question to determine whether or not he is acting in good faith on any supposed legal right, or
10 whether he is acting arbitrarily and in violation of the rights of his landlord?

Mr. Stockwell: We think, sir, that the law is directly to the contrary.

The Court: I think there should be more proof on the question of Scott's authority in this case.

Mr. Weaver: Then I ask to put him on the stand.
20

The Court: All right; it may be offered for that purpose.

Mr. Stockwell: I object to the Court's opening the case.

The Court: Well, Mr. Stockwell, the courts never foreclose a case where the effect would be an injustice.
30

(Exception noted for the defendant.)

Samuel B. Scott, sworn.

By Mr. Weaver:

Q. Mr. Scott, what office do you hold in the Ancona Printing Company?

A. Secretary.

Q. And have you the minute book of that company with you? 10

A. I have the minute book, yes.

Q. Will you turn to the minutes of June 12th, and tell us what happened at that meeting in respect to the Welsbach Company? Won't you read the whole minutes?

The Court: Only so far as it applies to this question.

A. "Moved by Mrs. Chew, seconded by Miss Brown, that the company refuse to purchase any property belonging to the Welsbach Company and the Welsbach Company be notified that the sprinkler system belongs to the Ancona Company, and Welsbach Company be given notice to vacate immediately at the end of the term of their lease. Carried." June 12, 1916, is the date of the minute. 20

The Court: Is there a copy of that anywhere that can be used without the book? 30

The Witness: In the evidence, I believe in the paper book.

Mr. Weaver: Yes, there is a copy in the book there.

Mr. Stockwell: There is a lot of testimony pro and con, your Honor, but we are not trying the case in the District Court now.

The Court: No, no, gentlemen; I am simply avoiding keeping the book here. If I may look at it, I suppose I might be permitted that privilege. I didn't take down the minute in full.

10 Mr. Stockwell: There was a statement by Mr. Scott in which he outlined his views and he has got that all mixed up in the same answer.

Q. Now, Mr. Scott, turn to the minutes of June 30th.

A. "June 30, 1916. A special meeting of the board of directors of the Ancona Printing Company was held on Friday, June 30, 1916, at eleven A. M., at 826 Commercial Trust Building, Philadelphia, to consider matters arising out of the lease of the com-20 pany's property to the Welsbach Company. The secretary reported a conversation between E. G. C. Bleakly, Esq., and Mr. D. S. B. Chew and Mr. Samuel B. Scott. It was moved by Mrs. Chew, seconded by Mr. Samuel Chew that the following letter be sent: 'June 30, 1916. E. G. C. Bleakly, Esq., 317 Market Street, Camden, New Jersey. Dear Sir:' "

The Court: That is this letter of June 30th signed 30 Samuel B. Scott?

The Witness: Exactly, verbatim, yes.

The Court: That is the one already offered in evidence?

The Witness: Yes, "I have taken up with the directors" ——

The Court: Oh, well, you need not read that.

Q. Now, is that all?
A. That is all.

By the Court:

10

Q. Was there anything preceding that, anything earlier than that, Mr. Scott? What was the basis of these earlier letters written in 1915 and early in 1916, were they written by direction of the board of directors?

A. The letter of Oswald Chew, secretary, was written on the basis of a letter written to him by the stockholders.

Q. What do you mean, the stockholders?

A. Well, I meant all the stock, with the exception of qualifying shares owned by Mrs. Chew and Miss Brown, mentioned here. They wrote a letter to the secretary directing him to write the letter of September 23rd. 20

Q. What about the others?

A. I will have to look back.

Q. September 24th, you mean, don't you?

A. September 24th, yes.

Q. That is the lease offer?

A. Yes, the meeting of March 2, 1916—that is just slightly prior—the letter from the Welsbach Company signed by Sidney Mason, president, dated March 1, 1916, concluding as follows: "Under no conditions can we consider an extension of the present lease of the Ancona Printing Company's property for a period of five years at a rental of $15,000 30

per annum,'' was read and the secretary pro tem was directed to send the following letter to the Welsbach Company: ''Mr. Sidney Mason, president, etc. Your letter of March 1st with regard to the Ancona property has been received. We understand therefore that pursuant to the rejection last autumn of our offer of a five year extension of the lease the Welsbach Company will vacate the premises by June 30th and shall act accordingly. Meanwhile
10 certain members of the board of directors will visit the Ancona property probably this or next week.''

By the Court:

Q. Now, how did that come to be sent?

A. At the direction of the directors; that is, the minutes of the directors' meeting; ''the secretary pro tem was directed to send the following letter.'' Then the minutes of January 21, 1916: ''Mr. David
20 S. B. Chew submitted an offer made on January 12th by Mr. Samuel T. Bodine, president of the U. G. I Company, of $200,000 in cash for the Ancona property, and also the draft of a reply making a counter offer of $250,000 payable $50,000 in cash with thirty years 6% sinking fund mortgage, of $200,000. He was directed to forward Mr. Bodine a copy of the letter of Ancona Printing Company to Sidney Mason, president of the Welsbach Company, dated September 24, 1915, offering an extension of the lease for
30 five years from June 30, 1916, at the rental of $15,000 a year. The property is not for sale.''

Cross-examination.

By Mr. Stockwell:

Q. Mr. Scott, the letter of September 15th, I think it is, 1915, contained an offer to lease the property for five years at $15,000 a year; you recall that, don't you?

A. I think you mistake the date; September 24th.

Q. September 24th? 10

A. Yes.

Q. That letter was put in evidence, wasn't it?

A. Yes.

Q. And the other letters which were written by you referred back to that particular offer, didn't they, and that offer stood open until June 30th?

A. That offer stood open until June 30th, yes.

Q. And did not it remain open until July 7th?

A. I don't know.

Q. As a matter of fact, the Ancona Company was 20 willing to lease the property to the Welsbach Company, was it not, right up until you began the possessory action, providing you could agree upon terms?

Mr. Wescott: I object to this, if your Honor please; I don't see how it is cross-examination.

The Court: This witness has been called to testify as to these minutes and what was done in pursuance to them. I suppose what is in the minds of the par- 30 ties must be inferred from either their papers or their correspondence.

Mr. Stockwell: He is called to prove his authority, as I understand it, that is the reason your Honor opened the case for the plaintiff. The questions I

put would seem to me to be directed to that end. I won't pursue that question if it is objected to, but I will ask another.

Q. Will you please refer to the minutes and show me the authority for the service of the demand of July 7, 1916?

Mr. Wescott: That I object to; if I understand
10 this situation, your Honor, it is this: Mr. Scott is secretary of this company, and as such secretary he serves a notice on these people to quit and presumably that was right and lawful. There was an application made to Judge Garrison to review his power and authority to serve the notice. The Supreme Court said that from the fact that he was secretary of the company and such other facts as were before it, he might in the judgment of the jury have authority to serve that notice. Now, afterward
20 the question of his authority and the whole thing was threshed out in a court of record before a jury and Judge, namely the District Court, and they settled that he had the authority. Now, how under the sun can we inquire into that question here in this case; it is difficult for me to see.

The Court: The old Duchess of Kingston case is authority for all these res adjudicata propositions. It is brought down to our present day. As I recall
30 that case it held that the judgment of a court of record of all matters necessarily and directly arising in the case was conclusive on the parties in any subsequent proceedings, but not those matters which arose incidentally and were not essential to the case. Now, you see here all that it was necessary for Judge Garrison to hold in such a case was not that he had

the authority, but that there was sufficient authority shown to justify the District Court in believing that he had such authority to issue the notice and so on.

Mr. Wescott: And that was done.

The Court: But we go a step further in this case. You see, the proceeding there was to get possession of the property which disregarded entirely the motive with which the defendant might be holding it. 10 In the present action the proceeding is based entirely on the theory that the defendant is a wilful wrongdoer, and that he is holding not simply without legal right, but he is holding wilfully and with knowledge that he has no such right. So you see obviously the two issues are entirely different, and what might be conclusive even if it were in the case as to one proceeding would not be decisive in the other. In other words, the right being in question there, an adjudication of that would not establish 20 that the holding over was wilful in this case.

Mr. Wescott: Not necessarily, but the question here is if Mr. Scott had a right to serve this notice.

The Court: Yes, this is cross-examination of this witness to determine whether he had, but the proceedings in that case do not preclude, indeed they do not touch the rights of the Court under the present circumstances or the jury to determine its good 30 faith.

Mr. Wescott: Perhaps, your Honor, as I look at what you have said, don't quite catch the thought that is in my mind. The power of Scott to serve this notice and the authority of Scott to serve this notice

was essential to the jurisdiction, was it not, of the District Court? Now, the jurisdiction of the District Court was established; it asserted it itself and found that Scott had the authority to serve this notice, and that was the very essence of the District Court proceedings. It had no validity at all without Scott's authority. That being so, why should we undertake to inquire into it here? It is already settled; there is an adjudication upon the point, an adjudication
10 that is final.

The Court: Well, there cannot be any objection to supplementing that proof.

Mr. Wescott: Well, perhaps not. Now, that, I think, is all right.

Mr. Stockwell: Now, may we have the question repeated?

20

(Question repeated.)

The Court: That is your minute of June 30th, as I understand; counsel wants to see it.

(Witness complies.)

Q. In that letter or in the minute which you adopted which embodies the form of a letter which
30 you were going to send, you refer to the terms which you had laid down in the letter of September 24, 1915, sent to Mr. Sidney Mason, president of the Welsbach Company, didn't you?

A. Yes.

Q. And you stated in that letter that the terms of that letter were to stand, would not be changed, is that correct?

A. Yes.
Q. And that letter of September 24, 1915 ——

Mr. Wescott: What has this got to do with his authority? I can't understand.

Mr. Stockwell: Well, I will show you in just a minute.

Q. What is the date of the letter, Mr. Chew, which refers to the proposal for $15,000? 10
A. September 24th.

Mr. Stockwell: Won't you let me have that letter?

The Court: It is in your book there; it is the very first letter of this series, page 79.
Q. That letter reads like this: "Mr. Sidney Mason, president, Welsbach Company, Gloucester City, New Jersey." This is September 24, 1915. "Dear Sir: 20 I am directed by the Ancona Company to offer to the Welsbach Company an extension of the lease for five years at a rental of $15,000. This property is not for sale. Yours very truly, Oswald Chew." That is correct, isn't it?

Mr. Wescott: I object; what does he know about it?

Q. The letter of September 24th referred to in that 30 minute is the letter I have just read?
A. Yes.
Q. Very well; then the action of that minute of June 30th, was conditioned upon the terms of the letter of September 24, 1915, is that correct?
A. I can only answer by referring to the books, to the letter and minutes.

Q. Do you find any authorization there to make demand upon the Welsbach Company to quit the premises?

A. I do in connection with the minutes of June 12th.

Q. I am not asking you about in connection; I am asking you about this particular minute.

A. Yes, I do.

Q. Where is it?

10 A. I have read it.

Q. That is all in your judgment that sustains that demand of July 7th?

A. That is all in those minutes.

Q. Please refer to any other minutes which gave you authority to serve that demand.

A. June 12, 1916.

Q. What part of the minute?

A. "It was moved by Mrs. Chew, seconded by Miss Brown, that the company refuse to purchase 20 any property belonging to the Welsbach Company and the Welsbach Company be notified that the sprinkler system belongs to the Ancona Company, and the Welsbach Company be given notice to vacate immediately at the end of the term of their lease. Carried."

Q. But you just told me, I believe, that the offer of a further lease, for five years at $15,000 a year, remained open until June 30, 1915; is that correct?

30 The Court: Mr. Stockwell, is not that a construction of their communications? Isn't that not for him, but for the ——

Mr. Stockwell: He is secretary of the company.

The Court: Yes, I understand, but if their communications were all in writing, it is a construction of these letters and not for the witness to say.

Mr. Stockwell: If your Honor please, my proposition is this, that there is no inherent authority in the secretary to make a demand under the statute, that he must therefore show or someone else must show the authority to make the demand.

The Court: That may be so, I am not questioning that, but what I am saying is that it is not for him to construe the written communications that have passed between the parties. 10

Mr. Stockwell: Not, but I am asking him if there is anything else in the minutes other than what he has read showing any authority in him as secretary to make that demand of June 12th.

The Court: That is a proper question, but not the question you asked.

The Witness: I find nothing further than what I have already read. 20

Q. Under your by-laws I believe the company was managed by a board of directors; you have by-laws there, haven't you? Just read the section governing that.

A. I have here the act of incorporation and the by-laws.

The Court: I do not see why this letter of October 6, 1915, is not offered in evidence; if it is intended to get the state of mind of these parties as to this property, it seems to me all their communications ought to come in. 30

Mr. Wescott: I don't know what the letter is.

The Court: That is the one in which the company says that they have no interest in the property except from the standpoint of purchase, away back in October, 1915.

Mr. Wescott: Well, put it in evidence; I haven't seen the letters, but that is evidently an important letter.

10 By Mr. Weaver:

Q. Mr. Scott, you got that letter, the letter of October 6th?

The Court: Well, you can do it in the same way you did the others; you used the book for it.

Mr. Weaver: Then we offer in evidence here the letter of October 6th, addressed to Ancona Printing 20 Company signed by Sidney Mason, president.

Mr. Wescott: What does the letter say?

Mr. Weaver: (Reading) "Dear Mr. Chew: Your favor of the 24th ultimo received: If the Ancona property which we are now occupying is not for sale, we are without further interest, as new buildings are now under construction, which make it no longer necessary for us to consider a further lease of the 30 premises. In letter of September 18th, we invited a counter-offer of sale of the premises, but owing to the action we have now taken we are without interest in considering the purchase of the property above the figure of offer in our letter of June 30th, last. Should you care to reconsider same we shall be glad to hear from you prior to the first proximo,

on which date we desire our offer to be considered withdrawn. Yours very truly, Sidney Mason, president."

Mr. Stockwell: May I ask whether this constitutes all the correspondence now between the parties, Mr. Weaver?

Mr .Weaver: No.

Mr. Stockwell: Why not put them all in? His Honor said he would like to have all the correspondence in; let's have it all in. 10

The Court: No, I did not say I would like to; I said I did not see why it wasn't all put in.

Mr. Stockwell: Then we will ask them to put it all in.

Mr. Weaver: We think that is the only letter that has any importance. 20

Mr. Stockwell: I want you to produce any other letters which were had between these parties as to the renting and sale of the premises.

Mr. Weaver: I object to that; you can't get it in our case.

The Court: I cannot prevent counsel asking the witness to produce some letters; he can do that in court or any time. 30

The Witness: No.

Q. Were there any other letters?
A. During what period of time?

Q. During the year 1915 and 1916.
A. I can't recall anything further that had anything to do with negotiations.

At this point a recess was had until Wednesday morning, September 26th, 1917, at ten o'clock A. M.

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10 Camden, New Jersey, September 26, 1917.
Trial of the cause resumed on the above date, at ten o'clock A. M. pursuant to adjournment, in the presence of counsel for the respective parties.

Mr. Stockwell: I wish to add this to the motion made yesterday, and to clarify one point. I suggested as one reason for a non-suit that the defendant had paid a part of the rent and that had been accepted; this was in the nature of taxes paid in
20 accordance with the terms of the lease.

The Court: How was it accepted, Mr. Stockwell?

Mr. Stockwell: It was not returned, and as a matter of fact it is charged against the defendant as part of the rental in the declaration and complaint; credit is given in the declaration for payment on account of rental. The basis of that point is this: The lease made the payment of taxes an integral part of the
30 rent; the payment of taxes was a payment of part of the rent. The payment and acceptance of rent or any part of it is a recognition of the relation of landlord and tenant. A recognition by the landlord of that relation precludes any right to recover any penalty under the statute. The declaration charges as a part of the rent the taxes in accordance with the terms of the lease and then credits on account.

The Court: Account of what?

Mr. Stockwell: On account; it says, "On account."

The Court: On account of rent?

Mr. Stockwell: Well, on account.

The Court: Well, on account of rent? 10

Mr. Stockwell: Well, the declaration speaks for itself.

The Court: I am asking you.

Mr. Stockwell: I will argue on account of the amount due. He says double the penalty; we say it was on account of rent, and that money has not been refunded and he has made a credit as I have stated. 20 With reference to the question of the authority of the secretary to serve the notice or make demand, we say that for the purpose of our motion, whether or not that secretary had the power is of minor importance, because even if he had actual authority the certiorari granted to the Supreme Court of itself shows that there was a doubt under the law as to whether he did have authority to serve that notice and make that demand, and that would amply justify, that point alone would justify the retention of the 30 premises.

The Court: I do not see my way clear, gentlemen, to grant a non-suit in this case. Note an exception.

THE CASE FOR THE DEFENDANT.

Sidney Mason, sworn.

By Mr. Stockwell:

Q. Mr. Mason, you are the president of the Welsbach Company, the defendant?
A. I am.
Q. The plant of this corporation is in Gloucester
10 City, this county?
A. It is.
Q. How long has your plant been located there?
A. Since about 1887.
Q. When did the Welsbach Company first become a tenant of the Ancona Printing Company?
A. At that time.
Q. Was there any other corporation in business there which your company succeeded, which was a tenant of the Ancona Company before 1887?
20 A. I am not familiar with anything prior to that.
Q. And it was in possession of the premises—they were in possession of the premises ——

Mr. Wescott: What importance has all this? Is it necessary to consume this time?

Mr. Stockwell: This will be shown to be important.

Q. And the premises which are involved in this
30 suit, they were occupied from 1887 by your company?
A. Yes.
Q. During that period did your company install any fixtures in that property?
A. They did.

(Objected to.)

Mr. Stockwell: The lease gives a tenant the right to remove any fixtures at the termination of the lease. We propose to show what fixtures were installed and their nature. It all relates to the bona fides of the defendant.

The Court: I think this may have bearing on the question of the good faith of the defendant.

Q. Can you give us an idea what those fixtures were? 10

A. Well, they were complete ——

Mr. Wescott: Another trouble, if your Honor will pardon me for breaking in here, is that this is an assumption these things were fixtures.

Mr. Stockwell: I will change the form of the question.

20

Q. Please tell me what the fixtures were that were installed.

Mr. Wescott: That is a matter to be determined by law.

The Court: I suppose it is not a question so much of the actual fact of what they were, as how the parties regarded them. You see, this is an action impinging on the good faith of the parties as opposed 30 to their holding over wilfully.

Mr. Wescott: I will withdraw the objection.

Q. Tell me what fixtures you did install during that period.

A. We installed a complete manufacturing plant. The buildings were substantially nothing more than shells when we entered them, and we put in ——

Mr. Wescott: I object to that, and move that statement be stricken. No, I won't, let it stand.

The Witness: And we simply rented from them the bare plant; all they had on the property was
10 practically an engine and a small boiler plant.

Q. Now, what did you install?
A. We installed all the machinery, all the shafting and buildings, etc., required for our purposes; a gas works, sprinkler systems, lighting systems, additional boiler plant.
Q. Tell me approximately the cost of the fixtures that were installed.
A. The total value of all the fixtures we installed
20 would approximate throughout the period of our occupancy over a million dollars.
Q. What was your company engaged in?
A. In the manufacture of gas mantles and accessories for incandescent gas lighting.
Q. Did the premises which are involved in this suit constitute your entire plant or only a part of the plant?
A. Our entire plant.
Q. At the time of the—on June 30, 1916, did the
30 premises involved in this suit constitute your entire plant or only a part of the plant?
A. A part of the plant.
Q. Were these fixtures of a character to be easily removed?
A. No, they were fixtures.
Q. Well, were they small in size, simple in opera-

tion or were they large in size and intricate pieces of machinery which would take time and much expense to remove?

A. They were intricate pieces of machinery and in many cases large pieces of machinery which would take considerable time to remove.

Q. How many hands were employed in this factory in June, 1916?

(Objected to.)

10

The Court: I think he may answer.

(Exception noted for the defendant.)

A. About two thousand hands.

Q. How many machines were there in that property?

A. I couldn't tell you.

Q. Can you give us an approximation?

A. No, I could not even approximate it.

Q. How many buildings were occupied?

20

A. All of the buildings.

Q. How many were there?

A. Well, the real buildings, there were probably a dozen or more there, with a whole lot of small sheds and out-houses which were storage places.

Q. Did your company put up any buildings on the property while it was there?

A. They did.

Q. How many?

A. Well, I couldn't give you the exact figures; I haven't looked that matter up; but I can state that they put up to my present recollection four buildings.

30

Q. Those buildings were left there when you removed from the property, were they?

A. They were.

Q. Did you take away all the fixtures when you left the property—I mean, all the fixtures which you had installed, or did you leave a part?

A. Well, we took away all the fixtures that we had installed, as far as I know, but part of the connections for those fixtures we did not remove.

Q. Who would know about that, Mr. Stites?

A. Mr. Stites, the general manager of the company would be familiar with that.

10 Q. Between June 30, 1916, and December 30, 1916, was your company engaged in the removing of the fixtures which you had installed in that property?

A. They were.

Q. And were you doing it as expeditiously as you could in view of the labor conditions that prevailed?

A. We were, yes.

Q. And as soon as you had removed the fixtures which were actually removed, did you quit the prop-
20 erty?

A. We did.

Q. For the year 1916, did your company pay the taxes upon that property?

The Court: There is no dispute about that, Mr. Stockwell.

A. Yes.

30 Mr. Stockwell: I want to offer in evidence the tax bill.

The Court: Well, there is no use doing that; it only complicates and multiplies. I will reject it without an offer; there is no use taking up time with things like that, you know.

Mr. Stockwell: I would like to offer the tax bill because it is a receipted bill.

The Court: It is refused; go on with the next. Note an exception. There is no use proving things that are already admitted.

Mr. Stockwell: Your Honor, we simply felt that we had a right to offer the receipt which we obtained for that payment. 10

The Court: I know, but, Mr. Stockwell, it is simply taking up time. You can't get anything stronger than an admission, you know; it only cumbers the record.

Q. When you left the property, did you make a tender of $5,000 in cash—when I say you, I mean your company—to the Ancona Company?

20

The Court: I think that also was admitted, was it not?

Mr. Stockwell: I don't think so.

The Court: Well, if there is any doubt about it, go on.

A. Yes.

30

Mr. Stockwell: I call for the letter of December 30, 1916, addressed by the Welsbach Company to the Ancona Printing Company.

Q. Is that the letter which was delivered to the Ancona Company at that time with the $5,000?
A. Yes.

Q. Did you make this tender personally?
A. No.
Q. Through whom was it made?
A. The treasurer of the company, J. M. Devlin.
Q. Is he here in court?

The Court: I think the other side testified to that.

Mr. Stockwell: No, I asked that it be admitted,
10 and your Honor would not go into that at the time.

The Court: No, I thought the other side admitted that there had been a tender of $5,000?

Mr. Stockwell: No.

The Court: I somehow got it in my mind.

(Said letter is offered and marked Exhibit D1.)

20

The Court: That was refused, was it, Mr. Mason?

The Witness: The offer was refused.

A. It did.
Q. Proceedings were started in the District Court, according to the record offered here, Mr. Mason, against the Welsbach Company by the Ancona Printing Company to dispossess the Welsbach Company
30 of those premises in July, 1916. The Welsbach Company defended those proceedings, did it not?
Q. And were they defended by the Welsbach Company by advice of counsel?
A. They were.

Mr. Wescott: That is objected to.

Q. And was your defence in those proceedings —

The Court: Just a moment, Mr. Stockwell; objection is made. I don't see any objection to it.

Mr. Wescott: All right.

Q. And was your defence in those proceedings that there were negotiations between the Welsbach Company and Ancona Printing Company before and subsequent to June 30, 1916, for a new lease of the property or a purchase of the property?

A. Yes.

Q. And that thereby a tenancy at will was created and that you were therefore lawfully in possession of the premises?

(Objected to; objection sustained.)

(Exception noted for the defendant.)

Mr. Stockwell: May I ask the ground of the objection? Is it because the question is leading?

The Court: Oh, no, I suppose it is because it states a conclusion of law; that is the principal thing that is in the Court's mind.

Mr. Wescott: Yes, it is in my mind; it is leading and a duplicate question.

Mr. Stockwell: I would like to restate the question if the objection is that it is leading.

The Court: It would be no use to restate a question that asks the witness to state that they were a tenant, because that is purely a construction of the acts of the parties.

Mr. Stockwell: Very well, your Honor, I am simply asking this defendant the ground of his defence.

The Court: Well, that is not the form of the question; you are a good ways from that in your question.

Q. What was the ground of your defence in that
10 District Court action?

(Objected to.)

The Court: I suppose the record shows that, doesn't it?

Mr. Stockwell: I can't say whether it does or not.

Mr. Wescott: It don't make any difference what
20 the ground of defence was; there was a defence.

The Court: If you are trying to get at the motive of these parties, what actuated them, that is one thing ——

Mr. Stockwell: That is what we are after at this particular stage of it.

The Court: I don't see why you don't ask him
30 that, instead of asking him what happened in the District Court.

Mr. Stockwell: As a matter of fact, this is not a complete record of the District Court, I call your Honor's attention to it now, because there is not a line of testimony attached to the record, and the testimony would show the defence.

The Court: Well, if it is incomplete you have the right to show it.

(Question repeated as follows: "And that thereby a tenancy at will was created and that you were therefore lawfully in possession of the premises?")

Q. After June 30, 1916?
A. Yes.
Q. And was there also raised in that same proceeding the question of the authority of the secretary of the corporation, Mr. Scott, to make and serve the demand for possession? 10
A. Yes.
Q. And following the judgment in the District Court was there a certiorari obtained carrying the proceedings for review to the Supreme Court?
A. Yes.
Q. Did the Welsbach Company in June, 1916, desire to renew a lease for the premises in question? 20

(Objected to.)

A. They did.

The Court: Just a moment; the witness ought not to answer when objection is made. I suppose, Mr. Stockwell that ——

Mr. Stockwell: I am trying to follow it up by showing just what was done to express that desire. 30

The Court: I think the acts of the parties and communications are ——

Mr. Stockwell: I am going to follow that up by the correspondence and oral communications.

The Court: That is all competent enough; go on with the real facts.

Q. Did you have a conversation with David S. B. Chew, who was the treasurer of the Welsbach Company, at that company's office, or the Ancona Company—I said the Welsbach Company—with David S. B. Chew, the treasurer of the Ancona Company, at the Ancona Company's office in Philadelphia, on
10 June 22nd or 23rd, with reference to a prospective sale or lease for this property?

The Court: That is 1916?

Mr. Stockwell: Yes.

A. On June 22nd, I saw Mr. Chew at the office of the Ancona Printing Company and in the course of our conversation we discussed a purchase as well
20 as a lease of the premises. Mr. Chew invited offers, and at that time I told him we had made our final offers; that we were prepared to consider any propositions they had to make as we were very desirous of continuing to occupy the property, preferably by purchasing it. Mr. Chew then argued as to the value; he stated that the price they had given Mr. Bodine or he had stated to Mr. Bodine, rather, was a very reasonable one.

Q. Did he state what that price was?
30 A. Yes, he stated to me that it was $350,000. I told Mr. Chew that we—or Mr. Chew stated to me that they had always considered that the Welsbach Company would be the ultimate, logical owners of the property, that their growing and expanding business seemed to him to warrant it, and he wanted to know why we didn't retain the plant for the

manufacture of the burners, we at the time having those burners manufactured at Waterbury. I told him that we desired to keep the plant, and if he wanted to dispose of it we were prepared to buy it, otherwise we would consider a short term lease. At that time we had on the premises a large gas works which could not be removed and become of very much, if any value, to us; hence we regarded the property as having value to us from that standpoint. We also had on the property at that time a chemical department which was very extensive and which was very pressed for production—— 10

The Court: You told him this, you mean.

The Witness: Yes, and that we would desire that property in order to preserve those values, but if we were to take a lease it would have to be a short lease, as we could not consider a five-year lease. Mr. Chew stated that they did not want—they were not anxious to sell the property and suggested to me that we take a long term lease, a twenty-year lease, in order that we could preserve our equities. I left Mr. Chew with the situation about the same as we had always left the situation getting nowhere. 20

Q. Now, you had had several leases of this property, hadn't you?

A. We had.

Q. And prior to this last lease you had had a lease dated 1904, hadn't you? 30

A. We had.

Q. Now, at the time when you took this 1904 lease, did you have any negotiations then for that lease—did it extend over any considerable period?

A. The 1904 lease was for ten years and it was

the last preceding the renewal of one year, which was 1915. At the time of negotiating that lease——

Q. That is, the 1904 lease?

A. The 1904 lease, I had interviews and correspondence with Mr. D. S. B. Chew. At that time they wanted an increased rent. We had previously paid $6,000 a year and taxes. I was unable to come to any satisfactory agreement with Mr. Chew as to the amount of the rent, and I had a visit from Mr. Sam-
10 uel Chew——

Q. Is he here in court?

A. He was in court—yes, he is in court.

Q. Is he an officer of the Ancona Company?

A. He is now.

Q. Was he connected with it then?

A. I don't know.

Q. An officer or director?

A. I haven't the slightest idea.

Q. Was he a brother of David S. B. Chew?

20 A. He was a brother of David S. B.. Chew. He called at my office in the U. G. I. Building, Broad and Arch, Philadelphia, early one morning, and told me that the Welsbach Company could not under any circumstances have a renewal of the lease unless they paid a rental of $10,000. As I did not know Mr. Samuel Chew's connection with the matter and never had any interviews with him on it, I refused to discuss it with him, and communicated with Mr. Hayes, who was the counsel of the company ——

30 (Objected to.)

The Court: I think we are a long ways back.

Mr. Stockwell: If your Honor please, this is pertinent to show that they had the same trouble in 1904 that they had this time and just what happened as a result of that.

The Court: I haven't shut out the general fact, but I don't want to go into any more detail than we can help with this phase of it. This is so far back, you see.

Mr. Stockwell: It simply shows that they had to have the same negotiation before that they had this time.

The Court: I think the fact that they did have such negotiations is pertinent as showing a state of mind, probably, but the details of it —— 10

Mr. Stockwell: He is about through on this, I think, from what he told me before.

The Witness: Mr. Hayes called to see me and told me he would take the matter up with Mr.——

(Objected to.) 20

Q. As a matter of fact, who conducted the negotiations after that for the Welsbach Company?

A. For the Welsbach Company? I did.

Q. And for the Ancona Company?

A. Mr. Hayes.

Q. And who attended to the execution of the lease for the Ancona Company? Where did you make your settlement under that lease, at Mr. Hayes' office or somewhere else? 30

A. The negotiations were conducted in my office, Broad & Arch.

Q. Where was the settlement made—where was the lease executed?

A. They executed it in their office and we executed it in our office.

Q. And through whom were all those details carried on?

A. Mr. Hayes and myself settled the matter in my office. He had been to see Miss Brown and Mrs. Chew and had come to me and stated if we would take a lease for $6500 it would be acceptable and I told him then and there to go ahead and draw up the lease and we would take it.

Q. Did you take it?

10 A. We did take it.

Q. And you did not pay any $10,000?

A. No.

Q. Now, did you have that in mind when you approached negotiations for the renewal of the lease in 1916?

A. Yes, I had that in mind.

Q. In 1915, when you took up with Mr. Chew, David S. B. Chew, a renewal of the lease for the short term, that is, from June 30, 1915, to June 30,

20 1916, did you negotiate with—which Mr. Chew did you negotiate with?

A. Negotiated with Mr. David S. B. Chew.

Q. And did you have any conversation with Mr. David S. B. Chew then with reference to the term of that lease, the new lease and the possible removal by you of fixtures which you were allowed to remove under that lease?

A. Please read that question.

30 (Question repeated.)

A. I saw Mr. Chew in regard to continuing in the property and endeavored to get him to sell us the property.

By the Court:

Q. When was that, Mr. Mason?
A. This was in 1914.
Q. This was before the last lease was made?
A. Yes, it was the outcome of my conference——
Q. Was the last lease a one-year lease?

Mr. Stockwell: There is a little confusion there, your Honor; the last lease is dated 1914, but it is to run from 1915 to 1916. 10

The Court: I see; they were still operating under the old lease.

The Witness: They replied by a proposition for a ten-year renewal. We had made up our minds that as we had put so much on to the property and had so much——

20

Mr. Wescott: I object to that and ask to have that stricken out.

The Court: Strike that out.

The Witness: We desired to buy the property, and if we could not buy it we desired a short lease, and I so stated to Mr. Chew. Well, they protested and finally consented to a five-year lease which I stated was not acceptable to us, that we wanted a one or two-year lease. 30

The Court: When was this?

The Witness: I should judge in November, 1914. The final result of the negotiations was their agreeing to give us a one-year extension, provided we would pay $10,000 a year rent.

By Mr. Stockwell:

Q. Now, did you state to Mr. Chew at that time that the company proposed to build on an adjoining property?

A. Yes.

Q. Just give the conversation in reference to that.

A. I told him that we had bought a plant, that it was our intention to put up modern buildings in
10 order to efficiently produce our goods, and we would like to buy his plant, and if we could not buy his plant we would simply take a short lease pending the completion of our buildings. I furthermore stated that we were not desirous of proceeding with the buildings at that time on account of general financial conditions.

Q. Did you tell him at that time—Strike that out. Did you explain to him at that time any proposed plans for the new buildings?

20 A. No, not at that time. At the interview in June or July, 1915, when I was negotiating for a continuance of the current lease, the last lease, I told Mr. Chew that we had plans prepared for our new plant, and I displayed those plans to him as an evidence of our intentions and to make him realize that unless we owned the Ancona plant we ultimately would remove from its property. I urged upon him that they seriously consider a sale of the property to us, and that if they would not sell us the property
30 we would be very glad to take a short lease in order that we might complete our plant as per those plans. I explained to him that the time was short and that it was urgent and finally said: "Mr. Chew, we of course having been tenants for thirty years, if our buildings are not ready by the time the present lease runs out, you surely won't throw us off of the prop-

erty?" Mr. Chew made no reply to that at all, and I said, "Well, I will assume your silence means that you would not do such a thing."

Q. Did he reply to that statement?

A. No reply whatever. I would like to add that there was present at that interview Mr. Scott and Mr. Oswald Chew and Mr. Townsend Stites of the Welsbach Company.

Q. Following that interview did the Welsbach Company lay its plans to construct the new buildings 10 and proceed to construct them?

A. Instructions were issued to return the plans to the builders for estimates for building the plant in order that the expenditure might be referred for action to the board of directors. As soon as that was in my possession it was acted upon by the board and authority was granted. The building operations were commenced, I think, by October of that same year.

Q. And did the work progress on those buildings 20 as fast as the labor conditions and other conditions would permit?

A. It progressed as fast as it was possible to make it go. There was, of course, a considerable delay due to labor conditions and due to inability to secure materials.

Q. Where was this new plant located?

A. At Gloucester City, New Jersey.

Q. Where with reference to the old plant?

A. On a lot adjoining on the north the Ancona 30 plant.

Q. Were those new buildings completed on June 30, 1916?

A. They were not.

Q. Did Mr. Chew know at that time that they were not completed?

A. He did.

Q. Had he been on the property and inspected the property, both the old buildings and the new, prior to June 30th?

A. Yes.

Q. In the month of June?

A. I am not sure what month it was.

Q. Well, near the month of June?

A. Yes, in the summer of 1916.

Q. As soon as the new buildings were completed
10 and the fixtures were removed from the old property, could be removed from the old property by you, were the premises vacated?

A. They were.

Q. And that was at the time when the keys were surrendered and tender of cash made?

A. It was.

Q. Following this interview between you and Mr. David S. B. Chew on June 22nd, I think you said it was, did you have any subsequent conversation with
20 him yourself?

A. No.

Q. Did you see Mr. Scott?

A. No.

Q. Or any other member of the firm?

A. No.

Q. Did you interview Mr. Scott just before June 22nd?

A. I called at the office to see Mr. Chew in the early part of June, I think it was the 7th or 8th,
30 and in his absence I saw Mr. Scott. I left a message with Mr. Scott to give Mr. Chew.

Q. Did you then take up with them the question as to whether or not they would be willing to take the sprinkler system over, which you had installed?

A. The purpose of my visit was to give them an opportunity to buy——

Mr. Wescott: No, answer that question; don't state the purpose.

The Witness: To buy the sprinkler.

Mr. Wescott: I object.

(Question repeated.)

A. Yes. 10

Q. What did you say to Mr. Scott and what did he reply?

A. I told Mr. Scott—I asked for Mr. Chew and Mr. Scott said Mr. Chew was not there, and I told him I had called in regard to a letter that I had written in reference to the sprinkler system, and asked him to say to Mr. Chew that we would be very glad to dispose of those fixtures to them as they were a desirable thing on the property. He said he would notify Mr. Chew. 20

Q. Following those two interviews—did you continue—did the company continue its negotiations? I will withdraw that. After these two interviews, did your company employ the firm of Bleakly & Stockwell to continue the negotiations with the Ancona Company for a new lease or the purchase of the property?

A. They did.

Q. And did Mr. Bleakly at your request interview Mr. Chew and Mr. Scott? 30

A. He did.

Q. With reference to these matters?

A. Yes.

Q. And did Mr. Bleakly report to you the result of each interview?

A. Yes.

Q. And receive new instructions with reference to these negotiations?

A. Yes.

Q. Did that continue after June 30th?

A. It did.

Q. Did it continue right up to July 7th?

A. Yes.

Q. The day the demand was served and proceedings were started?

10 A. It did.

Q. During any of your interviews with Mr. Chew or any other member of this corporation, the plaintiff, did they suggest to you directly or indirectly that you would not be allowed to remain in the property after June 30th to remove your fixtures?

A. No.

Q. Several letters have been offered in evidence here earlier in June suggesting that final offer had been made and final refusal given. I understood you

20 to say that negotiations regardless of those communications continued orally right up until July 7th?

A. They did.

Q. Was the District Court suit defended by your company in good faith?

(Objected to.)

Q. Believing that it had a just right to retain possession?

30

(Objected to.)

Q. After June 30th?

The Court: What is the question, the company?

Mr. Stockwell: Yes, your company.

The Court: I think you have a right to ask the witness; he is president.

Mr. Stockwell: Just change the question.

Q. Did you as president of the company ——

(Objected to.)

The Court: No, I think that is competent. 10

(Exception noted for the plaintiff.)

A. I did.

Q. Did you believe before June 30th and even after June 30th, 1916, that an arrangement would be made between the Welsbach Company and the Ancona Company either for a purchase of the property or a new lease of the property?

A. I most assuredly did; we had occupied the property for thirty years—— 20

Mr. Wescott: Oh, I object.

The Court: Not your reason, Mr. Mason, just the fact.

Q. Did you know that there had been prepared by the Ancona Company a form of renewal lease?

A. Yes. 30

Q. Were you told that by Mr. Bleakly?

A. Yes.

Mr. Wescott: I object to that and move to have it stricken out.

Mr. Stockwell: Now, I propose to call Mr. Bleakly simply to show that he acted as an intermediary and he told that to this gentleman, that he had it there, communicated that to the company.

Mr. Wescott: Is that allowed?

The Court: Yes, I think it is competent.

10 (Exception noted for the plaintiff.)

The Court: Gentlemen, I might state that, as I construe this statute, the term "wilful" implies a wrongful purpose, a wrongful heart, a bad heart in the doing of what was done, and that anything that entered into the minds of the acting parties here that throws light upon that state of mind is competent, and, of course, a communication made by Mr. Bleakly to them reporting what he had done or what was 20 likely to be done enters into that question. Is there any diversity of opinion between counsel as to the meaning of the statute?

Mr. Wescott: Well, I suppose that wilfulness is a state of mind. My notion is that that state of mind is settled by the proceedings in the District Court. Here was a lease in writing, a contract the same as a note or mortgage. Take a mortgage—it has a date when interest shall be paid and the principal shall 30 be paid. Now, the man making that mortgage knows when he has to pay interest and when he has to pay principal. He don't do it, he is proceeded against and he says, "Oh, I ought to have a reasonable time to pay it, and I am delaying paying in good faith." Now, here is a contract to let the premises, which provides that on the 30th day of June this company

should vacate these premises. They knew it; there is nothing in that contract which gives them the right to hold those premises for the purpose of removing fixtures or for any other purpose. They knew that unless they moved when that contract told them to move they would be put out, didn't they? They knew, according to the proof in this case that the landlord would not renew the lease, and therefore the contract told them when they had to get out. Now, that is true to my mind beyond all question. They did not get out for some reason—I don't care what their motives are declared to be—for some reason they didn't get out. They had been notified again and again that they would have to get out at the end of that term, and they knew they would have to get out, but they didn't want to get out; they negotiated to stay in and the negotiation failed because the Ancona Company would not either re-lease the property or sell it to them. Now, is there any possible question that at that time they new they had to get out and when they had to get out? Why, suppose that weren't the law, there isn't a tenant on earth that could not hold a property and hold it in good faith, he would afterward say, notwithstanding his contract to get out on a fixed day. Now, they having declined to go out, under the circumstances, pursuant to the will and direction of the legislature of this state, we served a peremptory notice on them to get out, and still they didn't get out. Then we took them in the District Court in regular proceedings before a capable Judge and a jury and tried the issue which they said was good faith, they were holding there in good faith, they didn't want to get out because they were holding in good faith, and that issue was submitted to the jury and the jury found they weren't holding in good faith, they were holding contrary to the con-

tract, and contrary to the evidence, they were holding for an ulterior purpose, so they were put out by the judgment of the Court involving this very problem which we are now retrying. Now, then, as the case now stands, on their own doctrine, on the documentary evidence here, they did not show good faith, and if they be permitted to come again in another court and say they did hold that property in good faith, that in my mind is contrary to well-established
10 legal principles. Now, I will admit that wilfulness is a state of mind, but I reiterate that that state of mind was investigated in another court and settled against them. They are trying again now, in order to escape the consequences of their conduct, to re-exhibit the state of their mind, which was foreclosed in a court of record, solemnly and forever; it is a finality; and that is the reason we make these objections. It seems to me we are going a great way to investigate this state of mind twice, in two different
20 courts, when it was once settled in a proper court having jurisdiction of the subject. Now, all these conversations and all these interviews of course may have something to do with the state of mind; they were paraded before another jury and in another court and they repudiated them. Now, then, it seems to me on the admitted facts that wilfulness has been shown already and they cannot escape it by saying, "Oh, we were honest about it; we thought it would be a business advantage to us and we talked to these
30 people." Of course, they talked to them. These people repudiated the plaintiff to its face, and all its efforts to keep that property.

The Court: I think the illustration which you make of the note is a very apt one as throwing light upon this situation. If a man has a note due upon

a certain date and he doesn't pay it, undoubtedly he makes himself amenable to an action for recovery upon that note. If, however, another action is brought based not upon the note itself, but upon a wilful refusal to pay the note, bad faith, malice, if you please, in that sense, a malicious purpose in holding the other out of his money, and the statute affords a remedy of that kind, you would have a parallel situation to this one here. The proceeding in the District Court, I apprehend was upon the legal rights of the parties, as I understand, upon the termination of a lease; the action here is not that, but it is for the wrongful act of the party, if it was such, in refusing to give possession and holding over, and doing it with a mind actuated by bad faith. It seems to me the two issues are very widely apart.

Mr. Wescott: Will your Honor pardon me—I don't want to be prolix, but this is a point I want to make. The nature of the action we were compelled to bring in the District Court was of the same nature as this action.

The Court: Oh, no,—was it?

Mr. Wescott: We were not undertaking to recover a penalty, but we were undertaking——

The Court: No, you did not have to show the same thing you have to show here.

Mr. Wescott: We had to show a definite term, we had to show that they had been requested to get out and they wouldn't get out.

The Court: Yes.

Mr. Wescott: Well, now, that drove us right away into the position involving this penalty, didn't it?

The Court: Now, did it? Listen a moment——

Mr. Wescott: Just one second, your Honor, pardon my persistency; I have much respect for your suggestions, I want to hear them, but I want your Honor to understand the thought exactly that is in my
10 mind. The mere fact that they held over and would not get out compelled us to do what? Why, to resort to that section of the law which involves this case, first give them a peremptory notice to get out, then if they wouldn't do it put them out, and the consequences which would follow would be what? A penalty for holding over. Now, what is involved in their holding over under those circumstances? Wilfulness; that is my point. I maintain, in other words, that a man who knows when his term ex-
20 pires, who knows his landlord won't continue that term and who knows his landlord has requested him to get out, and refuses to get out, and drives us in order to get possession to resort to this very legislative scheme to get him out, that that involves on his part legal wilfulness. It isn't a moral question; it is legal wilfulness; it is his holding over when he knows he ought not to hold over; it is his holding over against the will of his landlord; it is his holding over until he com-
30 pels us to resort to this legislative scheme to get him out, a part of which is a penalty. Now, he knows the law presumably, but not actually, of course, as well as your Honor does, and he knew that law, and he knew that when he refused to get out he was invoking the infliction of a penalty. Knowing that situation, I say, involved wilfulness on his part.

Now, to let him come into court and say, "Well, that is all true; I knew I had to get out, I knew the contract, I knew my landlord would not renew, but still I held on in good faith, first because I had value there, I had fixtures there, and I had this, that and the other there, and I was going to hold on anyhow,"—now, there is a sharp legal conception involved in the machinery that is before your Honor; it is not a mere empty performance. Why, it seems to me that if this company is allowed to escape on the theory that in 10 their minds they can now say they acted in good faith, every landlord in the state of New Jersey is precluded from visiting this penalty on a tenant, because you cannot conceive of a case of a tenant holding over after a definite term where, when this penalty is undertaken to be visited upon him as punishment, he cannot and would not come into court and say, "Oh, I held in perfect good faith; I thought I had a right; my landlord said this and that and the other, and I had a interest in the house, I had re- 20 paired the walls and put in a new heating apparatus and done this and that and the other, so that when knowingly I had no right to stay there I assumed to stay because I had made these improvements in the property." I say that involves legal wilfulness. That is our view of the case as it now stands.

Mr. Stockwell: To the attorney general's remarks, your Honor, may I say this: First, the question of good faith did not enter in any way into the 30 District Court procedings.

The Court: If it did, it necessarily only entered incidentally and that is not conclusive.

Mr. Stockwell: And the conversations which have been detailed by Mr. Mason, the major part of them

were not in evidence at all in that case. Furthermore, that District Court proceeding has nothing whatever to do with any other case which may be brought regarding that or any other matter. The very fact that that District Court Act says that there shall be no appeal from the judgment of that District Court on the question of ouster shows it when we read the next section which says that the relief of the tenant who has been dispossessed wrongfully
10 by these landlord and tenant proceedings shall not be by appeal from that judgment, but by an action of trespass against the landlord who has worked a wrong against the court. That of itself shows the proceedings are not binding. Now, if your Honor please, may I just call the attorney general's and your Honor's attention to the language of this White vs. Wright. This is the Judge's remark: "The usual course has always been by action of trespass for mesne profits, and there seems to be no reason for
20 substituting this action for it, as in trespass for mesne profits, the landlord may recover the full value of his land." He is not trying to do that; what he wants to do is to brand these defendants as quasi criminals and exact a penalty from them for having committed a fraud. If your Honor will refer to the old English Act—and I think you will find the same in this act, because it is identically the same in wording—the heading of that act is, "An Act to Prevent Fraud by Tenants against Landlords."

30

The Court: Is that the title of this act also?

Mr. Stockwell: I can't find the title; it goes so far back.

Mr. Wescott: It is not the title of our act; our act is a distinct legislative scheme to meet this very situation.

Mr. Stockwell: How does the attorney general know anything about that when there is nothing in the digest to show the title of our act?

The Court: The act probably had an origin at some time as an independent statute or else it came by adoption from the English system.

Mr. Stockwell: When I say verbatim, I mean verbatim; it is the exact wording of that statute from beginning to end. 10

The Court: We have somewhere in our recent reports a most illuminating opinion on the question of malice, legal malice—I don't mean actual malice—which seems to my mind to have a relevancy here as defining what the word wilful means.

Mr. Stockwell: I also want to call your Honor's attention to the case of Stewart vs. Hamilton, 66 Illinois, Supreme Court. 20

The Court: You need not take time with that.

Mr. Stockwell: I just want to read this language; it is the word wilful in the statute: "An action to recover the double value of rent under this statute is in the nature of a forfeiture and is highly penal and the landlord to recover must clearly bring his case within the statute." The Court held that when 30 the lease expired according to its terms, the holding over, although intentional, is not within the statute unless it was knowingly and wilfully wrongful, and where the tenant continued to hold over under a reasonable belief that he was doing so rightfully, he does not incur the penalty.

The Court: Well, there is no question pending. This came about by an interruption from the Court. Go on with the next question.

Mr. Stockwell: If your Honor please, we haven't submitted any authorities to you yet on the question of tenancy at will arising out of negotiations. I will do that sometime when your Honor wishes.

10 The Court: Well, there is a divergence in the testimony here, Mr. Stockwell. The plaintiff says, as I gather, that the writings made a definite term and brought the tenancy to a conclusion on its termination, and in the absence of any negotiations resulting in a new lease, particularly after it was apparent, at least, as they testified, that nothing in the nature of a lease would be accepted, it seems to me it would be difficult to deal with the question as a court question.

20 Mr. Stockwell: I wasn't asking your Honor to rule on it now; I simply wanted to tell your Honor we had the authorities here when you wanted to see them.

Cross-examination.

By Mr. Wescott:

Q. You had a lot of leases in this case, didn't
30 you?

A. Yes, sir.

Q. You knew that the last lease required your company to go out when—what was the date?

A. The last was a renewal for one year——

Q. What was the date that you were required to go out?

A. The lease terminated on June 30th.

Q. Then you knew that on June 30th that lease which your company had signed required you to vacate this property, didn't you?

A. I knew the term of the lease was up on June 30th.

Q. You knew that the terms of that lease required you to vacate that property on the 30th day of June, didn't you?

A. Well, I am not prepared to say that I did; all I knew was——

Q. Then you didn't know that?

A. Well, I am not prepared to say I didn't know it.

Q. You are not prepared to say you did know it and not prepared to say you didn't know it?

A. I never gave it any thought.

Q. You did not give it any thought? Well, this was a pretty important lease, wasn't it? It required you to pay $10,000 a year and the taxes on the property?

A. Yes.

Q. That is no idle proposition even to a corporation like yours that is worth millions, is it? No idle proposition, is it?

A. No.

Q. A pretty serious thing, or didn't you regard it in that light?

A. The lease was a renewal of a previous lease.

Q. I know, but ——

Mr. Stockwell: Now, let him answer the question.

Mr. Wescott: Now, he won't answer the question; I didn't ask him any question.

Mr. Stockwell: If the Court please, may we have a ruling here right now?

(The last portion of the testimony was then read by the stenographer.)

The Court: Is there anything more you want to answer, Mr. Mason?

The Witness: No.

The Court: Then it seems to be ended.

10

Q. If I understand the purport of your testimony, the additions you had made to this property, the buildings you had put on it in the course of your occupancy of it, and the growth and size of your business made it quite important that you should remain in the property, didn't it?

A. As owners.

Q. Well, didn't it make it quite important that you should remain in the property whether as owners

20 or what not?

A. Yes, if we hadn't any other place to go.

Q. Now, don't go to reasoning with me. You have said yes. Now, because it was important for you to remain in the property, considering the size of your business and the additions you had made, and the values that you had given the property, you tried to negotiate with the owners, didn't you?

A. We did negotiate with them.

Q. You tried to negotiate with the owners, didn't

30 you?

A. Yes.

Q. And you tried over and over again, didn't you?

A. Yes.

Q. And you failed over and over again, didn't you?

A. We failed the last time.

Q. Pardon me; didn't you fail over and over again?

A. We always came to some decision.

Q. Did you? The decision was that you were not to stay there, wasn't it?

A. Their decision was that.

Q. Your decision was the contrary?

A. Our decision was——

Q. That you would stay anyhow whether they wanted you to get out or not—that was your decision, wasn't it? 10

A. We always expected to get a lease.

Q. No, wasn't that your decision—I don't care what you expected to get. You say you expected to get a lease; you tried to get a lease and you didn't get a lease, and, therefore, you knew you had to get out, didn't you? Didn't you?

A. Know we had to get out? Of course, we knew we had to get out ultimately.

Q. Very well, then you made up your mind you wouldn't get out, didn't you? 20

A. No, we didn't make up our mind we wouldn't get out; we made up our minds we would do everything in our power to get that property. That is what we made up our minds to.

Q. Yes, you made up your mind that you would do everything in your power to get that property?

A. Yes.

Q. And part of that was staying there, wasn't it? 30

A. No.

Q. Wasn't it?

A. No.

Q. But you made up your mind you would do everything you could to get that property?

A. Yes, we negotiated for it.

Q. Now, pardon me; now, when you negotiated so frequently with these people and failed to reach any conclusion, you then knew that you had to get out, didn't you? Now, answer that yes or no.

A. I have answered that question——

Q. Answer it again.

A. A dozen times; I knew the lease was through on the 30th of June.

Q. Yes, well, all right. Now, knowing the lease
10 was through on the 30th of June and knowing that your negotiations to increase or to get another lease or to purchase the property had failed, why did you stay there?

A. On the 30th of June I did not know that our negotiations had failed.

Q. Oh, you did not?

A. No.

Q. Why not?

A. Because they were pending.

20 Q. Hadn't you received several letters from this plaintiff?

A. Yes, and I had subsequently had several conversations.

Q. With whom?

A. With Mr. David S. B. Chew.

Q. When did you have those conversations?

A. The 22nd of June.

Q. When?

A. The 22nd or 23rd—the 22nd of June.

30 Q. Well, is that all?

A. Mr. Bleakly was in conversation with Mr. Chew under my instructions subsequent to that period.

Q. Now, as I understood you, for the purpose of coercing—you didn't use that word, I am using it—for the purpose of bringing pressure upon the mind

of Mr. Chew or the plaintiff in this case to let you have that property, you exhibited to them plans of a proposed building by you, didn't you?

Mr. Stockwell: I object to that question; there is no evidence of coercion.

(Objection overruled.)

Q. Didn't you? 10
A. No.
Q. Didn't you say you exhibited plans to Mr. Chew?
A. I did.
Q. And didn't you say you exhibited those plans to him for the purpose of letting him see that if he did not sell you the property you would build?
A. We intended to build anyhow; I told him so.
Q. Didn't you say to your own counsel a little while ago in the hearing of the Judge here and this 20 jury that you took these plans to Chew and showed them to him for the purpose of giving him to understand that if he did not sell the property you would build—didn't you say that or in effect that?
A. It may have had that effect, but we would have built anyhow.
Q. All right; didn't you say that to him?
A. Well, I will have to ask you to refer to what I did say; no doubt it gave that impression.
Q. Now, when was that? 30
A. That was in June or July, 1915.
Q. Very well, June or July, 1915; that was a year before your lease expired, wasn't it?
A. Yes.
Q. Very well; when did you actually begin to build those buildings?
A. The day following the interview instructions

were given to obtain the estimates on the buildings as designed, and building operations, as I call it, were started in October or November of that year.

Q. Not until October or November?

A. No.

Q. And they were not started until when, with reference to your negotiations with these people?

A. They were started in either October or November.

10 Q. They were started when the letters you had from the plaintiff and negotiations with them informed you that you could not have a term any longer, weren't they?

A. No, we never regarded any letter that we got ——

Q. I don't care how you regarded it; I am asking you for a fact.

A. Well, we never regarded any letter we got from them as terminating the settlement of either

20 lease or sale.

Q. I know, you say you didn't, but it was after you got those letters that you commenced to build that building, wasn't it?

A. Yes, there was some correspondence preceding that, of course; it is on record.

Q. Now, let's don't quarrel; we will get along very well. How big was that building?

A. What building?

Q. The one you showed the plans of to Mr. Chew

30 and threatened to build if you did not get the property from him?

A. We didn't threaten to build if we did not get the property from him.

Q. How big was that building?

A. If you want to know how big the building was——

Q. Yes, that is what I am asking you.

A. I can't tell you; they were very large.

Q. Well, give us a guess.

A. I can't guess; I haven't any idea of guessing.

Q. You were president of the company and you saw these buildings, didn't you?

A. Yes.

Q. And you have no idea of their size?

A. Oh, yes, they were large, comprehensive buildings. 10

Q. How large?

A. Perhaps five or six different buildings.

Q. How large were they?

A. Three-story buildings.

Q. Brick?

A. No, they were brick and concrete, yes.

Q. You began them in November, 1915?

A. It is my thought they started to build at that time, yes, the actual building operations; preceding that the excavations and cutting down of trees, etc., 20 were done.

Q. Sure. Now, when did you finish those buildings?

A. I haven't got the date in my mind.

Q. Well, just make a real good, honest guess at it.

A. I should say that the buildings were finished about September or possibly not until October of 1916.

Q. Well, how near finished were they by the 30th 30 day of June, 1916?

A. Well, they were finished up to the point that they required about two or three more months' work.

Q. Would they hold anything?

A. Well, their side walls were up, some of them.

Q. Only the side walls?

A. The roofs.

Q. Who is there here who knows about this?

A. Mr. Stites, the general manager of the company.

Q. Well, do you say that on the 30th day of June, 1915, only the walls were there of the buildings?

A. Well, I don't really pretend to say what was there.

Q. You saw them?

A. They weren't ready for occupancy; they
10 weren't completed sufficiently to move into.

Q. You saw them, didn't you?

A. Yes, I saw them, of course.

Q. Very well, now; can't you form any judgment how near completion they were? You said within two or three months?

A. No, I cannot form any judgment, because there were six or seven different buildings and one building might have been at one stage and another building at another stage.

20 Q. How soon now—these buildings not having been completed until three months subsequent to June 15th—keep that in mind, because you said that and not fit for occupancy—how soon did you begin to move things out of the plaintiff's factory after the 30th day of June?

A. We started to move things out of our factory, the Ancona plant, the latter part of June.

Q. Not until the latter part of June?

A. Of 1916.

30 Q. Have you got any record of what you moved?

A. I believe there is a record of it.

Q. Will you produce it?

A. I will if it exists.

Q. Well, I hope it exists. But you did not begin until the latter part of when?

A. Of June.

Q. Then you began before the expiration of the term?

A. Yes.

Q. Can you tell what you moved before the expiration of the term?

A. The record will show that, yes.

Q. Now, if you began to move out of there before the expiration of the term, I want you to tell this jury why you honestly believed that you did not have to move at all? 10

A. The only reason we didn't believe we had to move at all was because we had every reason to believe that the Ancona plant, which had been leased to us for 30 years, would either be sold to us or rented to us for a short term.

Q. Yet, notwithstanding that honest belief you commenced to move out before your term expired, didn't you?

A. We did, yes.

Q. Now, if it had not been for your honest under- 20 standing that you did not have to move out, you would have known from your lease that you would have to move out, wouldn't you?

A. I don't get that question; please read that.

Q. Well, I will withdraw the question. Suppose you had not seen these people at all, the Ancona people, you would have known from the terms of your lease you would have to go out on the 30th day of June, wouldn't you?

A. Yes, we would have known the lease was over 30 the 30th day of June.

Q. But you would not have known you would have to go out?

A. Well, that question I don't know anything about it.

Q. Well, then, if you hadn't had any negotiations

with these people at all, do you mean to say you would have stayed there?

A. Oh, I can't presume such a thing; I can't imagine such a thing.

Q. You would have gone out then if it had not been for these negotiations because your term told you when to go out, wouldn't you?

A. Well, I imagine so, yes.

Q. Now, before your term expired you began to
10 move out?

A. Yes.

Q. Why?

A. Why, because we had certain apparatus we desired to move into the buildings before they were all bricked up.

Q. Yes, and you did not want to take other things out until you got your buildings ready for them, did you?

A. Why, of course not; we couldn't take them out;
20 it would be physically impossible to take them out.

Q. And then the reason you did not go out before was because your buildings were not completed, was it?

A. Not at all. That was the reason we didn't move the stock; the reason we didn't go out was because we expected at all times to renew the lease or purchase that property. It was a great astonishment to me that it wasn't done.

Q. You have lived through that period of aston-
30 ishment, haven't you?

A. Yes.

Q. And still live?

A. Yes.

Q. It didn't shock you to death?

A. No, but it amazed me to death.

Q. Well, do you imagine there is any amazement

on the part of the owners of this property that you wouldn't get out when they told you to?

A. They had no idea of putting us out; no idea; it was a great surprise to us all when they brought this action.

Q. A surprise to them?

A. I think it was a surprise to them.

Q. All right; we are all surprised.

A. They wanted a tenant, they showed that; they wanted to sell the property, they showed that. They could not have had a better tenant, they could not have gotten any more from any other tenant. 10

Q. Now, go ahead and argue, I like to hear you argue; the more you argue, the better it is. Are you through arguing?

A. I am simply showing our state of mind in this thing.

Q. You were a very desirable tenant, weren't you?

A. I think we were.

Q. And you wanted the property, didn't you? 20

A. Yes.

Q. And you wanted to buy it when you found you could not rent it again, didn't you?

A. We wanted to buy it and when we could not buy it we were willing to rent it for a short term.

Q. I don't care how you put it.

A. Well, that is the whole thing.

Q. A term long enough to let you get out?

A. Why, of course.

Q. Now, these negotiations between you and the Ancona people to rent and to buy failed, didn't they, because you would not pay what they wanted, isn't that true? 30

A. We really didn't——

Q. No, but isn't that true?

A. Why, we were——

Q. Isn't that true?

A. The proposition——

Q. No, isn't that true?

A. The proposition ——

Q. Don't argue with me.

A. I am not arguing; I am trying to state facts.

Q. Isn't that true?

A. No, it is not true, for they never ——

10 Q. Now, let us take the rent part of it. How much rent did they want you to pay to renew the lease, can you remember?

A. Yes.

Q. How much?

A. $15,000 a year for a five-year lease.

Q. And you wouldn't pay it, would you?

A. Not for a five-year lease.

Q. You wouldn't pay it, would you?

A. Not for a five-year lease.

20 Q. Well, would you have done it for a one-year lease?

A. Yes.

Q. Now, when you wanted to buy the property, do you remember how much they asked you for it?

A. They never named a figure to me; they named a figure to Mr. Bodine, or at least they didn't name it, his company.

Q. Did you hear that figure?

A. Yes.

Q. What was it?

30 A. $350,000.

Q. And you wouldn't give it, would you?

A. Assuredly not.

Q. Now, because you wouldn't come to their terms on the rent to be paid and would not come to their terms on the price that they wanted for the property, the whole thing failed, didn't it?

A. Yes.

Q. And you knew it?

A. Knew that it failed?

Q. Yes.

A. We were served with a suit in ejectment, and I knew it had failed under those circumstances unless——

Q. And yet you held on to that property, didn't you?

A. Why, that was on the 6th or 7th of July.

Q. Do you know when your new building was finished, actually finished? 10

A. Entirely and completely finished?

Q. Yes.

A. Yes, approximately I should say October, 1916.

Q. What part of October?

A. I can't tell you definitely, I don't know.

Q. Have you any record of it?

A. As I say, those buildings were built in groups.

Q. Have you any record of it?

A. Yes. 20

Q. Will you produce that record in evidence?

A. I will with pleasure.

Q. What was the first thing you moved out of the buildings before the expiration of your term?

A. I don't know what was moved out of the buildings first, second or third; I told you the record would probably show that.

Q. What were the principal things you moved out?

A. I don't know.

Q. Have no idea? 30

A. Well, I have no recollection.

Q. You took out boilers, didn't you?

A. Yes, we took out boilers.

Q. You took out shafting, didn't you?

A. I am not sure about shafting.

Q. You took out the sprinkler system, didn't you?

A. We did.

Q. What?

A. Yes.

Q. You took out motors, didn't you?

A. Yes, we took out all that belonged to us that was worth moving.

Q. Do you know the reason why the Ancona Company has failed to rent that property since you moved out?

A. I suppose it is because they haven't had any
10 tenant, any application.

Q. Don't you know it is because the property is wrecked?

A. I certainly do not.

Q. You do not?

A. I do not.

Q. Don't you know it is because you people when you found you had to go out of there after the judgment of the Supreme Court was against you, that you went out in such a way that you wrecked
20 the whole property—don't you know that?

A. I know absolutely the contrary of that.

Q. You left it in good condition, did you?

A. Perfect condition, the best of condition; occupied the plant for thirty days longer in order to put it in the best of condition.

Q. I understood you to say that when you went in there that the property was a shell?

A. Well, I wasn't on the plant before the Welsbach Company got in there.

30 Q. Didn't you say that when you went in there the property was a shell?

A. Yes, when I was down there about 1889, there was still three-quarters of it a shell, no floors in it.

Q. One-fourth was not a shell?

A. No floors in it at all.

Q. One-fourth was not a shell?

A. That was the part that was occupied by the little Welsbach.

Q. One-fourth was not a shell?

A. That was about right, yes.

Q. And the other three-fourths were a shell?

A. Yes, that is the reason it rented so cheap.

Q. Then you went to work to put it from the state of shellness into the state of suitability for your business? 10

A. We did.

Q. Isn't that one of the reasons you didn't want to get out?

A. Certainly, we wanted to buy the plant, wanted to use it.

Q. Isn't that one of the reasons you did not get out?

A. No.

Q. You put a good deal of value into that property, didn't you, this shell? 20

A. No.

Q. Didn't you add to it?

A. You say this shell—what shell?

Q. The shell you spoke of, two-thirds shell; you put a good deal of value in that, didn't you?

A. We estimated the value of the property worth $150,000 to us to buy.

Q. You put a good deal of value into it, didn't you?

A. That may be considered a good deal of value.

Q. Isn't that one of the reasons you wanted to stay there? 30

A. No, we are delighted we are not there.

Q. Well, if you are delighted you are not there, why did you want to stay there so?

A. As I told you, we had a gas plant on the property, we had a chemical plant, being pressed for pro-

duction, and we wanted to go ahead without interruption.

Q. Did you move the chemical plant anywhere?

A. We ultimately moved it, yes.

Q. Did you move the gas plant?

A. Yes.

Q. Moved everything, didn't you?

A. Yes, sure, everything that belonged to us.

Q. Except the shell?

10 A. Everything that belonged to us we moved.

Q. Except the shell?

A. I don't know anything about a shell; I don't think it is a shell any more, I think it is a pretty good plant.

Q. Have you seen it?

A. Yes, see it every day.

Q. Since you went out?

A. Oh, yes.

Q. Have you been in it and seen the sun come
20 down through the roof and shine on you?

A. No.

Q. You haven't seen that part of it?

A. No, I haven't been in it.

Q. Have you seen the walls where the rain comes through in a storm and the sun shines on you through the wall?

A. No; it has been idle, you know, seven months.

Q. Well, maybe that came about through idleness; it was a very valuable property when you left it,
30 wasn't it?

A. We considered it was worth $150,000 for us to buy it; we never considered it a very valuable property.

Q. It was a very valuable property when you left it, wasn't it?

A. It depends upon what you consider very valu-

able. It was worth a good deal to us in order to continue our production of thorium.

Q. Yet these people haven't been able to rent it?

A. No; I don't think they have; they say they haven't, I don't know how much they have tried.

Q. Did you on June 13, 1916, receive this letter: "Mr. Sidney Mason, President, Welsbach Company, Gloucester City, New Jersey. Dear Sir:" this is June 13, 1916—"Pursuant to your conversation with me on June 7th, I reported the same to the officers of the Ancona Printing Company and also the Directors, and have been instructed to inform you that the Ancona Printing Company does not desire to purchase any property belonging to the Welsbach Company, and also to inform you that as the buildings of the Ancona Printing Company were originally supplied with a sprinkler system that the present sprinkler system should be allowed to remain in order to satisfy conditions of the lease. I was also instructed to notify you that the Ancona Printing Company expects that you will vacate the property immediately upon the expiration of the lease and turn it over to the Ancona Printing Company at that time in the condition required by the lease." Did you get that letter?

A. Yes.

Q. Did you make an answer to it?

A. I called at their office subsequent to receiving that letter.

Q. Did you make any answer to it?

A. I made answer to Mr. Chew in person, yes, on the 22nd of June.

Q. Very well; you didn't put it in writing?

A. No; I do not recall putting it in writing.

Q. What do you understand that letter to mean? Now, you are an intelligent business man; what did you understand that to mean?

A. I understood that to be a formal proposition to put on record their views; that is what I understood that was.

Q. Just a false pretense?

A. Yes, that is all. If they had substituted the word "demand" for "expect" I might have felt differently over it, but I had had these expectations repeatedly sent to me.

Q. So that you honestly, did you, thought that that
10 letter was a piece of false pretense?

A. Certainly.

Q. You thought this plaintiff was dealing with you dishonestly?

A. Not necessarily dishonestly, negotiating for the best terms he could get.

Q. Isn't it rather dishonest for a man to deal in false pretense?

A. Well, I don't know whether I used the right word, false pretense; he was simply negotiating for
20 the best terms he could get. He had the property and wanted to sell or lease; I wanted his property and preferred to buy it. If I could not buy it I would take it on a one-year lease.

Q. Now, if the Ancona Company when it sent you that letter was dealing in false pretense, what were you dealing in when you refused to get out, honest pretense?

A. Subsequent to that letter I saw Mr. Chew and we discussed the property, terms in regard to con-
30 tinuing to occupy that property.

Q. Why would you go ——

A. He invited me to make a proposition.

Q. Why would you go to this company and undertake to make honest dealings with them when you were satisfied that they had put that solemn written declaration in writing as a pure piece of false pre-

tense and as coming from the board of directors—now, why did you under those circumstances go deal with such people?

A. Well, I had had a good deal of experience in previous dealings with these people.

Q. You found them to be crooks, did you?

A. Not a bit; I don't make any charges of that kind at all, sir. I found it was a question of being pretty discreet. You never knew where they were at, and as I viewed the situation, they considered —— 10

Q. Now, let's hear it.

A. As their attitude exhibited to me, that they had us by the short hair.

Q. Oh, yes; now, that is excellent. Now, you thought all the time that they thought they had you by the short hair?

A. I certainly did.

Q. In other words, you thought they were dishonest?

A. I don't know whether you call it dishonest or 20 not; they were negotiating to sell their plant or lease it at the very best terms they could get.

Q. If a man thinks he has got you by the short hair and won't let go, do you think that conduces to a perfectly candid and honest state of mind on the part of the fellow whose short hair is handled?

A. I don't pretend to pass on what was in his mind.

Q. You are only passing on what was in your mind? 30

A. Yes.

Q. All right; now, that is your defence in this case, isn't it; it is what was in your mind?

A. Why, not necessarily; it was what I was led to expect as the ultimate conclusion of this thing.

Q. Haven't you been saying from the beginning of

this case and hasn't your counsel been saying, "Oh, we were in such an honest state of mind that we held on to that property"?

A. Why, we certainly were in an honest state of mind.

Q. And the other fellows were in such a dishonest state of mind ——

A. I don't know what their state of mind was.

Q. That they wanted to let go of the property?

10 A. I don't know what their state of mind was, but I know this: They had the plant for rent or for sale, and it was simply a question of reaching terms, that is what I knew. Now, it was a question how far they could drive me ——

Q. Oh, it is a question of how far they could drive you, not a question of how far you could drive them?

A. Not a particle; I was short-haired.

Q. You were an honest man, they were a dishonest crew and they were seeing how far they could drive

20 you?

A. I have nothing to say about their dishonesty, sir; that has nothing to do with it.

Q. You made no answer to that letter in writing?

A. No, not that I recall.

Q. But you did try, didn't you, before they sent you this letter, to sell them some property?

A. No, I didn't try to sell them some property at all.

Q. Didn't you?

30 A. No, sir, not a bit of it. I went up there and told them that is what we would consider to move out—this was in June—that we had a sprinkler system in there, that if we took it out it would change the fire rate, and it was part of our own fixtures, and suggested that they might consider the wisdom of buying it. It was an accommodation to them that I went; the thing was of great value to me to take out.

Q. Sure, and you were so sensitive about injuring their property that you went to them and tried to get them to buy it?

A. It wasn't any question about injuring their property; I stated in that interview with Mr. Chew when I discussed this matter ——

Q. And you wanted them to buy the sprinkler system so as not to injure the property, or take the sprinkler system out?

A. I didn't care whether they bought it or didn't buy it, or for what purpose they bought it. 10

Q. Did you wish to rent it to them?

A. I told Mr. Chew in the interview that we wished to go out of that plant in the very best way.

Q. When was that?

A. On the 22nd of June.

Q. And it was then you tried to sell them the sprinkler system?

A. I didn't try to sell them anything; I told them what the situation was and told them what we would do. 20

Q. It was then you offered them the sprinkler system?

A. Yes, offered them an opportunity to buy it.

Q. It was then you offered them an opportunity to buy the sprinkler system and they would not buy the sprinkler system?

A. Presumably they wouldn't.

Q. Now, that sprinkler system was fastened to the whole establishment, wasn't it, up and down, top and bottom? 30

A. It was the customary sprinkler system.

Q. And to take it out meant what to the building?

A. I don't know what it meant to it; it meant it didn't have it in.

Q. And it didn't mean it would hurt the building any?

A. I don't think it made any difference to the building.

Q. Then why did you want to sell it to them?

A. It wasn't that I wanted to sell; it was for them to buy it if they wanted it; I didn't care whether they bought it or not.

Q. Well, all right. See if you got this letter of March 3, 1916: "Sidney Mason, President, Welsbach Company, Gloucester City, New Jersey. Dear
10 Sir: Your letter of March 1st with regard to the Ancona property has been received. We understand, therefore, that pursuant to the rejection last autumn of our offer of a five year extension of the lease, the Welsbach Company will vacate the premises by June 30th, and shall act accordingly. Meanwhile, certain members of the board of directors will visit the Ancona property probably this or next week. Yours truly, Ancona Printing Company, By Samuel B. Scott, Secretary pro tem." Did you get that letter?
20 A. Yes.

Mr. Stockwell: What is the date of that?

Mr. Wescott: March 3, 1916.

Q. Did you answer that letter?

A. I don't know whether I did or not. If that is the original letter, I can tell you by looking at it.

30 (Counsel hands paper to witness.)

The Witness: Yes, I answered that letter on the third month, fourth.

Q. Now, then, you didn't get out of the property according to the request of these letters at the term-

ination of your lease, did you—you can say yes or no.

A. No, we didn't get out.

Q. Well, immediately after your refusal to get out you were served with a notice under the Landlord and Tenant Act issuing out of the District Court, weren't you?

A. On July 7th or 8th we received such a notice, much to our surprise.

Q. Well, how would you be surprised when you are dealing with short-haired people? 10

A. Well, Mr. Bleakly had only a short while before that informed me of a further interview he was to have with Mr. Weaver regarding the negotiations.

Q. I see; so that is what surprised you?

A. I thought after we got Mr. Weaver in we might come to terms.

Q. That is what surprised you; you thought you could do more with Mr. Weaver than you could with the Ancona Company? 20

A. No, but I thought probably Mr. Weaver would be more reasonable in his business views.

Q. Now, Mr. Witness, when you knew through years of experience that you were dealing with unreasonable people, people who got a man by the short hair, people who indulged in false pretense, why didn't you have everything put in writing with them?

A. Well, I don't know why we didn't. There might have been one reason at one time, another 30 reason at another time. There was no reason why what we said should not have been in writing.

Q. It makes a whole lot of difference, doesn't it, when a thing is reduced to writing and when it is an oral declaration, speech, word of mouth—a great deal of difference between them, isn't there?

A. Well, there ought not to be.

Q. I know there ought not to be and wouldn't be on the part of honest men like yourself, and dishonest men like them there ought not to be, but there is generally a difference when people are in a legal quarrel about what was said at personal interviews, isn't there?

A. It seems so in this case.

Q. There isn't any inaccuracy in your statements, of course, as to what was said?

10 A. Not to my knowledge.

Q. The inaccuracy is all on their part?

A. I haven't heard them say anything.

Q. Well, you will hear it further on. Now, to go back to that District Court matter you went to the District Court, didn't you, in response to that rule to show cause why you should not get out immediately?

A. We did.

Q. You went there with your two lawyers, the two distinguished gentlemen, members of the bar here

20 now, didn't you?

A. We consider them so.

Q. And you took your witnesses there, didn't you?

A. We did.

Q. And there was a jury there, wasn't there?

A. There was.

Q. And a good Judge, wasn't there?

A. Yes, I think he is a very good Judge.

Q. And he heard your case and the jury heard

30 your case, didn't they?

A. Well, I was present at the trial and unless they were deaf they heard it.

Q. Well, they weren't short-haired people?

A. I don't know anything about that.

Q. Well, the case was argued, wasn't it, to the jury?

A. Yes.

Q. By your distinguished and eloquent counsel?

A. Yes, sir.

Q. And you set up there the question of your good faith, didn't you?

A. That I don't know.

Q. You did not?

A. No, I don't know what good faith there was about the question, whether that was set up or not.

Q. Didn't you set up there as a defence against your being put out of the property that you were 10 acting in good faith in holding it? Didn't you set up all these conversations with these people, with the Ancona people?

A. The record of the case will show exactly what the defence was, I don't ———

Q. I know, but didn't you?

A. I don't know what the record shows.

Q. You can't remember about that?

A. No.

Q. And did not the jury after the Judge charged 20 them find against you?

A. They did.

Q. And that meant that you should go out immediately, didn't it?

A. Well, it did at that moment, I think.

Q. Now, how did you keep yourselves in there from that time on?

A. Well, the review of the case was next.

Q. Yes, you raised the question whether Mr. Scott had the right to serve the notice on you, didn't you? 30

A. That was one thing, I believe.

Q. And that went to the Supreme Court, didn't it?

A. I understand so.

Q. And the Supreme Court decided against you?

A. That I am not informed on; I don't know what their decision was.

New Jersey State Library

Q. You don't know that the Supreme Court decided against you?

A. I don't recall anything about it. There was one case that I don't think ever went to issue.

Q. Well, they did; they decided against you.

A. I will take your word for it.

Q. Then your own counsel told you you were at the end of the rope and you had to get out, didn't he?

A. I don't recall being told anything of the sort.
10 We had determined on July 7th, when this suit was commenced—we did everything we could to hasten things to get out.

Q. Now, how many months would it take you to get out of that place with your sprinkler system, your boilers and everything—how many months would it take you to get out, actually?

A. To physically move the property?

Q. Yes.

A. And throw it in the street?

20 Q. I don't care where you put it—how long would it take you to get out?

A. It would take ordinarily about anywhere from two to three months.

Q. To move that stuff?

A. To move that plant, yes.

Q. It was so big?

A. Why, yes.

Q. How many men did you have moving it?

A. Well, I don't know, but the records will show
30 that; a good many; as many as we could get; constantly trying to hire them.

Q. Yes, and failing, and it took you five or six months to get out of that factory?

A. I don't know that it took five or six months to actually do the moving.

Q. Well, how many months did it take to do the moving?

A. I say the record will show the whole thing complete, the detail of it.

Q. Well, you did not stay in there after the Supreme Court decided against you, did you?

A. We did not stay in there after the 30th of December.

Q. You did not stay in there after the Supreme Court decided against you?

A. We could have left the premises probably three weeks earlier if it had not been that we retained 10 them to put them in good physical condition.

Q. You did get out after the Supreme Court decided against you?

A. That would be merely a coincidence; I don't know when the Supreme Court decided against us.

Q. I made a mistake and I beg your pardon; you did not get out after the Supreme Court decided the case, did you?

A. I don't know; when did the Supreme Court decide the case? 20

Q. December 4th, 1916; now, when was it you say you went out?

A. We delivered the keys to the property on December 30, 1916?

Q. And you had not moved out by December 4th and you could not deliver the keys because the building was not empty until when, did you say?

A. Oh, we had moved out two or three weeks before we delivered the keys. We retained possession because we wanted to reglaze the windows and paint 30 the sills and do such things as would leave the property—clean it up.

Q. Now, then, after the Supreme Court decided against you, you took a writ of error or an appeal to the Court of Errors and Appeals, the highest court in the state, didn't you?

A. I guess so.

Q. Have you any doubt about it?

A. Well, there was some action taken, I don't know where it was taken; I didn't pay any attention to it.

Q. Well, that was for the purpose of holding the business up, wasn't it?

A. No, no purpose at all.

Q. Very well, then, it was done for mere idleness?

A. Well, it was done by advice of counsel.

10 Q. Now, after you took the appeal to the Court of Errors and Appeals and got out of the property, you abandoned that controversy, didn't you?

A. I believe that controversy was mutually agreed to suspend; I don't know, or dropped; I don't know what counsel arranged.

Q. Now, don't put that on us, whatever you do.

A. Well, I don't know if I put it on to you or not.

Q. Did you abandon that law suit after it got into the Court of Errors and Appeals and you got out of 20 that property?

A. If we did it was done by our counsel without any consultation with me at all.

Q. Oh, Lord; now, put it on your counsel; you don't know anything about it?

A. I don't know anything about it, didn't know it was abandoned.

Q. Well, do you know whether it was begun, Mr. Mason?

A. No, I did not know it had been begun.

30 Q. Did you direct it to be begun?

A. The original suit, yes, and then the appeal to Judge Garrison; then it was certified up to a hearing and then the matter was practically ———

Q. Yes, but after that did you direct an appeal then to the Court of Errors?

A. No, the matter was left entirely in the hands of

Mr. Warden, the chief counsel of the company, who co-operated with Stockwell & Bleakly.

Q. Is he an executive officer as well as an advisory one?

A. He is the general counsel of the company.

Q. I say, was he an executive officer of the company as well as counsel?

A. No, he was not an executive officer.

Q. Who was that?

A. Clarence Warden, Clarence B. Warden. 10

Q. Won't you this afternoon, if you will, produce the record showing the history of your removal from that property? Now, don't fail to do it. Here is one other letter I want to call your attention to. This letter is written on your official paper; it is dated July 30, 1915: "Ancona Printing Company, Mr. Oswald Chew, secretary, Commercial Trust Building, Philadelphia. Dear Mr. Chew: I herewith acknowledge receipt of your favor of the 30th ultimo quoting resolution passed by the stockholders of 20 your Company, i. e., that the property now leased to the Welsbach Company be offered to them for rental for ten years from the expiration of the existing lease on a sliding scale, beginning at $10,000 and increasing annually by $1,000 until it reaches $15,000 and from then to be continued at $15,000 annually until the end of the term, other terms and conditions to be the same as now in force in the existing lease. This offer we cannot favorably consider either in respect to the terms or duration of the lease, and ac- 30 cordingly it is hereby declined. At my suggestion, under date of July 13th, representatives of our respective companys inspected the Ancona premises, at which time there was pointed out to yourself and representatives the many structural weaknesses and defects of certain buildings, namely, Nos. 23, 24, 27,

35, 36, 44 and 47, occasioned by settling of foundations, etc. We subsequently retained the services of Mr. Steele & Sons Company, whose engineers have reported on the condition and safety of the above mentioned buildings. In brief, their report indicates that none of the buildings are in immediate danger or involve any undue risk owing to their occupancy of one year, but as a precautionary measure certain minor re-enforcements of said buildings should be
10 made, involving an expenditure estimated at approximately $6,000, and with an additional expenditure on building No. 27 of approximately $14,000 the buildings would be deemed safe by them for a continued occupancy of not exceeding five years. Inasmuch as we contemplate the construction of modern buildings on premises now owned by us in order to conduct our manufacturing efficiently and economically, it would seem a waste of either your money or our money to make the additional ex-
20 penditure on building No. 27, as your plant has served its usefulness as far as our requirements are concerned. To avoid this, I am prepared to renew authorized offer to purchase the Ancona premises now leased by us for $150,000. The premises would serve the purpose of our fluid and chemical department and thereby relieve us of expenditure for bulkheading and extending our own property. I have had measurements taken of the Ancona premises which were reported to contain a total of nine and
30 one-quarter acres, hence we consider the above offer a very full and liberal price taking into consideration all the conditions involved in our present occupancy of the premises. Should this offer not be accepted we are prepared to consider a renewal of our lease for a further period of not exceeding three years, in which we would require that the provisions be made

to place the buildings in a safe condition for our occupancy and use. If you should neither care to sell nor make a short term lease, we would then ask for a six months extension of our current lease upon terms and conditions as now in force, in order that we may have ample time in which to surrender and vacate the premises. Yours very truly, Sidney Mason, President.'' Did you write that letter?

A. I did.

Q. You put these buildings—you say you stayed there quite a long while in order to put these buildings in complete condition, didn't you? 10

A. Yes, we stayed there—we were working two or three weeks repainting them.

Q. How much money did you spend putting them in complete condition?

A. That I couldn't give you offhand; I have got the records.

Q. Have you a record of it?

A. I have.

Q. Will you produce that? 20

A. I will with pleasure, sir.

Q. Did you spend $14,000 or $15,000 on the buildings?

A. No.

Q. To put it in condition?

A. No; I expressed in that letter I would consider that expenditure a waste of money.

Q. And that is the reason you did not put them into condition?

A. It would be a waste of money out of anybody's pocket. 30

Q. I say, that is the reason you did not put it in condition? Did you put the other one in condition?

A. Yes.

Q. For five or six thousand dollars?

A. We re-enforced the building and put it in condition.

Q. How much did that cost you, do you remember?

A. I don't remember what it cost; probably two or three thousand dollars.

Q. You glazed the buildings, I understand?

A. We what?

10 Q. Glazed them.

A. Yes, we put all the glass in condition, repainted the sills and a whole lot of things, cleaned it up.

Q. "If you should neither care to sell nor make a short term lease, we would then ask for a six months extension of our current lease." Did you get that six months extension?

A. We didn't get any.

Q. Did you get that six months extension?

A. That would be included ——

20 Q. Did you get it?

A. No, no.

Q. Very well. Now, why did you ask for it: "If you should neither care to sell nor make a short term lease we would then ask for a six months extension of our current lease upon terms and conditions as now in force, in order that we may have ample time in which to surrender and vacate the premises."

A. Yes.

30 Q. Now, why did you write that when you now say in good faith you believed you had a right to stay there six months more?

A. What is the date of that letter, sir?

Q. The date of this letter is July 30, 1915, a year, pretty nearly, before?

A. Yes.

Q. Now, you did not get that request?

A. No.

Q. And yet you say now honestly that the last six months you occupied that property you thought you had a right to it?

A. Why, we didn't get that request ——

Q. That is all.

A. But we did get—I will answer your question—but we did get a continuation of negotiations for occupancy. 10

Mr. Wescott: I offer that letter in evidence.

(Said letter is marked Exhibit P 7.)

By Mr. Stockwell:

Q. The fixtures which were removed before June 30th, would they have been removed anyhow, whether you had remained in the old property or vacated it? 20

A. All the fixtures would have been removed except the gas plant and the fluid department, the chemical department.

Q. If you had retained the plant, purchased it or had a long term lease on it, would you have used it for the purpose you were using it at the time, say, on June 30, 1916?

Mr. Wescott: I objected to his speculating what he would have done under certain conditions. 30

(Question repeated.)

The Court: You mean by that, was it intended to be used in such a way?

Mr. Stockwell: Yes, was it intended to be used?

The Court: All right.

A. Not wholly, only partially.

Q. Were those buildings modern buildings?

A. Of the Ancona plant?

Q. Yes.

A. Only the buildings that we ourselves erected
10 were modern; the rest had been built thirty-five years before—sixty years.

Q. Are the buildings suitable for manufacturing purposes now for any large plant without the expenditure of a large amount of money?

A. Well, it would depend on the character of manufacturing. They are brick construction, mill construction, and they are very old buildings, and they would not do for heavy manufacturing work. There might be some conditions under which they
20 could be used, but I think they would be very limited.

Q. Are the buildings of a character to make the property easily rentable?

A. Oh, no, quite the reverse.

Q. You said, as I understood you, under ordinary conditions it would have taken two or three months to move the fixtures. Were the conditions normal at the time you were removing these fixtures?

A. Labor conditions?

Q. Yes.

30 A. No, they were abnormal, very difficult to get people to work.

Q. So it took a good deal longer than the two or three months?

A. It would have taken longer, yes, did take longer under those circumstances.

By Mr. Wescott:

Q. Now, just a word. Your buildings, you say, are modern?

A. Modern, yes.

Q. And I asked you a while ago if you could tell us the size of them, the number of them, and you couldn't. Can you tell us the value of them?

A. Of our buildings, the buildings we erected?

Q. Yes. 10

A. Yes—what they cost, you mean? They cost when we erected them about $800,000.

Q. About $800,000?

A. Yes.

Q. Now, you say the Ancona buildings were old, old-fashioned, weren't they?

A. Why, they were so old that the state factory inspectors—we had all we could do to let them permit us to occupy them, they were in such a condition. 20

Q. I didn't ask you that.

A. Well, they were old.

Q. Old buildings—old-fashioned, weren't they?

A. I don't know anything about the fashion; they had been built probably fifty years before.

Q. And they were not fit for your kind of work?

A. They weren't considered by us under present labor demands fit for almost any kind of work.

Q. Then why were you so anxious to get them?

A. Because we wished to keep our gas plant on the property, and we were willing to keep our chemical department on the plant; that is the only reason we wanted the plant. 30

Q. All right, I have got it; go ahead.

John M. Devlin, sworn.

By Mr. Stockwell:

Q. What office do you hold in the Welsbach Company?

A. Treasurer.

Q. Were you treasurer in December, 1916?

A. Yes, sir.

Q. Did you on behalf of the Welsbach Company go to the office of the Ancona Printing Company in Philadelphia for the purpose of tendering cash for the rental of the property?

A. I did, sir.

Q. The witness is shown ——

The Court: Gentlemen, is there any dispute about this tender?

Mr. Weaver: No, there is no dispute about it.

The Court: Well, Mr. Stockwell, there is no use multiplying on it.

Mr. Stockwell: Yes, but I am going to ask him more than just offer the letter.

Q. This is the letter, is it?

A. That is the letter, yes.

Q. Did you offer the cash?

A. I did.

Q. Was it refused?

A. It was.

Q. To whom did you offer it?

A. Mr. David S. Brown Chew.

Q. What did he say?

A. He said that he was willing to accept it on account. I stated that it was a payment in full and if accepted must be receipted as such. He thereupon declined to receive it.

No cross-examination.

Townsend Stites, sworn.

By Mr. Stockwell:

Q. What office do you bear in the Welsbach Company?

A. General manager.

Q. How long have you been general manager?

A. Oh, ten or twelve years. 10

Q. Do you know Mr. Chew, Messrs. Chew and Mr. Scott?

A. Yes, I know D. S. B. Chew. I have never met Mr. Samuel Chew.

Q. Did you have knowledge of the fixtures which were removed by the Welsbach Company?

A. Yes.

Q. From the premises?

A. Yes.

Q. Have you those records here with you? 20

A. No.

Q. Are there records showing the date of the removal of all of the buildings?

A. The removal of all fixtures?

Q. The removal of all fixtures.

A. I don't think so; there is a general shop order covering the work, but it would be almost impossible to make a general record covering the removal of every fixture.

Q. Will you produce whatever records you have after the noon recess, please? 30

A. Yes.

Q. When did the Welsbach Company start the removal of fixtures from the plant of the Ancona Company?

A. In June, 1916, I think the first were removed.

Q. And did that removal continue for any length of time?

A. Went on continuously until we vacated the property.

Q. Up until the 30th day of June what fixtures had been removed?

A. The tanks had been taken out of the wash house, some of the hardening machines, part of the knitting machines, and a large number of smaller
10 things; it is almost impossible to keep in your mind. There were over three thousand fixtures in that place.

Q. Three thousand fixtures which were installed by the Welsbach Company?

A. Yes.

Q. Was there anything taken away which belonged to the Ancona Company?

A. Not to my knowledge; on the contrary I gave explicit instructions that we were to be very care-
20 ful ——

Q. Was any property of the Welsbach Company left upon the premises of the Ancona Company?

A. Yes.

Q. What?

A. A part of the gas works including ——

Mr. Wescott: I object to that.

The Court: I don't suppose that is a thing ——

30

Mr. Stockwell: Judge Wescott has already questioned previous witnesses about that and they didn't have very definite knowledge. I wish to clear it up. Mr. Mason said he didn't know.

Mr. Wescott: Well, I was cross-examining Mason. This has, as I can see, no relation to the mentality of this company.

Mr. Stockwell: The attorney general rather criticized Mr. Mason for not knowing everything and he referred to Mr. Stites as the man who knew.

The Court: What difference does it make whether they left anything on or not?

Mr. Stockwell: We think it is simply an element in the question of good faith.

10

The Court: I cannot see it.

Mr. Stockwell: Is it overruled?

The Court: Yes, it is overruled and an exception noted.

Q. When did the removal of fixtures by the Welsbach Company end—when did you get through?

A. Well, we were practically through by the first week in December, but there was some few things that we were working on right up until the 30th of December. The month of December was an exceptionally hard one for outside work. We had rain, snow and freezing, and it was almost impossible to get men to work.

20

Q. What was the character of the fixtures that were removed? It is some proposition but I want you to tell us.

30

The Court: In a general way only, Mr. Stites; you don't need to identify all the individual articles.

The Witness: You mean the machinery used for the manufacturing or the fixtures?

Mr. Stockwell: The fixtures that you installed and took away.

Mr. Wescott: What you call fixtures; we don't know whether they were or not.

A. There was an entire chemical plant, consisting of pipes, tanks, pumps, agitators, the entire knitting room, consisting of winders, knitting machines and all the necessary auxiliaries; the entire plant for hardening mantles, consisting of the hardening machines, burning down machines, necessary motors,
10 ventilating fans; an experimental machine shop containing probably twelve or fifteen lathes, planers and such machinery; an entire round tube paper box factory, consisting of four spiral mailing tube machines and the necessary cutting machines, labeling machines, punch presses for making the lids, automatic machines for assembling lids and tubes; an entire square paper box factory consisting of paper slitting machines, square shears, metal stay machines, paper stay machines, box covering machines, pasting ma-
20 chines, gluing machines; an entire wooden case factory, consisting of band saws, circular saws, nailers, cleaters, and all the machinery out of a department known as mantle assembly, consisting of a great number of small cleating machines, the entire sprinkler system except what was under the buildings and under the ground; gas lighting system except what was under the buildings and under the ground; a gas manufacturing plant except three gas holders and valves and governor, and all of the pip-
30 ing under the ground and under the buildings, shafting, generator, motors. Isn't that enough?

The Court: Does that cover it?

Q. In round figures, how many machines in the plant belonging to the Welsbach Company?

A. I had that estimated some time ago and it was about three thousand.

Q. Did you mention the gas mantle machines?

A. Yes, hardening machines.

Q. Now, as to the most or a very large part of those machines, could they be taken down readily?

A. No, the majority of them could not.

Q. Why not?

A. I neglected to mention two important things; one was a still and the other is a spirit rectifying 10 apparatus, all very expensive and highly delicate pieces of apparatus.

Q. Now, why couldn't they be taken down and moved readily?

A. Because they had to be taken down by skilled people, carefully handled and set in place in their new position, and skilled people were not obtainable.

Q. Did you use your best endeavors to get skilled people to do the work?

A. We not only used our best endeavors, but we 20 hired all the laborers that William Steele Sons & Company had on the premises at the time; we let contracts for removal of the tanks and vats and the larger and most cumbersome pieces to whoever would take the contract; some of them were local people and some from Philadelphia.

Q. Then do I understand that the removal was as expeditious as the condition of the labor market would permit?

A. Absolutely so; it was pushed hard. 30

At this point a recess was had until 1:30 o'clock P. M.

E. G. C. Bleakly, Esq., sworn.

By Mr. Stockwell:

Q. You are a member of the bar of this state?
A. Yes.
Q. A member of the firm of Bleakly & Stockwell?
A. Yes.
10 Q. And represent the Welsbach Company?
A. Yes.
Q. Now, in the month of June, 1916, were you requested to take up with the Ancona Printing Company through its officers negotiations for a renewal of the lease and purchase of the property?
A. Not for the renewal of the lease at first; I was requested to endeavor to purchase the property. I was first employed on the 26th day of June, 1916.
Q. Now, just tell us in your own language, please, 20 what you did pursuant to these instructions?
A. On the 27th, I think it was Tuesday of that week, I went to their office at the Commercial Trust Building, Philadelphia, saw Mr. Samuel Scott, told him I wanted to see Mr. David S. B. Chew, the president, treasurer or whatever he was of the Ancona Printing Company. Mr. Chew was in the other room and shortly came in and I made known my errand. He told me that Mr. Scott represented them and I could talk with him, and I started to talk to 30 Mr. Scott, and finally got to talking to them both, stated that I was there representing the Welsbach Company to purchase this plant, that the Welsbach Company had been occupying for some time. After a short conversation Mr. Chew said, "Well, this plant is not for sale but how about a lease?" I said , "I was not sent here to lease the property, but I will be

glad to take that up later on." They invited me out to lunch and we went out to lunch together and talked a little bit about the matter, but very, very little, but at the conclusion, as I was leaving, Mr. Chew, Mr. David Chew said, "Now, Mr. Bleakly, you go back to your clients and take up this question of the lease, get the very best amount that they will pay in dollars for a year and the very best number of years that they will take a lease." I agreed to do that, told him that I would be back to see him in a day or two. 10

Q. Did you report the interview to Mr. Mason, the president of the Welsbach Company?

A. I reported the interview—I think I reported it to Mr. Warden and Mr. Mason.

Q. Who was Mr. Warden?

A. Mr. Warden was counsel for the company.

Q. General counsel?

A. Yes, and they gave me instructions to go back at the request of Mr. Chew and make a lease, and I did go back, I think it was Wednesday or Thursday,—I don't just recall which day now—of that very week, and I submitted a proposition of $12,000 a year for two years. They agreed to take that matter up with the officers of the company and report to me later. 20

The Court: Is this Chew and Scott?

The Witness: Chew and Scott, David Chew. I didn't hear anything from them then until I guess it was sometime in the afternoon of Friday, June 30th, just before I was about leaving for the shore over Sunday, and I got this letter which they have put in of June 30th, and I sat down immediately and wrote them that letter which they have. 30

Q. Telling them what?

A. Well, the effect of it was that I would be over to see them on Monday. I was busy Monday morning and really forgot the appointment until Mr. Scott called me on the 'phone, I think about a quarter of twelve. That was Monday, July 3, 1916.

Q. That is the letter you wrote on June 30th?

A. That is the letter I wrote.

Q. Just read it please.

10 A. "S. B. Scott, Esq., 826 Commercial Trust Building, Philadelphia, Pa." This is dated June 30, 1916. "Dear Sir: In re Ancona Printing Company I received your letter of this date just before I was about to take a train to the shore, and I will not be back again until Monday. I will come over to see you Monday between eleven and twelve o'clock, Very truly yours, E. G. C. Bleakly."

Mr. Stockwell: I offer that in evidence.

20

Q. Did you go?

A. I did; I didn't go, however, until he 'phoned me as I had really partially overlooked it.

Q. What was that 'phone conversation between you and him?

A. Well, I can't just give the exact words, something about, "How about this Welsbach matter; you wrote me you were coming over; are you coming over? Why aren't you here?" And I told him I

30 think that I had been engaged, busy, and I would be right over. I dropped the matter that I had in hand and proceeded there and got to their office about twelve o'clock.

Q. What did you say and what did they say?

A. I saw Mr. S. B. Scott and Mr. Samuel Chew; I think I asked for David Chew but I don't think

I saw him, but I saw Mr. Scott and Mr. Samuel Chew, and told them this was the third of July, the holiday was apparently running over all the way from Friday until the next Wednesday, because I had not been able to get in touch with Mr. Mason or Mr. Warden, not knowing—I had not known that when I wrote the letter—and I explained to them that therefore I was not able to make any further proposition to them. They asked me what other proposition I had to make in reference to the lease, 10 and I asked them then if they would lay the matter over until Wednesday, July 5th, and they both agreed to do that, and I agreed then to come back on that day and make a further proposition in reference to the lease.

Q. Well, did you consult Mr. Mason?

A. Oh, well, that same day, that day before I left, Mr. Samuel Chew took up the question then of the purchase; he said, "Why don't you purchase the property?" "Well," I said, "Your brother David 20 Chew told me last week it was not for sale; I would be glad to take up the purchase of the property." He then says, "Our price is not unreasonable." "Well," I said, "I thought your price was—" and between the two of us the price came out, that they had mentioned $350,000. Mr. Samuel Chew started to justify that price, commenced to talk about the riparian rights and the buildings. I told him I had looked into the matter and they didn't have any riparian rights. Then I took up some letters that I 30 had with me that they had written back and forth in reference to the value of the property, and we had quite an argument, to cut it short, back and forth about the value of the property. On that particular occasion Mr. Chew tried to convince me that $350,000 was a reasonable price, and I tried to

convince him that it was not a reasonable purchase price, it was in excess thereof. Anyhow, I left there with the understanding between us that I was to return on Wednesday in reference to the lease and name them another proposition. I am not sure whether I did go back on Wednesday or Thursday; either one of those days I did return and say ——

The Court: That is the 5th or 6th?

10

The Witness: I think it was the 5th, your Honor. that is my impression, Wednesday, the 5th; it was one of those two days; I am pretty sure it was the 5th; and I had hardly gotten in the door when Mr. Scott said, "This matter is in the hands of Mr. Weaver,"—Mr. Frank Weaver, who is here in court. "Well, then," I said, "I am dismissed," and then Mr. Samuel Chew came on the scene again and I just forget what his first words were, and I said,
20 "Mr. Scott has dismissed me," or something to that effect. He said, "Oh, no, sit down, let's talk the matter over." I said, "No, I understand from Mr. Scott that I am dismissed; I am to go see Mr. Weaver." Then they both said, "You go see Mr. Weaver about the matter," and I went over, I won't be sure whether I tried to see Mr. Weaver that afternoon or not; I think I did; at any rate I was unable to see him, but the next morning, Thursday morning, I did see Mr. Weaver, and told him of my
30 several interviews, that I had been trying to negotiate a lease, and that I had been referred to him, that I had offered $12,000 for two years and I was prepared to go even higher. He then asked me, "What is your offer?" I said, "I will give you $12,500, $25,000 for a two years lease." We talked the matter over for a few minutes and he said,

"Well, now, why not make it $15,000?" I said, "I am not authorized to make it $15,000 yet, but if you will get your client to make a proposition of $15,000 for two years ——"

The Court: $15,000 for each year, you mean?

The Witness: Yes, I mean $15,000 a year for two years, $30,000 for the two years—"I will endeavor to get my clients to agree to those terms." I left Mr. Weaver with that understanding, that he should endeavor to have his clients name that figure, and I would endeavor to have mine. The next morning, which I think was the 7th of July, I hadn't heard from Mr. Weaver, and between nine and ten o'clock I called him on the 'phone. He said he could not get his clients to agree to $15,000 for two years. Later on that day, I guess, this notice was served; at least, we heard it was.

By Mr. Stockwell:

Q. In any of the interviews you had with Messrs. Chew and Scott, was there a mention by them of a form of lease already prepared for the Welsbach Company to sign?

A. Yes, at the interview on July 3rd, that was the Monday I went over there and called on Mr. Scott, Mr. Samuel Chew in Mr. Scott's office said during the course of the conversation either about a lease or a purchase, "We have got a lease right here in the other room now already drawn up, if you want it." I don't know as I made any reply except to say to him I would have to see my clients further to get further authority.

Q. During any of these interviews was it sug-

gested or plainly stated by any of these gentlemen that the Welsbach Company was a trespasser upon the property?

A. It was not.

Q. During any of these interviews was it stated or suggested that the Welsbach Company should get out immediately?

A. It was not.

Q. Did you believe up to the time the demand of 10 July 7th was made, the demand in writing, that the Welsbach Company and the Ancona Company would be able to come to terms on a lease?

Mr. Wescott: I object.

The Court: Well, if it was communicated to the company ——

Mr. Stockwell: That will be the next question.

20 The Court: His belief is not important; it is what he reported to his company.

Q. And if so, did you communicate that to Mr. Mason?

A. I so believed and communicated my belief to Mr. Mason and Mr. Warden.

Q. Then on July 6th, had you any reason to believe from anything that had been said by any of 30 these parties that the negotiations would fail?

(Objected to.)

Q. If so, did you ——

(Objected to.)

The Court: I think that, Mr. Stockwell, is a conclusion. I think that what occurred must be the test of what the basis of his opinions were.

Mr. Stockwell: Well, I will withdraw the question.

Q. Did you advise Mr. Mason whether or not a lease would probably be made?

A. I advised either Mr. Mason or Mr. Warden, maybe both of them—that is, Thursday, July 6th—that in all probability the negotiations would come to a successful termination; in other words, we were close together; we were so close together that it was almost certain now a lease would be executed. 10

Q. Was that the way it appeared to you?

A. I was sure of it.

Q. Were you looking for the service of a demand to quit?

(Objected to.) 20

Q. Was there anything in their language or actions during any of your interviews to indicate that they proposed to formally eject the Welsbach Company?

(Objected to.)

The Court: No, Mr. Stockwell, I think what they said and did must be the sole basis of what construction is to be placed on it, not the witness' opinion. 30

Mr. Stockwell: I will withdraw the question.

Q. Were you authorized by the Welsbach Company from time to time to continue these negotia-

tions after each report was made by you to Mr. Warden?

A. Each time I made a report I was authorized and directed to go back with these different propositions that I have outlined.

Q. And under those instructions would you have gone back or did you go back after the interview with Mr. Weaver, that last conversation with Mr. Weaver?

10 A. I had no opportunity to go back after that, because that was nine or ten o'clock in the morning, and I think by noon of that day notice was served; I didn't get a chance to make any report back, as I recall it, of my telephone conversation with Mr. Weaver that morning before the notice was served.

Q. Had you intended to make a report back and get further instructions?

(Objected to.)

20 The Court: No, Mr. Stockwell, I don't think Mr. Bleakly's views are important at all; he was not the company; he was simply their advisor, and unless he communicated and induced them to have a belief, it would not have any bearing.

Mr. Stockwell: The point was that Mr. Weaver had made a certain statement and said they couldn't do that. The question was whether Mr. Bleakly under his previous instructions was going back to 30 get further instructions; that is what I wish to ask him.

The Court: That is not this question.

Mr. Stockwell: Well, I will withdraw that. Were you going back to Mr. Warden for further instructions after your interview with Mr. Weaver?

The Witness: It was my intention to go back and see what further we could do to meet the demands of the plaintiff.

Cross-examination.

By Mr. Wescott:

Q. What do you mean when you say you were going back to see your people to see if you could meet the demands of the plaintiff? 10

A. Well, it was a question of the number of years and the amount. We had agreed practically, now, we had agreed on the amount; that was settled; we had come to their terms. The only open question was the number of years and Mr. Weaver said he could not get them to agree to two years.

Q. When did you say you were employed in this matter?

A. On June 26, 1916. 20

Q. That was four days before the expiration of the lease?

A. Yes, sir, I was not employed about the lease; I was employed at first to make a purchase.

Q. That was four days before the expiration of the lease?

A. Yes, I guess it was four days before; it was Monday and the other was Friday; I guess that is four days.

Q. Where did you see these people? 30

A. Whom?

Q. Well, I don't know their names; you talked about being employed by the Welsbach people.

A. Do you mean the Welsbach? Sometimes I saw Mr. Mason in my office, sometimes I saw him over at Mr. Warden's office; I generally saw Mr. Warden in his office in Philadelphia, Broad and Arch.

Q. Where did you see these people when they employed you?

A. Where did I see—why, I think it was over at Mr. Warden's office; I think I was sent for to meet Mr. Mason and Mr. ——

Q. Who was there?

A. I think Mr. Mason and Mr. Warden were there.

Q. Who is Wharton?

A. Warden, W-a-r-d-e-n; he is counsel for the
10 company.

Q. Did they show you the lease?

A. I don't think they did; I don't recall anything about a lease being mentioned particularly at that time.

Q. How long were you there?

A. I was there about an hour.

Q. What did they show you?

A. Why, I think they showed me a plan, told me about what the property was, and they told me they
20 had been negotiating about the purchase of it.

Q. They didn't show you a lease or say anything to you about a lease?

A. I don't think, Judge, they did; now, I won't be positive; they may have.

Q. And you didn't ask anything about a lease?

A. No, it was solely a question of purchase.

Q. What they wanted you to do was to go see the Ancona people to see if you could buy that property down at Gloucester?

30 A. That was the idea at first.

Q. That is all they said to you?

A. Oh, well, there was conversation about what—they had been trying to deal with them and they talked about that; we also talked about how much I should offer.

Q. Did they tell you they had been trying to buy the property?

A. Yes.

Q. Did they tell you they had been trying to lease the property?

A. I don't know whether they did or not.

Q. But you are sure they told you they had been trying to buy the property?

A. I did; that was the main thing.

Q. And they had failed?

A. They had failed, and wanted me to see what I could do. 10

Q. To see what you could do?

A. That was the idea.

Q. And you tried it and you failed?

A. Yes, I failed I guess; at least, I didn't get it.

Q. I imagine there can't be any uncertainty about that.

A. I suppose that is what you call it.

Q. Is it possible that lawyers have to quibble so over ideas that they can't admit that? Well, it is a fact that they didn't buy that property? 20

A. Yes, no question about that.

Q. In other words, you failed to get the property?

A. I did not get the property, that is right.

Q. You failed to get the property?

A. I suppose that is the same thing.

Q. Now, who was it told you they wouldn't sell you the property?

A. Why, Mr. David Chew first.

Q. And who secondly?

A. Mr. Samuel Chew told me he would afterward; 30 he was entirely reversed on his brother, as I explained.

Q. So one of them said he would not sell the property and the other said he would?

A. That is the idea exactly.

Q. Do you know whether either of the Messrs.

Chews had corporate authority to sell that property at the time?

A. Well, no, I knew they were officers of the company and I knew Mr. Chew.

Q. Then you did know as a lawyer that the talk with either of these gentlemen was mere idleness?

A. No, I didn't know that, because they told me Mr. Scott was authorized to act on behalf of the company.

10 Q. Who told you that?

A. Mr. David Chew. Then Mr. David Chew came in himself and voluntarily began to act, and I had had dealings with Mr. Chew before.

Q. Did you try to buy the property of Scott?

A. Well, he was there while we were talking with Mr. Samuel Chew.

Q. Did you try to buy the property of Scott?

A. I spoke to both. You mean on the first interview?

20 Q. Any interview in the world—did you try to buy the property of Scott?

A. I spoke to him and Mr. David Chew on the first interview.

Q. No, did you try to buy the property?

A. Certainly I did.

Q. What proposition did you make to Scott?

A. I didn't get that far.

Q. What did you do that amounted to an attempt to get the property of Scott?

30 A. I told them I was there to buy this property and would like to see if we could not get together on terms. After Mr. David Chew had told me Mr. Scott would act, then he butted in and said, "Now, we won't sell the property, but we will lease it," so we talked lease.

Q. But you had no authority to talk lease?

A. No, not then.

Q. Did you tell them so?

A. I did.

Q. Then you went back to your people and got authority to talk lease?

A. Right.

Q. And you went back and talked lease?

A. I did.

Q. And did you get any lease?

A. I didn't get a lease; we kept getting closer together. 10

Q. Oh, well, you have told us that; you got so close together you could hardly keep apart?

A. That was right.

Q. Well, it is not often people struggle so hard to get together and get so close to it and then fail?

A. We got very close.

Q. Well, your instructions, then, as I understand you, were limited to either the purchase or the lease of that property?

A. Yes. 20

Q. Very well.

A. First it was only the purchase; I had no authority about leasing it first.

Q. Yes, I understand; you are trying to keep the horse ahead of the cart. Did you have any discussion with your client about anything else?

A. When?

Q. Oh, any time—I don't care when.

A. Well, when I went back, of course, then, we commenced to talk about a lease. 30

Q. I know, we are through with the lease and purchase; you said your authority was limited either to purchase or leasing of that property. Now, what I want to get out of you is whether your client said anything else to you?

A. I don't recall; we just simply discussed that.

Q. And you said nothing to them?

A. Not that I recall.

Q. You did not talk back and forth about any lease to your client?

A. We talked about what would be the right amount to offer, the terms.

Q. You and your clients did not talk anything about the lease under which they were holding the premises?

10 A. Only what the terms of it were, yes; they said, "There is a $10,000 lease and the amount of the taxes." I had to know that as a starting point.

Q. Then did you know anything else about the lease?

A. Well, I don't know that I knew what it covered.

Q. You didn't see it, you say, or don't recollect it?

A. I don't recollect seeing it then, Judge, no. Of
20 course, I saw it later.

Q. So you and your client had no talk about this lease except they told you they were paying $10,000 a year and taxes?

A. That is all. At first there was no talk about the lease; it was a question only of purchasing the property.

Q. Oh, well, we have left that behind long ago; now, let's go ahead.

A. Now, if you will name the date; you say, "You
30 and your client had no talk." What date do you refer to?

Q. You and your clients' conversations dealt exclusively first, I understand you, with either a purchase or a lease of that property, nothing else?

A. That is right, as far as I know. We may have discussed the weather; I wouldn't say about that.

Q. Oh, well, if you talked about the moon and stars ——

A. I don't know; it did not impress me.

Q. That is not quite material to this case at all. Well, after you failed either to purchase the property or to lease the property, you went back and told your clients, didn't you?

A. You mean on Friday?

Q. Well, sometime this century.

A. Oh, yes. Well, the last interview I had with Mr. Weaver was Friday morning, July 7th. I don't think I got in communication with my clients, because I think I went on my vacation that afternoon and I was away for two weeks. 10

Q. Well, then, there was a hiatus in time of two weeks before anything passed between you and your clients?

A. As far as I was concerned, yes; Mr. Stockwell was home at the office, of course.

Q. Now, during that period of two weeks, of course, your clients did not say anything to you about this lease? 20

A. They did not, because I was away up in Canada.

Q. Therefore, whatever they had concluded to do about the situation you didn't know about?

A. I didn't know then.

Q. And you yourself had nothing to do with it?

A. No, except what Mr. Stockwell wrote me; I had no communication with the client, if that is what you mean; I couldn't. 30

Q. That is what I was trying to ask you.

A. No, I didn't have any.

Q. Now, when did you first learn after the expiration of the two weeks that they were holding over and intended to hold over?

A. After the two weeks?

Q. Yes, after the two weeks.

A. Well, I suppose I knew that as soon as I got back, maybe before; maybe Mr. Stockwell may have written me. I certainly am sure when I got back I knew it.

Q. Did Mr. Stockwell write to you that they intended to hold over?

A. No.

Q. Well, when did you first learn that they were
10 holding over?

A. You mean that they were on the premises.

Q. What?

A. That they were in the premises.

Q. Holding over is the phrase I use.

A. Well, I don't know about that phrase; I knew that they were in the premises when I returned because there was a suit on.

Q. Well, you did know they were holding the premises?

20 A. I knew they were in possession of the premises.

Q. Well, you knew they were in possession of the premises?

A. Located on those premises.

Q. Located there without holding?

A. I knew they were there.

Q. When did you first hear of the theory in this case that your clients could hold over after you had failed either to purchase or lease the property on the ground of fair dealing—when did you first hear of
30 that theory?

A. Well, I first heard of that theory—I talked with Mr. Stockwell just before I went away on that Friday; I think we got the word about this notice being served, and I had a talk with him and we concluded that the lease—then we got out the lease ——

Q. Oh, you had the lease?
A. It was sent to us then.
Q. Sent to you when?
A. Right that—I think the day before.
Q. The day before when?
A. Friday.
Q. What Friday was that, after you got home?
A. No, before I went away.
Q. Oh, I thought you hadn't seen the lease?
A. I said I hadn't seen the lease on Monday or Tuesday. 10
Q. Then you did see the lease?
A. I think I saw the lease on Thursday.
Q. While you were negotiating with these people?
A. I think I saw the lease on Thursday, yes.
Q. Now, how did you get that lease?
A. Why, I think we asked for a copy of it.
Q. Did you get a copy?
A. Yes.
Q. Did you get the lease? 20
A. No, I don't think we got the original; I think we got a copy.
Q. When did you ask for a copy?
A. I won't be sure about that.
Q. What did you want a copy of the lease for?
A. Well, I don't know; we asked for it, I won't just say why we wanted it.
Q. But you were hired for two special purposes; one was to purchase that property, the other, failing to purchase it, to lease it? 30
A. Yes, that is right.
Q. Now, why did you want that lease?
A. Well, I should think we would want it to make up a new lease in the first place; we were very close together on the Thursday when we got it. That is one purpose.

Q. Did you want the lease when you had been already told there was one made up, prepared, ready?

A. Well, we hadn't seen that.

Q. Not having seen the one that was prepared by the Chews, you wanted to see the other one?

A. Naturally we wouldn't let our clients sign one that we hadn't seen.

Q. Then you got that lease for the purpose of making up a new lease, did you?

10 A. Well, no, I won't say that, Judge; in anticipation, certainly, if we were to get together, to have that ready, to get the terms, to look it over, and to be perfectly frank also, to see what the rights of our client were, surely, a double purpose; there was no question about that.

Q. Then when you were authorized to purchase this property or to lease this property at the same time you had acquired that lease?

A. No.

20 Q. And examined it?

A. No.

Q. To see what your clients' rights were?

A. No sir.

Q. Well, then, I misunderstood you. I understood you to say that you got the lease to see what your clients' rights were, to be frank with you?

A. Yes, but let's have a clear understanding; June 26th there was no question of lease at all, a pure question of purchase. I hadn't seen the lease, the

30 lease was not under discussion at all, because I was employed ——

Q. Well, you hadn't seen it?

A. No.

Q. Therefore you hadn't sent for it?

A. No, I said Thursday.

Q. Now, when did you send for the lease?

A. As I recall, I think about the 6th day of July; that was on Thursday.

Q. Very well; you sent for the lease for two purposes, that was to have it in case a new lease had been drawn?

A. Yes.

Q. And the other was to see what your clients' rights were?

A. That is the idea; the matter had gotten into Mr. Weaver's hands on that day, of course. 10

Q. Now, Mr. Bleakly, what rights of your clients were you searching for in that lease?

A. Simply the question about the fixtures and how long it would take to move those fixtures, and whether the lease gave us any right of removal, and that was the question that I took up with Mr. Stockwell, and we discussed it, and I guess he advised our clients about it, because we decided what the advice would be before I went away.

Q. And what was the conclusion you reached? 20

A. That under the terms of the lease and under the law we had a reasonable time to remove those fixtures.

Q. Now, you told your clients that, did you?

A. Yes.

Q. Now, when did you tell them that?

A. I don't know when Mr. Stockwell told them, but I imagine maybe he told them Friday; certainly he told them sometime within that two weeks that I was away. 30

Q. Didn't you tell that same thing to Mr. Scott on June 28th, that you had advised your clients that way?

A. No, sir, the question of fixtures was not even discussed with Mr. Scott or anybody else.

Q. Didn't you tell Mr. Scott on June 28th, that

you had advised your clients that they could stay there a reasonable time to move their things?

A. I don't think I did.

Q. Well, do you say you didn't?

A. My recollection is now I didn't, Judge, because at that time I don't think we discussed the question of—what date are you referring to?

Q. June 28th.

A. June 28th, no, I don't think we did.

10 Q. You weren't even employed at that time?

A. Oh, yes, I was employed on June 26th; I was not employed in reference to the lease.

Q. But not a word was said between you and Scott about anything except the purchase of the property or lease of the property?

A. There was something said about both.

Q. I say, nothing was said except about those two matters?

A. Well, that is what I recall.

20 Q. Did your clients ask you what their rights were under that lease?

A. When?

Q. Any time in the world, from that time down to the present hour?

A. Well, I don't know as they asked me particularly; they must have certainly asked our firm. The main question was the question of the removal of these fixtures.

Q. Did your clients ask you what their rights
30 were under this lease?

A. They either asked me or Mr. Stockwell.

Q. How do you know?

A. Well, because Mr. Stockwell and I discussed it.

Q. Because you and Mr. Stockwell discussed it, you are willing to say that he told your clients what their rights were in the lease?

A. I wouldn't say that he did; I am pretty sure he did.

Q. Well, did your clients ask you what their rights were under the lease?

A. Certainly they did, in reference to the fixtures, Judge, yes, certainly.

Q. And in reference to something else, wasn't there?

A. No, I don't think so.

Q. Wasn't it with reference to a reasonable time to move? 10

A. They didn't ask us that particularly; they asked us about the fixtures, what their rights were in reference to those fixtures.

Q. What did you tell them?

A. We told them they had a right to remove the fixtures and had a reasonable time to remove the fixtures as a matter of law and also by the terms of the lease.

Q. When did you tell them that? 20

A. Now, I think that was told, I think sometime between the 7th day of July and say, the 25th or last part of July, somewhere along there.

Q. And they wanted to know what their rights were?

A. I think they did.

Q. How do you account, if that is so, for the fact that your clients knew before they employed you that they had a right to take the fixtures and they had a right to hold it a reasonable time to take those fix- 30 tures, to wit, six months?

A. Why, they had their counsel in Philadelphia.

Q. Oh, that is the way?

A. I presume so.

Q. And they wanted to know from New Jersey counsel?

A. That is the idea, exactly.

Q. Well, they had two barrels, the Philadelphia barrel and the New Jersey barrel?

A. I don't know; I am not a barrel, Judge.

Q. Well, some barrels shoot pretty hard. Did they tell you that Philadelphia counsel had told them what their rights were?

A. I don't think they did.

Q. During your talks with any of these people, Mr. Scott, Chew, Weaver, was there anything said about
10 your clients remaining in possession?

A. You mean pending the negotiations while we were talking? Yes, that was assumed between the parties.

Q. No, I am not talking about assumption; was there anything said?

A. Well, there was nothing said to the contrary about us not staying.

Q. Was there anything said directly or indirectly on the subject?

20 A. You mean about the moving, Judge?

Q. You don't understand it?

A. Read the question and I will try to.

(Question repeated.)

A. Well, I don't know that there was anything.

Q. On page 45—you testified in this case in the District Court?

A. I did.

30 Q. On page 45, I read a question and answer, a question put to you by Mr. Weaver: "Mr. Bleakly, while you were carrying on these conversations with the Ancona people, nothing was ever said by you or the officers of the Ancona Company regarding your remaining in possession after the 30th of June? A. Directly no, only indirectly, to ask us to make a lease." Did you say that?

A. That is right.

Q. That is correct, is it?

A. That is correct.

By the Court:

Q. Do you remember what day that was, Mr. Bleakly?

A. Which, Judge?

Q. They asked you to make a lease. 10

A. Well, the first time was on June 27th; then on July 3rd I asked Mr. Scott or Mr. Samuel Chew to have the privilege extended until July 5th, and they agreed to it.

Q. The privilege of what?

A. The privilege of making a lease and fix up the terms which would be agreeable to both parties. They agreed to give me that time to see my clients and come back with another proposition. That is the date they told me they had a lease in the other room. 20 Of course, I didn't see that lease; they said they had it already executed there. No, I won't say executed ,already drawn up.

By Mr. Wescott:

Q. Did you testify to that fact in the District Court?

A. I did; you mean in reference about a lease being drawn up? 30

Q. That these two gentlemen agreed with you to lease the property?

A. Oh, I didn't say that, Judge.

Q. What did you say?

A. I say this, that they agreed to extend the time to July 5th for me to see ——

Q. Did you testify to that in the District Court?

A. I am pretty sure I did; I can find it for you there, if you will give me the book. Here it is on top of page 45. (Indicating.)

Q. Read it.

A. Shall I read it all? It starts at the bottom of page 41. "I said, 'This being the 3rd of July, some of the officers of the company'—I think I named Mr. Mason—is away, he went away last Friday and will
10 not be back until the 5th of July, tomorrow being the 4th, I explained therefore I hadn't had a chance to see Mr. Mason or Mr. Warden, the counsel, between the date of my writing the letter and this Monday, and therefore asked them to hold the matter over until Wednesday the 5th, which they agreed to do."

Q. Who were they?

A. Mr. Scott, the man who was ——

Q. And which Chew?

20 A. Mr. Samuel Chew; I think it is Mr. Samuel Scott; I think that is his first name.

By Mr. Stockwell:

Q. Mr. Bleakly, will you please tell us when the appeal or writ of error was taken from the judgment of the Supreme Court in the other case to the Court of Errors and Appeals?

A. Our docket shows December 11, 1916.

30 Q. When was the appeal withdrawn or dismissed?

A. March 9, 1917.

Q. What advice did the firm of Bleakly & Stockwell give to the Welsbach Company with reference to the removal of their fixtures?

Mr. Wescott: I object to that; it has been repeated two or three times.

The Court: Well, if it is simply to repeat, Mr. Stockwell, what he has gone over, he has testified about the conditions ——

Mr. Stockwell: No, I don't think so, your Honor, it was simply touched on and I want the full advice given to be stated here.

The Court: If there is anything he hasn't given he may tell us. 10

The Witness: Well, the advice was that under the terms of the lease and under the law they had a reasonable time to remove those fixtures and we told them to start to remove, which they did.

Townsend Stites, recalled.

By Mr. Stockwell: 20

Q. Are you able to tell us now when the various fixtures were removed from the plant by the Welsbach Company?

A. No, only in a general way.

Q. Have you looked up your records as far as there are records?

A. No, they are looking them up now; they have not completed them, but I am pretty sure they won't 30 find anything in detail. I think the work was done on one big shop order.

Q. What do you mean by that?

A. Well, there was an order issued that was probably called "Removal from old plant to the new," and all labor and material would be charged against that order.

Q. Was that under your supervision?

A. No, it is under the treasurer's and he is looking it up.

Q. Did you have knowledge of the removal of these fixtures from time to time?

A. Yes.

Q. You know how it was done?

A, Yes.

Q. What means were taken to expedite the matter?

10 A. Yes.

Q. I don't recall whether I asked you this morning whether they were removed as expeditiously as labor conditions would permit?

A. It was all asked this morning.

Q. Oh, I didn't recall that I asked that question. When were the last fixtures removed—can you tell me that?

A. Early in December.

Q. On December 11th had all of the fixtures been

20 removed?

A. Practically.

Q. After that was it merely a question of cleaning up the plant?

A. Cleaning it up and making repairs, glazing, putting in new floors, painting up walls, filling up excavations.

Q. And as soon as that work was completed you got out, that is, you surrendered the keys?

A. Yes.

30

By the Court:

Q. Was the property used in any way, Mr. Stites, during the summer and fall?

A. The summer and fall of 1916?

Q. Yes.

A. Yes, sir.

Q. In what way?

A. We partially occupied it.

Q. You mean you carried on your business there!

A. Part of it, yes.

By Mr. Stockwell:

Q. But you carried it on until the particular fixtures involved was removed?

A. Yes, we operated both plants at one time; as 10 the new building was completed we moved the department into the new building.

Q. And as soon as the fixture was removed, you ceased operating?

A. Ceased operating in the old plant.

Q. Were you present at the conversation held between Mr. David Chew and Mr. Mason in June or July, 1915?

A. Yes.

Q. Approximately when was that? Can you fix 20 the date absolutely?

A. Yes, July 13th.

Q. How do you fix it?

A. By a letter written by Mr. Mason to the Ancona Printing Company, I think.

Q. Who were present at that interview?

A. Mr. D. S. B. Chew, Mr. Scott, Mr. Oswald Chew for a part of the time, Mr. Mason and myself; I was there a part of the time.

Q. Just tell what happened at that interview, what 30 was said by you or Mr. Mason and their reply.

The Court: What date was that?

The Witness: July 13, 1915. I think after we had made an inspection of the factory Mr. Mason got out

the engineering plans of the proposed new factory, and after having explained them to Mr. Chew and Scott, he turned to Mr. Chew, Mr. David S. B. Chew and said, "Even if we can't complete our buildings at the expiration of this lease, I know that you won't throw us out after being your tenants for thirty years, will you, Dave?" And Mr. Chew stood up, made no reply, and then Mr. Mason said, "Well, I will assume from your silence that you won't."

10

Q. What was the condition of the premises when the Welsbach Company got out?

A. They were in just as good a condition as it was possible to put them in. We spent over $3,000 in putting them in good condition, painted, glazed, filled up all the holes in the walls where we had taken out machinery, put in new floors. We had William Steele & Company's men there for two or three weeks doing nothing but putting the buildings in good

20 condition.

Q. Is there anything in the suggestion of Judge Wescott in a question to Mr. Mason that you could see daylight through the roofs in those buildings?

A. Yes, there are plenty of them got skylights in the roof; we put them in.

Q. Well, through cracks in the roof?

A. No, absolutely, no, not unless they are there in the last seven months.

Q. Or that you could see through the walls ex-

30 cept where there were windows?

A. No.

Q. Or that the rain came through?

A. The rain didn't come through the roofs when we left the buildings.

Q. How many buildings had been put up by the Welsbach Company during its occupancy of the premises?

A. There were four substantial buildings and a very large number of smaller ones.

Q. Were those all left intact?

A. All of them.

Q. In good condition?

A. First-class condition.

Q. Did you give the same attention to putting those in good condition as you did to the old buildings?

A. Yes. 10

Q. Did you know what was the intention of the Welsbach Company with reference to the construction of a new plant regardless of the ownership or leasing of the Ancona property?

A. Read that question, please.

(Question repeated.)

A. They intended to construct a new plant.

Q. Did the acquiring of the Ancona property or 20 leasing of it change the plans of the company with reference to the construction of a new plant?

A. No.

Q. They intended to build anyhow?

A. Yes.

Q. Why?

A. Because the Ancona plant was old, antiquated; our manufacturing operations could not be carried on in sequence, which meant carrying manufactured articles back and forth. Some of the buildings were 30 hardly fit for working people to work in; one building in particular in which we had about sixty girls was without daylight, totally surrounded by other buildings, and there was artificial light there all day long.

Q. You say you had sixty girls in that one building?

A. Approximately sixty.

Q. Have you anything to show what amount of money was spent by the Welsbach Company in installing fixtures during their occupancy of the property?

(Objected to.)

10

The Court: Indeed, gentlemen, I don't see the importance of any of this line of examination.

Mr. Stockwell: Except to show the magnitude of the task in removing the fixtures at the termination of the leases. I think the jury has a right to consider that, your Honor, as well.

The Court: Well, I suppose in that aspect of it,
20 it has, in view of the advice given them.

A. No, I have not, but our inventory will give it absolutely.

Q. Do you have that here?

A. No.

Q. Haven't you made up a statement showing the cost year by year of the installation of fixtures?

A. No.

Q. I thought you had.

30 A. No.

Q. Well, do you know what the amount was?

A. For maintenance and repairs or for fixtures?

Q. No, for fixtures.

A. Oh, it is probably between $750,000 and a $1,000,000. That is just a guess.

Q. Have you a memorandum of the value of the

fixtures which were installed by the Welsbach Company and left on the Ancona property when you left, fixtures and buildings?

(Objected to.)

The Court: I will admit it. Note an exception.

(Exception noted for the plaintiff.)

A. I have if Mr. Stockwell brought a folder up from his office. 10

The Court: Well, Mr. Stockwell, I think Mr. Mason testified that there was approximately $800,000 in fixtures.

Mr. Stockwell: All right, I won't go into that.

Cross-examination. 20

By Mr. Wescott:

Q. If I understand you, these Ancona buildings were old and antiquated?
A. Yes, sir.
Q. And not fit for modern manufacturing purposes?
A. That is right.
Q. Now, how many years have you known that to be true? 30
A. Oh, I have realized that for ten or fifteen years. It is a condition we couldn't help.
Q. Now, for ten or fifteen years you have put $600,000 or $700,000 worth of fixtures in a plant that was antiquated and unfit for modern manufacturing?
A. No.

Q. And then after you got out of that plant you put up a modern plant for $700,000 or $800,000 which was fit for modern manufacturing, is that correct?

A. You will have to read it; there is too much of it.

(Question repeated.)

10 A. Well, it is substantially correct; we didn't put it all up after we got out of your plant.

Q. Oh, no, you were quite a while putting it up. You began promptly when to put up the new plant?

A. On October 11, 1915.

Q. And you finished it when?

A. Can I refresh my memory from letters I have there? On November 20, 1916, I reported to the president that the new plant was practically completed except in some minor details.

20 Q. When was that?

A. On November 20, 1916.

Q. Did you find it profitable to put $600,000 or $700,000 worth of fixtures in these old and antiquated buildings?

A. We certainly did, or we wouldn't have put it there. It was a case of necessity.

Q. Why, it wouldn't take you ten or fifteen years to build a modern building, would it?

A. No, but it takes the consent of the board of

30 directors to get the money.

Q. You mean to tell us that the board of directors preferred to murder along in old, antiquated, unfit buildings and spending six or seven hundred thousand dollars in putting fixtures in them when you could have built a modern building within a year?

A. No, I didn't tell you that; I don't know what was in the board of directors' minds.

Q. Well, you know that the board of directors or somebody made up their minds when they got in this trouble with the Ancona Company they would put up a modern building, don't you?

A. The active management made up its mind long before that, that they wanted modern buildings.

Q. You found out, didn't you, when they got into this trouble with Chews that notwithstanding difficulties theretofore they would go to work and put up modern buildings—you learned that, didn't you? 10

A. Well, I didn't deal directly with the board of directors. Mr. Mason dealt with them; I think that was merely coincident; I don't think they had any relation.

Q. Had nothing to do with the trouble with the Chews?

A. I don't think so.

Q. You say there are no holes in the walls and no holes in the roofs of the buildings?

A. No, I said there weren't when we got out of 20 the buildings. I personally inspected every building and every room in every building.

Q. You went out when?

A. December 30th.

Q. December 30th; have you seen the pictures of these rooms and walls that were taken immediately after you went out?

A. No, I didn't know there were any pictures taken.

Q. You didn't see them; would you recognize them 30 if you would see them?

A. I don't know, I might.

Q. Would you be surprised if you saw those pictures and found there were lots of holes in the roofs and walls?

A. No, after a building is not occupied it can go down very rapidly in seven months.

Q. Go down overnight?

A. No, in seven months it can develop very rapidly; a small leak will develop into a big leak in a rotten roof very rapidly.

Q. Will it go down overnight?

A. Not overnight.

Q. Do you think if you left these buildings in first-rate condition they would stand it for a week, wouldn't they?

10 A. Yes.

Q. In a week's time they wouldn't go to pieces?

A. No.

Q. When was the last day that the defendant company in this case manufactured in the Ancona works?

A. That is a very hard thing to answer, because we moved oue piecemeal. If you want my best guess I should say that there was some of the chemicals still in process probably up to December 1st, but very little.

20 Q. Now, this big company keeps books, don't it, of accounts?

A. Yes.

Q. Can't you find out by consulting the books when you quit manufacturing in the Ancona works?

A. No, I think the accounts over there would be closed as of December 30th.

Q. Well, relying then upon your memory, if you can't tell from your books when you quit working there, you think you quit sometime in December,

30 when?

A. I said I thought there was probably some of the minor chemical operations still being carried on in December. We moved the tanks in operation and material all together, so we left them over there just as long as we could to get the more important things out.

Q. How is that—what did you move all together?

A. The chemicals that were in the tanks in process of manufacture.

Q. And what else did you move all together?

A. The tanks and chemicals all at one time.

Q. And what else?

A. I don't understand what you mean by what else.

Q. Now, until you moved all these things all together you manufactured there, didn't you? 10

A. Yes, as I stated before, there was probably some little manufacturing.

Q. Now, how much manufacturing did you do in November?

A. Oh, I can't tell you.

Q. Well, your books can tell?

A. No.

Q. They can't?

A. No.

Q. How much manufacturing did you do in October? 20

A. I can't tell that.

Q. How much did you do in September?

A. I can't tell that.

Q. How much did you do in August?

A. In August I should say we had fifty per cent. of our mantle manufacturing department moved into the new building, probably more. That is a mere guess.

Q. In August? 30

A. Yes.

Q. How about July?

A. I can't tell.

Q. Will your books show anything on that subject?

A. No, I don't think they will.

Q. July, August, September, October, November and December—now, won't your books show in a big institution like this during that period of six months how much manufacturing you did and where you did it?

A. No, I can see no reason why we should have split the bookkeeping of the two plants, although the bookkeeping department may have it split. I can't see any reason why they should do it.

10 Q. Well, did you keep the new and old going simultaneously?

A. Yes, in part.

Q. In July, what proportion of the new buildings was occupied for manufacturing purposes?

A. I answered that I couldn't tell you.

Q. In August you thought it was about fifty per cent.?

A. Just as a guess.

Q. Well, the new building kept on increasing all

20 the time, didn't it?

A. Yes.

Q. Well, then, in September give us another guess how much was going on in the new building.

A. Well, I am not willing to say that we made very much progress beyond that fifty per cent.

Q. Not in August?

A. No.

Q. How about September?

A. Our business is peculiar ——

30 Q. How about September?

A. We have to wait ——

Q. No, how about September?

A. I don't know, nor I don't think anyone else knows.

Q. Did you increase manufacturing in the new plant?

A. Probably we did.

Q. How about November, increase it any then?

A. Yes, in November we were pretty well over, pretty well moved.

Q. Pretty well moved?

A. Yes.

Q. Did you do any manufacturing in November in the old plant?

A. Well, I have answered that once before.

Q. Answer it again.

A. Probably we did a little of the chemical work. 10

Q. Then in December what did you do?

A. Probably a very small amount of chemical work.

Q. In the old building?

A. Yes.

Q. And all the rest of it over in the new?

A. It was over in the new or suspended entirely, one or the other.

Q. So that you kept running down, graduating, falling off in the amount of work done in the old 20 building as time went along and increasing the work done in the new building?

A. Yes.

Q. Holding the old buildings all the time under the right of mental rectitude, high moral sense, is that correct?

A. You don't expect me to answer that, do you?

Q. And for nothing—neither you had the use of them or the owners had the use of them—isn't that correct? 30

A. No.

Q. Well, you didn't use them, did you?

A. Yes, we were using them.

Q. All the time?

A. Yes.

Q. For what?

A. We were moving out.

Q. Moving out?

A. Yes.

Q. And manufacturing in both buildings at the same time?

A. Yes.

Q. Did you have these machines in the course of manufacturing operation as you were moving them through the air?

A. No, but we had the same type of machine in
10 operation in both factories at the same time.

Q. How about the other machines that were idle, where were they?

A. Some of them lying out in the yard.

Q. Out in the yard?

A. Yes.

Q. Why didn't you put them in the new building?

A. Because we couldn't get the help to do it, and we were rushing things trying to get out of the old plant.

20 Q. Now, did you notice that you succeeded in getting the whole thing done, work or not work, difficulty or no difficulty in getting employees, just about the end of the six months—have you noticed that?

A. I notice it since you called my attention to it, but I never noticed it before.

Q. How do you account for that coincidence?

A. I can't account for it.

Q. It worked out very strangely, didn't it?

30 A. No, I don't think so. I know the last two weeks that I wrote the general superintendent a letter and told him he had to get out on December 30th, that was all there was to it, and he got out.

Q. Why did he have to get out on December 30th?

A. Because I told him to.

Q. You told him when to get out and not the lease?

A. He was cleaning up and spending a lot of unnecessary time in very unfavorable weather conditions, and we had to clean the job up.

Q. Had your time of reasonableness expired, the period of reasonable time expired?

A. I don't know what you mean by that.

Q. You know the theory of this case, don't you, that you had a reasonable time to hold on there?

A. I don't know anything about the law of the case. 10

Q. You have heard of it here, haven't you, discussed?

A. Yes, I have heard of it, but I am not competent to express an opinion.

Q. Did you have any of that doctrine of reasonableness in your head while all this was going on?

A. I think probably I did.

Q. Probably you did? Well, when did it expire in your opinion?

A. What? 20

Q. The limitation of reasonableness?

A. I don't think it has expired.

Q. You don't think it has expired even yet?

A. No.

Q. Well, we will give you possession until it does expire; I hope it will expire sometime. What did your superior officers tell you about the expiration of this limit?

A. Didn't tell me anything about it.

Q. Now, who told you to hurry these people out? 30

A. Not anyone.

Q. You just took it in your own head?

A. Well, that is my job, to see that things keep moving. It was costing us a good many hundred dollars to have that job held open, moving back and forth.

Q. Well, did you hurry through the whole six months at the same rate of speed?

A. Hurry it? Yes, we did; we didn't spare expense, Sundays or holidays.

Q. You didn't spare expense or money?

A. No, sir.

Q. Or men?

A. No, sir.

Q. Or time?

10 A. No, sir.

Q. Week days or Sundays?

A. That is right.

Q. You wanted to comply with the law of limitation, I suppose, in this case. Well, you moved the last thing out on December 11th, didn't you?

A. I don't know that we did I don't think I have so testified; I can't tell.

Q. Didn't you testify the last thing you moved was on December 11th?

20 A No, I don't think so.

Q. When was it?

A. I can't tell you exactly when we moved the last thing; that would be a detail that would be impossible for me to remember.

Q. When was this big shop order made?

A. I can't tell you that; it was probably at the beginning of the moving operation.

Q. When was that?

A. Sometime in June.

30 Q. What time in June?

A. I can't give you the date of it.

Q. June of what year?

A. 1915-1916.

Q. Now, 1916, sometime in June, a big shop order was given to move, wasn't it?

A. I don't know that it was; the records will show.

Q. Well, haven't you got a big shop order somewhere?

A. Yes, they are looking it up. It is a pretty hard job to find those old records.

Mr. Stockwell: We will get it for you.

Q. But you think it was sometime in June that the big shop order was given to move?

A. That would be my impression of it. 10

Q. What was that big shop order?

A. What was it?

Q. Yes.

A. Why, it was a piece of paper.

Q. Yes, what kind of paper?

A. As I remember it, it was yellow paper.

Q. What was on it?

A. I don't think I have ever seen the shop order, but it probably had a number and a date and a written statement of the purpose for which it was issued. 20

Q. Then there was something beside the paper?

A. I didn't understand your question or I wouldn't have said paper; I didn't know what you were driving at.

Q. Well, what I was driving at was very plain, to get what was in that order, when it was made? Who made the order?

A. One of the clerks in the office, I presume.

Q. Now, what does a big store order mean—what does the phrase mean—a big store order? 30

Mr. Bleakly: Shop.

Q. A big shop order.

A. It means one running over a considerable period of time.

Q. Have you any idea why you started in June before the lease expired?

A. I don't know that we did start in June; the shop order will show for itself; that is only my opinion.

Q. There was a sprinkling system in the Ancona factories, wasn't there?

A. There was a sprinkling system in the factory after we put one there.

Q. Wasn't there one there before?

10 A. No, sir, not a sign of it.

Q. None underground?

A. No. Well, I don't know what was underground; there may be a sprinkler system underground if you can imagine such a thing.

Q. You said this morning about the underground system; I wondered what you meant.

A. That was the the supply pipes to the sprinkler system.

Q. Did you put those there?

20 A. Yes.

Q. And took them out?

A. No.

Q. Why not?

A. We couldn't get the labor to take them out in the first place; in the next place the ground was frozen, couldn't dig.

Q. Couldn't you get them out when the ground thawed?

A. Yes, if we had waited long enough it is ob-
30 vious we could.

Q. And wouldn't your doctrine of reasonable time have enabled you to do that, hold possession until the spring thaws came and enabled you to dig?

A. The facts are we didn't hold possession beyond the freezing point.

Q. Yes, you abandoned the protection of that doc-

trine when the weather froze up and you got the new factory built and everything in there, then you abandoned it, didn't you?

A. I haven't acknowledged that I had any such doctrine.

Q. You have spoken of great numbers of machines.

A. Three thousand and over, fixtures and machines.

Q. Were they pretty heavy?

A. Some of them were very heavy and some of them were very light. 10

Q. I suppose a great majority of them were very light?

A. Yes, they were.

Q. Very few that had any weight at all?

A. Well, I wouldn't say that there were very few; we probably had two hundred knitting machines.

Q. How were they attached?

A. Attached to the floors?

Q. Floors or walls or ceilings or any place? 20

A. Why, the usual common practice with floor bolts.

Q. And the boilers, were they held by floor bolts, the motors, and all those things?

A. The boilers? No, they are set up in the usual way.

Q. And the sprinkling system, underground and overhead, were they held the same way?

A. We didn't take the sprinkling system underground out. The sprinkler system over head was held by screws and easily removable. 30

Q. Very easily removable?

A. Very easily, yes.

Q. And when you removed them I suppose you puttied up the holes?

A. We did not.

Q. You did not?

A. No, little wood screws.

Q. You painted them?

A. Yes, we painted mostly inside the building.

Q. Painted the screw holes over?

A. Well, they were painted, the inside of the buildings. We didn't skip the screw holes.

Q. Was there anything attached to any of the walls?

10

Mr. Stockwell: When?

Mr. Wescott: Before the moral limitation expired in this case.

Mr. Stockwell: Do you understand the question?

The Witness: Yes.

20 Mr. Stockwell: Go ahead.

A. Anything? Yes, there was, clothes hooks on some of the walls, certainly no machinery, but generally speaking there was nothing on the walls other than clothes racks, may have been a hanger here and there.

Q. So that the only part of the buildings that you had to change at all in moving out of there were such as left a few screw holes in the floor and in the walls?

30 A. Absolutely, no.

Q. What?

A. No, we took out tanks which left great holes in the floors and we had to put in new floors; we put in any number of concrete floors.

Q. How many concrete floors did you put in?

A. Well, in about four buildings.

Q. How many concrete floors did you put in?

A. About four buildings.

Q. Well, you mean you put in four concrete floors?

A. Yes, in four buildings.

Q. How many floors in one building, one?

A. That is usual; they are one-story buildings, yes.

Q. Then you put in four floors?

A. Yes, four concrete floors; we put in some ——

Q. What was in these buildings before you put in the concrete floors? 10

A. The chemical plant.

Q. Did you put in any other floors?

A. Yes, we put in new sections in the floors where all the punch presses were taken out.

Q. When did you let the contracts for putting up the new building or buildings?

A. I received the authorization about noon on October 11th, and we began work that afternoon.

Q. October 11th of what year?

A. 1915. 20

Q. Where are those contracts?

A. In our files.

Q. I wish you would produce them, please. When did you let the contracts for removal to the new building, into the new building?

A. Oh, at sundry times.

Q. Have you those contracts?

A. Why, they were probably in the form of orders.

Q. Have you those orders?

A. Yes, they are in the purchasing department. 30

Q. I would like you to produce those; you will have no difficulty in producing them at all?

A. No, I don't think so.

Q. And they will show just when you began to move, won't they?

A. No, not necessarily so; they will show when

we began to move the material that that order covered.

Q. And what sort of material would be in the order?

A. I can't tell you.

Q. The material that was in the building?

A. Yes, of course, the material that was in the building.

Q. Were there any boilers connected with the
10 sprinkler system?

A. No, I never heard of a boiler being connected with the sprinkler system.

Q. Can you fix the time when you moved the sprinkler system?

A. The removal of the sprinker system extended over quite a period of time.

Q. Beginning when and ending when?

A. I can't tell you definitely.

Q. Will your papers and records show it?

20 A. Yes, I can produce a paper that will show when it was completed, when we completely removed it.

Q. Can you produce a paper that will show when you began?

A. No.

Q. Can you guess when you began—was it after June 30th that you began?

A. Oh, yes, well along in the winter.

Q. Well along in the winter?

30 A. Yes.

Q. Then you kept the sprinkler system in the old plant while you were manufacturing up to sometime along in the winter?

A. Yes.

Q. The sprinkler system is to put out fires?

A. Yes.

Q. Now, when did you move the boilers?

A. We only moved one boiler, I think that was in November; we left two boilers there that belonged to us.

Q. That belonged to you?

A. Yes.

Q. Why didn't you take them?

A. Because we couldn't get the necessary labor to remove them. We paid a dollar an hour to remove this one. 10

Q. When did you remove the one you did remove?

A. Oh, October, or November, I can't fix it definitely.

Q. Have you anything that will show when you removed that boiler?

A. Yes, I think so.

Q. Well, will you try to ascertain when you removed it?

A. Yes.

Q. You didn't remove the other two because you couldn't get me to remove them? 20

A. That is right.

Q. Did you operate them, the other two?

A. Yes, we operated them.

Q. How long?

A. What do you mean, how long? You mean when did we cease to operate them?

Q. Yes, those two boilers that you didn't move because you couldn't get men to move them, how long did you operate them? 30

A. Oh, I think until about December first.

Q. You operated them up until the time you quit the building?

A. No, we didn't quit the buildings until December 30th.

Q. Then you stayed there a month without operating at all?

A. Oh, that is approximately right. There are other boilers in the boiler room; I don't know which ones were operated.

Q. Well, were there other boilers in the boiler room that you did operate?

A. Yes.

Q. Up to the time you left?

A. No, not up to the time we left.

Q. Well, when did you quit?

10 A. I told you probably around December 1st.

Q. Well, if you quit December 1st, and you didn't go out until December 30th, then there was a month that you were occupying the building without even manufacturing, wasn't there?

A. No.

Q. Why not?

A. Many of the chemical processes don't require steam.

Q. Oh, it was a chemical process? Now, how many

20 chemical factories did you have?

A. One.

Q. Well, did you give over the others or did you keep them all until you got through the chemical factory?

A. Give over what others?

Q. There were a lot of buildings there, weren't there?

A. Oh, you mean give them up to the land owners?

Q. Yes.

30 A. No, we kept them all until we finished the job.

Q. You kept them all until you finished the job, got through with it?

A. Yes.

Q. Now, the boiler in connection with the gas plant —when did you take that out?

A. We didn't take it out; we sold it.

Q. Did you put the boiler in?

A. Yes.

Q. When did you put it in?

A. I can't give you date, but I can produce the bill.

Q. Well, produce the bill; when did you sell it? That is more important yet.

A. I think it was removed about twelve o'clock on December 30th, if I remember; I know the fellow that bought it had a hard job getting it out.

Q. But he removed it December 30th? Now, until December 30th, when you turned over the keys and surrendered the fort or the place, you used that boiler, didn't you, together with the gas system connected with it? 10

A. No.

Q. When did you quit using gas there?

A. Oh, probably thirty days before we got out.

Q. Then up to thirty days before you got out you used the gas system?

A. Well, that is approximately right. 20

Q. The gas system was how extensive in the Ancona works?

A. How extensive in the Ancona works?

Q. Yes, how many buildings did it run through?

A. It ran through the whole plant, the gas lighting and industrial fuel system.

Q. Yes, went through all the plants; and did you use it for fuel purposes?

A. We didn't use it for fuel purposes after we stopped manufacturing gas over there. 30

Q. When did you stop manufacturing gas?

A. I can't tell you exactly; I say, probably thirty days before we got out.

Q. Then there was thirty days that you did not manufacture anything except chemicals?

A. Yes, I think that is about right.

Q. The chemical manufacturing was limited to how many buildings did you say—I have forgotten?

A. I haven't said; there was quite a group of them, one-story buildings.

Q. Well, how many? Did the chemical business occupy all the buildings?

A. No.

Q. How many did it occupy?

A. Probably six or eight buildings.

10 Q. How many buildings were there all told there?

A. Oh, I can't tell you, thirty-five or six, including all the sheds and shacks.

By Mr. Stockwell:

Q. The gas plant which has been referred to, was that a plant which your company installed?

A. Yes.

Q. I think you stated that the initial work on the
20 new building was October 11, 1915?

A. Yes.

Q. Now, what part of the work was started at that time?

A. Cleaning the ground, taking down the buildings that were in the way, taking down the trees and the stone wall and fences.

Q. Didn't you begin before October 11th, to remove the old buildings and clear the property, etc.?

A. No, that is my recollection; we may have be-
30 gun a little before; I think we did, yes, we cut a lot of those trees down long before that, that is true.

Q. Now, what did you do in the way of beginning operations for the new building before October 11th?

A. If I remember it we cut all the trees down, took the roots out. Whether we began the removal of the buildings that were in the way of the new plant b--

fore October 11, or not, I am not sure. And, by the way, there was a good deal of piping too that was necessary to dig up and re-arrange. That was all done before October 11th.

Q. On the site of the new building?

A. Yes.

Q. What kind of piping?

A. Water pipes under the ground.

Q. City water piping?

A. No, our own. 10

Q. Why was it not possible to take out all those fixtures at one time in mass—why was it done piecemeal?

A. Why, it is physically impossible to do it.

Q. Why?

A. You couldn't get enough hands, couldn't get enough help to do it.

Q. It has been intimated that all you had to do was to remove the bolts from the floor and move the machines over bodily; is that the way you did it? 20

Mr. Wescott: Take the screws out.

A. Well, that is roughly the way we did it, yes, but there is a good deal more to it than those words would indicate.

Q. What is there to it?

A. Well, you take a punching press, for instance, you have to build a concrete foundation for it in its new location; you have got to put stay bolts in that 30 foundation to bolt it down when it is put on there; you must take it off its old foundation carefully, put it on a specially prepared truck to cart it the small distance as it was in our case, take it over to its new foundation, put up the shafting or motor or whatever is going to drive it, set up the new machine and have it adjusted.

Q. Wasn't the sprinkler system one of the last things you took out?

A. Yes.

Q. Why was that?

A. Because it was one of the easiest things to take out.

Q. What about fire protection?

A. That was another reason why it was left in, because we wanted the protection from that system
10 as long as we could get it.

Q. What did you mean by saying in giving the order to get out unnecessary time is being taken?

A. I don't think I said that.

Q. You used the word "unnecessary"; did you mean that the men were loafing on the job?

A. No.

Q. At the time you gave the order they were spending time putting the old building in shape, weren't they?

20 A. Yes.

Q. And not removing fixtures?

A. Yes.

John Devlin, recalled.

The Court: Is this something omitted, Mr. Stockwell?

30

Mr. Stockwell: Yes.

By Mr. Stockwell:

Q. The witness is shown voucher of the Welsbach Company, dated September 29, 1916, for $2500, made

payable to the Ancona Printing Company, and is asked if that voucher was sent to the Ancona Printing Company?

A. Yes, sir, this voucher was sent to the Ancona Printing Company.

Q. Was it returned uncashed?

A. It was returned uncashed.

Mr. Stockwell: I ask to have it marked.

(Said paper is marked Exhibit D3.). 10

Cross-examination.

By Mr. Wescott:

Q. That was a voucher for rent, was it?

A. Yes.

Q. Now, did you pay rent quarterly?

A. Yes, sir, we paid the rent quarterly. 20

Q. This was a quarterly period of rent?

A. Yes, sir.

Q. That is to say, you paid four times a year?

A. Yes, sir.

Q. Was it due in advance?

A. No, sir.

Q. Did you send more than one voucher?

A. No, sir, just that one.

Q. Only the one?

A. Yes. 30

Q. Didn't you send one in December?

A. I proffered the rent in full in December for six months.

Q. In cash?

A. Yes.

Q. You did not send any voucher?

A. No, sir.

Q. Who told you to do that, your lawyer?
A. The president of the company, Mr. Mason.
Q. You did not send a voucher?
A. No, sir.

DEFENDANT RESTS.

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10 PLAINTIFF'S REBUTTAL.

Samuel B. Scott, recalled.

By Mr. Weaver:

Q. Mr. Scott, I call your attention to an interview first with Mr. Bleakly on the 28th of June and ask you if you have a memorandum of that interview, if you made a memorandum of that interview at the
20 time?
A. Yes, at the time that interview happened I made a memorandum in a book which I keep for the purpose of keeping memoranda of conversations and other happenings.

Mr. Stockwell: I object to the reading of the memorandum.

Q. Well, by refreshing your memory what took
30 place at that time? What did Mr. Bleakly say and what did you say?
A. June 28th was the middle day of three separate visits which Mr. Bleakly paid to the office, if you want the thing in chronological order.
Q. Well, suppose you take them up in chronological order and state.

A. On each of these days I made a memoranda immediately after Mr. Bleakly left. The first visit was June 27th; Mr. Bleakly came to my office in the Commercial Trust Building, Philadelphia, and said that he wanted to see Mr. David S. B. Chew. Mr. Chew was in another room; I went in and said Mr. Bleakly wanted to see him, and the three of us sat down together. I said to Mr. Bleakly as soon as he had said that he come in the Welsbach matter—all of our dealings with Mr. Bleakly before had been about other matters, and as soon as it was mentioned by him that he was there on the Welsbach matter I said to him, "Mr. Bleakly, you must understand that neither Mr. Chew or I have any power to talk on that question except on the basis of a lease for $15,000 a year for five years. This is not technical; this is real; we are not the board of directors; the board of directors decides that matter." 10

The Court: How is that? You had no power to talk except on what? 20

The Witness: On a basis of $15,000 a year for five years. That was the letter of the preceding September. Then Mr. Bleakly began to argue with Mr. Chew, said he hoped the thing would not come to a legal squabble, that that was very bad for all concerned, and of course as lawyers we like that sort of thing, it is all our business, but from the point of view of our clients I hope it won't happen. Then about that time, after Mr. Bleakly had used considerable eloquence on those lines, Mr. Chew left the room and I said to Mr. Bleakly, "The only thing that I can do is to report anything you may have to say; if you have any offer to make, make it," and as Mr. Bleakly said, we all three went out to lunch after 30

that, and as far as I remember, nothing whatsoever was said about this Welsbach business afterward; it was purely a social call. The next day, June 28th, Mr. Bleakly came back again, but he said he had not seen his clients and he had nothing further to offer, nothing further to say, but he began with me to discuss the legal aspects of the case. He said, "You can't put us out, you haven't given us sufficient notice; the law requires thirty days' notice, and any-
10 way, we have got a reasonable time to get out." I knew that was very bad law and smiled at him. "In the second place," I said, "we have given you ample notice several times, and in the third place we didn't need to give you any notice at all." That ended that interview. The third interview was the next day, the 29th. Mr. Bleakly called; Mr. David S. B. Chew and myself were there, and he said he was then prepared to make a formal definite offer, and on behalf of his clients, the Welsbach Company, he offered that
20 the lease should be extended at $12,000 a year for one year or alternately for two years, with a six months' notice of cancellation after the first year, and I said to him, "I will undertake to communicate that offer to the board of directors," which I did.

Q. What was the result of that?

A. The board of directors had a meeting and rejected the offer, and I communicated that rejection in a letter to Mr. Bleakly which was delivered by special messenger on the 30th day of June.

30

By the Court:

Q. Did the other end the interview? Was that all that was said at the interview when you told him you would communicate with the board?

A. Yes, that ended the interview; that is all I had power to do, all I assumed to do; that is what I did.

Q. That is the letter of the 30th, is it?
A. That is the letter of the 30th, yes.

By Mr. Weaver:

Q. Now, is that the last interview you had with Mr. Bleakly?
A. No.
Q. What happened subsequent to that in respect to your interview with Mr. Bleakly? 10
A. Mr. Bleakly answered that letter saying that he was going away and would be back July 3rd between eleven and twelve o'clock. At eleven o'clock I consequently supposed Mr. Bleakly would appear. He did not appear, I was anxious to leave the office, I didn't think it was a courteous or polite thing to be absent from the office when distinguished Jersey counsel had indicated a desire to see me, so at twelve or possibly five minutes of, very near twelve, I telephoned and said, "Mr. Bleakly, are you coming?" 20 He said he was coming but had been delayed somehow or other, and he came over.
Q. What was the result of that interview?
A. He said he hadn't seen his clients since and had nothing further to communicate. It ended in absolutely nothing.
Q. Was that the last interview you had?
A. No, he came—Mr. Bleakly came on July 5th.
Q. Well, what happened then?
A. He asked to see Mr. David Chew, and I said he 30 wasn't there. I said, "Mr. Bleakly, there isn't any reason for you to be here; the case is already in the hands of counsel; a possessory action has been determined on; there is nothing I can say to you." "Well," he said, "in that case it is a short horse and very quickly curried," and went out.

Q. Now, was that the last interview you had?

A. That was the last interview I had with Mr. Bleakly until the court proceedings had already commenced.

Q. Mr. Bleakly in his examination stated that you and Mr. Chew agreed to lay over the matter of the negotiation for the lease on the 3rd of July to the 5th; what is the fact about that?

A. I remember no such agreement; I remember
10 nothing in my mind which would suggest such an agreement, because I considered the matter absolutely and definitely closed by the action of the board of directors on the 30th of June.

Q. Now, what other matters have you in your minutes than those testified to by you here yesterday respecting the action of the directors regarding a lease, a lease or the negotiations with the Welsbach Company?

A. I don't understand that question, Mr. Weaver.

20 Q. Have you any other minutes regarding a proposed lease or negotiations with the Welsbach Company other than those you have testified to here yesterday?

A. You refer to minutes of the board of directors?

Q. Yes, minutes of the board of directors.

The Court: Concerning this property, you mean?

Mr. Weaver: Yes, concerning this property.

30

A. Through how large a period of time do you refer to?

Q. Well, back as far as January.

A. I have testified to everything as far back as that.

Cross-examination.

By Mr. Stockwell:

Q. Was there any board of directors' meeting or stockholders' meeting after June 30th in reference to this matter or in reference to any matter?

A. We have periodical directors' meetings.

Q. That is not an answer to my question (to the stenographer); please read the question. 10

(Question repeated.)

A. In reference to ——

Q. Yes, in reference to the general business of the company.

A. There has been a series of directors' and stockholders' meetings.

Q. When was the directors' meeting or stockholders' meeting next following June 30th? 20

A. I don't remember; I would have to refer to the minutes for that.

Q. Please refer to them.

A. September 29, 1916.

Q. No meeting in the month of July, 1916?

A. No.

Q. Then the company did not hold any meeting to decide what should be done about this lease or the purchase of the property by the Welsbach Company after June 30th? 30

A. No.

Q. Didn't you communicate to the directors and stockholders the negotiations which were conducted by Mr. Bleakly after June 30th?

A. I don't understand there were any negotiations.

Q. He made propositions to you, didn't he?

A. Not to me, no.

Q. Well, by you, I mean the company?

A. I don't know a thing, unless there were communications with Mr. Weaver.

Q. Didn't Mr. Weaver communicate to you or Mr. David S. B. Chew the offer which Mr. Bleakly made after the first of July?

A. I think he did.

10 Q. Then why didn't you put it up to the board of directors?

A. Because the board had already taken its position and given us full instructions.

Q. But the instructions were on the basis that you would lease for a five-year period and for $15,000?

A. And they had made and would make no change from that. It would have been an insult to the board of directors to refer to them any different terms and phrases.

20 Q. It would have been an insult to them?

A. Yes.

Q. To which particular member of the board of directors would that have been an insult?

A. All of them.

Q. Including yourself?

A. Including myself; I would feel it would have been insulting myself to have done so.

Q. Just explain why that would have been an insult?

30 A. Because after a thorough consideration of the whole matter extending for about a year on four or five separate and distinct occasions the board had reiterated its terms and ——

Q. I believe it had reiterated this statement, that it wouldn't sell; is that it?

A. Yes, that it wouldn't sell and would not rent on

any different terms than $15,000 a year for five years. Now notwithstanding that reiteration of the board of directors I took the responsibility personally to call them into a meeting to consider Mr. Bleakly's offer on the 30th day of June.

Q. You have already told us about that.

A. Yes; now, you ask me why?

Q. Wherein is the insult?

A. I was criticized for having done so, because the board had already taken its position, and to receive anything which suggested that it would modify it was considered improper. 10

Q. You still wanted to lease the property to the Welsbach Company after June 30th, didn't you—you, meaning the company?

A. I have no means of knowing what the company wanted to do, except the action of the board of directors; I was merely secretary.

Q. Well, what was in your own mind? We will take you one at a time. 20

A. It was in my mind to do whatever the directors directed me to do.

Q. And you did not submit to the board of directors the offer which had been made so you don't know what the directors would think about it?

A. No.

Q. Why did you say to Mr. Bleakly on July 3rd that there was in the other room a lease already drawn for this property and why don't you take it?

A. Why did I say it? Because I didn't say it. 30

Q. Did you refer to a lease then drawn?

A. No.

Q. Did Samuel Chew in your presence make that statement to Mr. Bleakly?

A. There was some similar statement made, not in my presence but in my hearing.

Q. He made that statement to Mr. Bleakly, didn't he?

A. I didn't say he made that statement.

Q. What statement did he make?

A. I will tell you in direct terms.

Q. You said it was in your hearing?

A. Yes.

Q. Now, what was it ?

A. "Why don't you accept the terms we have laid
10 out before and take the lease which we have prepared?".

Q. Is that the exact language he used?

A. I don't pretend that is the exact language.

Q. Didn't he say, "There is a lease already drawn in the next room—why don't you take it?"

A. I can't remember so accurately as that.

Q. You seem to be very accurate on some things. Did you make a memorandum in your notebook of that conversation?

20 A. No, my notebook does not show that conversation.

Q. Let's see your notebook for July 3rd. It this a general notebook on all matters on which you think it is important to make notes?

A. Yes.

Q. I see you didn't make any notes between——

A. I object, however, to your looking at other matters.

Q. I don't want to see what notes you have made
30 except the dates, but I do see that in this notebook there is nothing made between July 5th and November 13th; I suppose nothing of importance happened to you in that period?

A. That is quite true.

Q. Now, you were very careful to tell Mr. Bleakly, I understand, you were very careful to let Mr.

Bleakly know that you had no authority to make any statement on behalf of the company—you cautioned him about dealing with you?

A. I did.

Q. That is right; you have always gone on the assumption you didn't have any authority to represent the company?

A. Oh, I make no such statement.

Q. Didn't you go on the assumption that you had no right to do anything to represent the company except upon express instructions? 10

A. Oh, no, that is a mistake; I had no authority to do anything but talk about the conditions the board had laid down, $15,000 a year for five years, but I could not in any way change or vary those conditions.

Q. You were not prohibited from listening to what was said and reporting it back to the board of directors, your principal, for action?

A. That is what I did. 20

Q. But you didn't do that as to the offer which was made through Mr. Weaver?

A. I did not.

Q. Did you make any note in your notebook as to that offer?

A. No.

Q. Why not?

A. Because I was not a witness to it; I only make these memoranda in case I ——

Q. In case of lawsuit? 30

A. Yes, law is my business; if I have to become a witness I take the precaution to put myself in a position to aid my memory.

Q. You say you are a lawyer; your office is in the office of David S. B. Chew, isn't it?

A. Our offices adjoin in the same suite, yes.

Q. Well, is it the same office?

A. I don't quite understand your use of the word "office." It is not the same room.

Q. How many offices are there in the suite?

A. Three.

Q. Who occupy the offices?

A. I occupy one, sometimes Mr. Samuel Chew is there, sometimes my father is there, who is employed in a certain capacity. Mr. David S. B. Chew has the 10 most distant room, the middle room is occupied by the stenographer and the small cut-off is occupied by Mr. Oswald Chew.

Q. Now, that is the office of the Ancona Printing Company, the plaintiff, is it not?

A. No.

Q. Isn't that where it transacts its business?

A. It is the office of certain officers of the Ancona Printing Company.

Q. Where is the office of the Ancona Printing Com- 20 pany?

A. Third and Market Streets, Camden.

Q. What kind of business does it transact there?

A. It is the main office where legal business is transacted.

Q. You mean the statutory New Jersey office?

A. Yes.

Q. And it is used for no other purpose?

A. Stockholders' meetings.

Q. Once a year?

30 A. Whenever necessary.

Q. But for practical business you transact your business in this suite of offices in Philadelphia?

A. That is where the officers have their main business, and therefore most easily seen.

Q. While we are on this subject, what is the business of the Ancona Printing Company and what was its business on June 30, 1916?

(Objected to.)

Mr. Stockwell: We have a right to know; it is a question of good faith all around, and this gentleman is under cross-examination.

The Court: I think it is competent on the relation of the witness to these conversations.

(Exception noted for the plaintiff.) 10

The Court: It would depend on what its business is as to whether or not there would be any implied authority to lease the property, perhaps.

A. The Ancona Printing Company was chartered for the purpose of printing cotten cloths, but a great many years ago it ceased actively ——

Q. I am not asking you what it was chartered for; I am asking what it did in June, 1916. 20

A. You asked me what its business was; I don't know whether you mean what it was actively doing or what it had charter powers to do.

Q. That is what that question means; it can't mean anything else.

A. It was actually in receipt of the rent of its property.

Q. It had no other business then than to rent this particular piece of property and collect the rental?

A. It was doing no other business. 30

Q. That is the only business it had in June or in that year 1916, is that correct?

A. That is the only business I know of.

Q. That is the only business it has had since?

A. Yes.

Q. Now, who were the officers of the Ancona Printing Company in June, 1916?

A. What part of June?

Q. Give me both parts, because I think there was a meeting there.

A. There was a meeting in the middle of June. I think the officers changed.

Q. All right, give me before and after.

A. May 23rd the directors were elected, Henry B. Chew, D. S. B. Chew, Mary J. B. Chew, Martha M. Brown, Samuel Chew. Following that on June 10 12th the following officers were elected: Henry B. Chew, President; David S. B. Chew, Treasurer; Samuel B. Scott, Secretary.

By the Court:

Q. How many directors were there?

A. Five.

Q. You were not a director yourself?

A. I was not a director, no.

20

By Mr. Stockwell:

Q. Weren't you a director in June, the latter part of June?

A. No, I have never been a director of the Ancona Company.

Q. You were secretary?

A. Secretary.

30 By the Court:

Q. Was there ever any time when three of those directors were in these conversations?

A. No, there was never more than two directors that talked to Mr. Bleakly at all, Mr. David Chew and Mr. Samuel Chew.

By Mr. Stockwell:

Q. The other members of the board, all the other members of the board are members of the Chew family, aren't they, relatives of David S. and Samuel Chew?

A. All related in some way.

Q. You were the attorney of the company at that time, weren't you?

A. I can't say that: I don't remember any formal retainer for this company. 10

Q. Didn't you represent the company in all of its dealings?

A. No, I can't say that.

Q. As attorney?

A. No, I was secretary; I am a member of the Bar and have a general contract with the Chew family to do legal work, but I can't say that I ever had either a mandate or retainer from the Ancona Company. 20

Q. The first interview that Mr. Bleakly had at your office in Philadelphia—I refer to that interview,—didn't Mr. David Chew then say to Mr. Bleakly in your presence that you were the attorney for the company and to deal with you?

A. I don't remember his saying I was attorney for the company.

Q. Will you say he didn't say that?

A. I say, I can't remember that that was said.

Q. Well, haven't you any memorandum in your notebook as to what was said and what was done? 30

A. I have certain memoranda which cover what I consider the important phases of it; I did not make any effort to cover ——

Q. Then you haven't put down everything that happened in these interviews, only what you considered important from your standpoint?

A. I have not pretended to put down everything, only certain aides to my memory. I have testified as full as I am able, aiding my memory from what I have put down.

At this point a recess was taken until Thursday morning, September 27th, at 10 o'clock.

10

Camden, New Jersey, September 27, 1917.

Trial of the above matter resumed at ten o'clock A. M., pursuant to adjournment, in the presence of counsel for the respective parties.

Samuel B. Scott, Esq., resumed in cross-examination.

20 By Mr. Stockwell:

Q. Mr. Scott, have you the minute book there? Please get it if you haven't.

(Witness produces book.)

Q. Did you ever visit the Ancona property in Gloucester?

A. Yes, I have been there once or twice.

Q. When were you there? Please name the occasions.

30

A. Between what periods of time?

Q. Well, start at the present time and go back.

The Court: Give us the best you can, Mr. Scott.

The Witness: It is a difficult problem because I have been there quite a number of times; it lies in the general circuit of my business.

Q. In the last six months have you been there?
A. Yes.
Q. Several times?
A. Yes.
Q. Were you there in the month of June, 1916?
A. The month of June, 1916? I can't remember anything definitely which fixes June, 1916, as the time when I was there. 10
Q. Well, were you there at all during 1916?

The Court: Well, Mr. Scott, if you remember all right; if you don't, say so.

A. Well, I don't remember.

The Court: Well, that is an answer. 20

The Witness: No, I have been there a great many times, but I have no way of fixing the date.

Q. Didn't you go down with the other officers and directors of the company and inspect the plant before June in the year 1916, in or before the month of June of that year?
A. I remember a time sometime in 1916 that I was over the plant, yes; I can't remember when it was exactly. 30
Q. It was before June, though, wasn't it?
A. It was before the vacation, before the end of the lease, that is all I can remember; I don't remember when it was.
Q. Between January and June then?
A. Yes.

Q. Now, who went over with you when you went there at that time?

A. Mr. David S. B. Chew was there; I think Mr. Oswold Chew; I don't remember anybody else.

Q. Any other member of your corporation?

A. I can't remember anybody else.

Q. Did you go into the property?

A. Yes.

Q. Throught the buildings?

10 A. Yes.

Q. Throught the buildings?

A. I can't say; I went through a great many of them.

Q. You were there to inspect the property, weren't you?

A. Partly.

Q. I think it was on September 24, 1915, that the company wrote to the Welsbach Company that it could have a lease for five years at $15,000 a year; 20 if I am wrong on the date I wish you would correct me.

A. That is correct.

Q. That is my recollection.

A. That is correct.

Q. Was it your idea that that proposition remained open until June 30, 1916?

A. Yes, up until June 30th.

Q. Is it your idea that it remained open until you actually served the demand to quit on July 7, 1916?

30 A. I have no idea about that, because the board said nothing about that.

Q. Yes, I recall that, but I am asking you what your idea was?

A. My idea was simply to do what the board directed; I had no other idea; had no right to have one.

Q. You did not consider that proposition open then after June 30th?

A. I didn't consider it in relation to open or closed; is simply ended; there was nothing further to be said or done.

Q. Well, do you say the company was not willing to make a lease on those terms after June 30th?

Mr. Wescott: I object; how does he know what the company was willing to do?

A. I don't know.

10

The Court: I think, Mr. Stockwell, we are getting into a realm of psychology which nobody can tell anything about.

Mr. Stockwell: I think this witness knows and knows very well, your Honor.

The Court: How can he know except by what they said?

20

Mr. Stockwell: Because he has on other occasions undertaken to represent the company and taken the bit in his own mouth and did what he saw fit, and I will show to your Honor that is these proceedings were taken.

The Court: Read this question, Mr. Stenographer.

(Question repeated.)

30

The Court: Now, what company are you referring to?

Mr. Stockwell: His company, the Ancona Company.

The Court: Well, the question might easily have been and I understood it to refer to the Welsbach Company.

Mr. Stockwell: Oh, no.

The Witness: I will answer it as I have answered before, that I do not know; that I took my orders from the board of directors and had no further judg-
10 ment in the matter.

Q. Yes; now, it is true, however, that you had in your office subsequent to June 30 a form of lease you prepared, isn't it?

A. That is true, and it was true because it was prepared long before and ——

Q. I didn't ask you because; I asked you if it is true?

A. I answered yes and I wish to explain.

20 Q. You can explain when your counsel asks you; just at the present time answer my questions, Mr. Scott. When was that prepared?

A. I don't know the exact date, but sometime during the spring of 1916.

Q. Can't you give us any idea about when it was prepared?

A. No, because I don't know.

Q. Who prepared it?

A. I did.

30 Q. Yet you haven't any idea when it was prepared?

A. No, because I have nothing to fix the date. I know it was prepared quite a long time before the occurrences of the latter part of June.

Q. Who instructed you to prepare it?

A. Mr. David S. B. Chew.

Q. Why did he instruct you to prepare it?

A. Because it represented the terms which the Ancona Company had proposed to the Welsbach Company. It was considered wise to have those in the most definite form so if the minds of the parties met it could be possible to consummate their action by immediate execution of an already prepared lease.

Q. I understood you considered that out of the question, there wouldn't be any meeting of the minds, and you directed these people to get out? 10

A. You have misunderstood my time reference; from September 24th to June 30th of the next year the Ancona Company had made a written proposition from which it never varied; $15,000 a year for five years.

Q. Very true.

A. During the spring, the exact date of which I am unable to state, long prior to June 30th, I was requested to put that proposition in the definite form of a lease, which I did. That lease was still in existence on June 30th. 20

Q. Where was it?

A. As far as I remember it was in my room, probably various parts of the files.

Q. Mr. Samuel Chew knew it was there, didn't he?

A. He did.

Q. And you were present when he suggested that there was a lease already prepared and the Welsbach Company ought to take it?

A. I was present in this sense, that I was in a different room and I heard the conversation going on between Mr. Bleakly —— 30

Q. When that conversation took place, where was that form of lease?

A. The lease was lying on my desk, on the left-hand side of the roll top desk. I have two articles of

furniture that I use; a table somewhat similar to that, and a desk.

Q. You mean it was packed away with some papers, a package?

A. It was simply lying ——

Q. Lying out in the open?

A. My desk has a great many papers lying on it and this was part of it.

Q. That had been lying there since spring?

10 A. I am unable to say that, because I don't know, I am unable to remember.

Q. You don't know why it was gotten out and put on your desk, do you, about that time?

A. No.

Q. Haven't any idea?

A. No, it had been there quite a long time.

Q. Did the board of directors authorize the preparation of that form of lease?

A. The board of directors authorized the propo-

20 sition which the lease embodied. The mere technical drawing of the lease was not stated by the directors.

Q. This was the lease to be made by the Welsbach Company, I suppose?

A. Yes, it was drawn on the analogy to the extension which was last in operation.

Q. Well, did you expect a new lease to be executed after June 30th?

A. No.

Q. You hadn't any idea that the parties would

30 come to terms?

Mr. Wescott: I object to that, if your Honor please.

A. You ask me whether I expected it; I didn't expect it. The Welsbach Company had stated defin-

itely what it would and what it would not do; we had stated definitely what we would do, continuing for over a year, for about a year, and I thought the allowance of the expiration of the term settled matters.

Q. You thought that even after you received over the telephone from Mr. Weaver on July 6th the proposition of $15,000 for two years, is that correct?

A. Yes, that showed the unwillingness of the Welsbach to meet the terms.

Q. You think so? 10

A. Yes.

Q. Did you communicate your ideas to your board of directors?

A. I did not; that is to say, not at a formal board meeting.

Q. Well, the Welsbach Company had come up to your figure on the amount of rent, hadn't it, $15,000 a year?

A. Yes.

Q. It had come up to a two-year period, hadn't it? 20

A. Apparently.

Q. And it had requested from Mr. Weaver, through Mr. Weaver and he through you that that be submitted to the company and a reply be had, isn't that correct?

A. I don't know, because I don't remember any such details as a report of Mr. Weaver.

Q. Didn't Mr. Weaver telephone to you or write to you on July 6th or 7th that this proposition was submitted and we would like to have an answer, the Welsbach Company would like to have an answer from the company on that proposition? 30

A. There was some telephone conversation about some such a lease; I can't give it to you accurately; there was no letter.

Q. Well, didn't he tell you that the proposition was for $15,000 a year for two years?

A. I think so; it is not clear in my mind.

Q. Well, that was a considerable advance, wasn't it, in the negotiations? I call them negotiations; you say you don't.

A. I don't call them negotiations at all.

Q. Very well; it was considerable advance toward the minds of the parties meeting, wasn't it?

10 A. No, because the situation totally changed.

Q. You didn't think so?

A. No.

Q. Now, you did not communicate that to the members of the board, did you?

A. Not as members of the board; it was talked over in the office.

Q. Where was your authority as secretary or otherwise to receive a communication of that character and refuse to put it up to your principal?

20 A. I did not receive it; I heard about it.

Q. Well, you got it, didn't you?

A. I heard about it.

Q. And if you got it you received it?

A. I don't understand your use of the terms.

Q. Very well; you don't understand that.

Mr. Wescott: I want to see if you will let this witness step aside a minute to accommodate a gentleman who took some photographs.

30

Mr. Stockwell: Very well.

(Witness withdrawn.)

William N. Jennings, sworn.

By Mr. Wescott:

Q. Where do you live?
A. Philadelphia.
Q. What is your business?
A. Photographer. 10
Q. How long have you been at that business?
A. About twenty years.
Q. I show you five photographs and ask you if you took them?
A. Yes, those are my photographs.
Q. Now, when did you take those photographs?
A. May I look at the date, please? (After examining photographs.) On the first day of January, 1917.
Q. What time in the day, about? 20
A. About the middle of the day I think those were made, as near as I recollect.
Q. Will you mark them for the purpose of identification?

(Said photographs are marked for purposes of identification, Exhibits P8 to P12, both inclusive.)

The Court: What are the pictures of?

30

Q. Where were those pictures taken?
A. At the Welsbach plant, I think it was at Gloucester, the old factory there.
Q. Who was with you at the time they were taken?
A. Mr. Chew, David S. B. Chew.

By the Court:

Q. Are they accurate pictures of the objects taken?
A. Absolutely, yes, sir.

Cross-examination.

By Mr. Stockwell:

10 Q. I believe there are five photographs there, is that correct?
A. Yes, five.
Q. How many photographs did you take down there that day?
A. I don't recollect, quite a number.
Q. More than five?
A. Yes.
Q. How many exposures did you make—I mean, for different buildings?
20 A. I don't know, probably over twenty.
Q. Over twenty?
A. Yes.
Q. These are five of the twenty?
A. Five of the twenty, yes.
Q. Did you turn over all the photographs which you took to Judge Wescott?
A. I turned them all over to Chew's office.
Q. Oh, to Mr. Chew, David S. B. Chew?
A. David S. B. Chew.

30

Samuel B. Scott, Esq., resumed.

By Mr. Stockwell:

(The last part of the testimony was repeated by the stenographer.)

Q. Now, let us understand each other, Mr. Scott: You told Mr. Bleakly to see Mr. Weaver, didn't you? 10

A. I did.

Q. At the last interview in your office when Mr. David S. B. Chew was there, is that correct?

A. I will answer fully and completely. When Mr. Stockwell asked me did I tell Mr. Bleakly to see Mr. Weaver, I did; Mr. David S. B. Chew was not present.

Q. Who was present?

A. I don't remember that anybody was present. 20

Q. Very well.

A. I told Mr. Bleakly that legal proceedings had been commenced, to see Mr. Weaver about them. He was not referred to Mr. Weaver to make any negotiations. The matter was out ——

Q. Anything more you want to say? Now, you have answered my question.

A. I am answering your question fully, as I said I would.

Q. You have already testified to these facts; I am asking you whether you told Mr. Bleakly to see Mr. Weaver? 30

A. I did, and I say it again; I am willing to say it any number of times it is necessary.

Q. Mr. Weaver then later telephoned to you that Mr. Bleakly had seen him, didn't he?

A. He did, yes.

Q. And Mr. Weaver said to you that Mr. Bleakly on behalf of the Welsbach Company had submitted the proposition of a two-year lease for $15,000 a year?

A. No.

Q. What did he say?

A. Not being able to remember the exact words, I can only give you the impression, that Bleakly was talking about getting the Welsbach Company to make
10 an offer of that kind.

Q. Wasn't there a request that the Ancona Company give a reply to that proposition?

A. I don't remember such a request at all.

Q. Didn't you make note of it in your note book?

A. I did not.

Q. Why didn't you?

A. Why, I considered it entirely beyond the question; it was nothing that I would ever expect to testify to, no reason why I should specially remember it.

20 Q. But you assumed that you were entitled as secretary to take that information and hold it and not communicate it to your principal and not give any answer?

A. I considered myself as secretary bound by the orders of the board; the orders of the board were fairly well expressed.

Q. Was there any order of the board that you should not report to them any offer received?

A. There was not.

30 Q. You knew on June 30th and thereafter that the new plant of the Welsbach Company was not completed, didn't you?

A. I had no definite information about it.

Q. Didn't you know that?

A. No.

Q. Hadn't you been told that?

A. I don't remember having been told so.

Q. Was it your idea that it had been completed?

A. It was my idea it had been almost entirely completed, because I saw large portions of it up.

Q. You thought it would be a very simple matter for the Welsbach Company to get out of the property?

A. I was not worrying about that.

Q. No, you didn't seem to be worrying about it. You considered that they would ultimately have to come to your terms, that is, the company's terms, didn't you? 10

A. I didn't assume to ——

Q. Wasn't that the conversation between you and David S. B. Chew and Samuel Chew, that the Welsbach Company would have to come to your terms because they didn't have any place to go?

A. I don't remember any such conversation.

Q. I understood that you put in your note book whatever conversation you considered would be of importance in the future—am I correct now? 20

A. Of importance for me to be able to refresh my memory upon in case I was called upon to testify, yes.

Q. Well, now, will you kindly refer to your notes which cover the negotiations by Mr. Bleakly with you and Messrs. Chew over this matter and just take the first interview?

A. You want the first interview with any officer of the Welsbach Company or Mr. Bleakly?

Q. I am asking you at this time for the first interview with Mr. Bleakly? 30

A. June 27th.

Q. Where is it? I will ask you to read that verbatim into the record.

A. June 27th, 1916.

Q. Where is it?

A. There it is. (Indicating on book.) "June 27th,

1916. E. G. C. Bleakly, representing the Welsbach Company, called to see Mr. David S. B. Chew. Mr. Chew and I talked with him. He said that the Welsbach Company wanted to buy or rent. We said that buying is out of the question, that we had no authority to speak for the Ancona Company except on the basis of $15,000 for five years, but would listen to anything he had to propose. After some general discussion Mr. Chew left the room. I told Mr. Bleakly
10 that the only way in which anything could be accomplished would be for the Welsbach Company to write and make the very best offer and I would take it up with the board."

Q. Very well; now, what is the next interview as far as your note appears?

A. June 28th.

Q. Give us the verbatim account in your note.

A. "Mr. Bleakly called about 10.30 A. M., said he could not have an answer until about 11.30 to-mor-
20 row. Made the legal points that not sufficient notice had been given and that under the decisions they would have a reasonable time to remove." "June 29th. Mr. Bleakly called——"

Q. Just a minute. I see in your note here that Mr. Bleakly told you under the decisions the Welsbach Company would have a reasonable time to remove; that is clear, isn't it, from your notes?

A. That is what the notes say.

Q. What reply did you make to that proposition?

30 A. I told him that we had given ample notice and that we were under no legal obligation to give any.

Q. It was your theory of the law that they were bound to get out physically as to every piece and fixture on the 30th of June, is that right?

A. That was my theory, yes.

Q. Is that what you told him?

A. It was not argued at that length.

Q. I see it wasn't, because you haven't put anything about your statement to him in the notebook, have you?

A. No.

Q. No, you did not put in your reply to him?

A. I did not; Mr. Bleakly's talk was what I wanted.

Q. Oh, you didn't want what you said, only what he said?

A. As I told you before, I answered largely with a smile, which I thought was sufficient. 10

Q. Well, your note is evidence of that. Now, let's have the note of June 29th.

A. "Mr. Bleakly called. David S. B. Chew and Samuel B. Scott present. Mr. Bleakly formally, though verbally, offered on behalf of the Welsbach Company to rent the Ancona property for one year extension of lease at $12,000 a year, or for two years with six months' notice of cancellation after the first year." 20

Q. Any statement in the note of what you said to him after he made that proposition?

A. No, I have read the whole note.

Q. Do you read into that record also a smile?

A. No, there was no smile on that, because I took Mr. Bleakly to be serious when he made that offer.

Q. Now, will you please read the next note you have here, July 2nd?

A. "July 2nd. Mr. Bleakly called, saw Samuel Chew and Samuel B. Scott. He had not seen his clients since receiving letter from me and had nothing real to say." 30

Q. What does that word "real" mean?

A. It means that he had gotten no instructions from his client and therefore had nothing about the matter in hand to say.

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Q. Anything there of a smile on your record as to what you said in reply?

A. I have read the whole record.

Q. Now, read your note of July 5th.

A. "Mr. Bleakly called, asked where Mr. David Chew was and said it was him he wanted to see. I said, Mr. Chew was not around, but there was really not much to be said about the matter, as orders had already been given to counsel in Camden to commence possessory action. Mr. Bleakly said, 'If that
10 is the case it is a short horse and quickly curried,' and went out."

Q. Is that all Mr. Bleakly said before he went out?

A. That is all I remember bearing on the matter in hand. Mr. Bleakly is a pleasant talking gentleman and we had some persiflage.

Q. Nothing beside persiflage?

A. I remember nothing more that bore on the mat-
20 ter.

Q. Didn't Mr. Samuel Chew or—what is this other gentleman there?

A. There is no note there that Mr. Samuel Chew was there.

Q. No, David Chew.

A. He asked where Mr. David Chew was and I said ——

Q. Wait a minute; let me ask the question, please. Is there any note there showing that David Chew
30 replied to Mr. Bleakly, "No, come back and sit down."?

A. There is no such note; Mr. David Chew not being present could not have said it.

Q. There was no one present but yourself?

A. I say that I have no note of anybody being present. It is always my habit to make notes of who

was present. I can remember no one else being present.

Q. And therefore ——

A. Therefore, I conclude no one else was present.

Q. Do you say no one else was present?

A. I do not.

Q. Any other notes on this subject of any conversations with Mr. Bleakly or Mr. Mason?

A. No further conversations with Mr. Bleakly or Mr. Mason until long after the suit had commenced. 10

Q. Now, I believe you said you had no authority to do anything except to report to the board what you had heard and to give the reply back; that is my recollection. Now, who gave you instructions to start the possessory action?

A. Mr. David S. B. Chew discussed it with me; we took it as a natural outcome of the board's action.

Q. I see; is there any action—will you please produce your minutes and show me any action by the board of directors or stockholders authorizing you or any other officer to take possessory action to oust these people from the premises? 20

A. I have no further minutes except what I have already read on the subject.

Q. And there is no such minute there, is there?

A. I wouldn't say that.

Q. Well, if you wouldn't say that, please look and give me an answer.

A. My answer is that I find no minutes which specifically direct the officer to take possessory action. 30

Q. Well, you were the person who received the message from Mr. Weaver at least intimating that the Welsbach Company would pay $15,000 a year for two years, and did not report it to your board and did not give any reply, but the next minute author-

ized Mr. Weaver to begin suit to oust the defendant; isn't that correct?

A. That is not correct.

Q. What is wrong about it?

A. It was not the next minute; it was about two days before.

Q. Well, that is metaphorically speaking.

A. Not metaphorically speaking, the next day,—no it was on July 5th, the day after the 4th of July, that 10 Mr. Weaver was given instructions prior to these offers to Mr. Bleakly. I considered that Mr. Bleakly

———

Q. Prior to these offers? You mean this particular one?

A. Prior to the offer of $15,000 for two years of which you have spoken; it was considerably prior to that. I considered that Mr. Bleakly had no reason for making such an offer after what had happened; Mr. Weaver had no reason for receiving it. The 20 matter was entirely settled; the status was fixed.

Q. You presumed to decide all that as secretary of the company without consulting your board?

A. I did.

Q. But it was as a result of your instructions to Mr. Weaver over the telephone that Mr. Weaver started the possessory action in the District Court?

A. Correct.

Q. And there was no minute of the board of directors or stockholders authorizing you to bring pos- 30 sessory action?

A. Not in those terms.

Q. Or in any terms?

A. I think there was in general terms.

Q. I would like to see it.

A. I have already repeated it several times.

Q. Nothing more than what you have already called my attention to?

A. Nothing more than I have already called your attention to.

Q. Is it not true that you had a change in the personnel of the board of directors in June, 1916?

A. June, 1916? I must be sure about that. Not in June, but in May, at the annual meeting of stockholders, May 23, 1916, there were five directors elected; at the previous year there were only three, so in that sense there was a change; there was an addition. 10

Q. You did not think it necessary to lay this matter before the entire board?

A. I did not.

Q. After consulting with Mr. Weaver or Mr. Bleakly?

A. I did not; I had very good reasons for not doing it.

Q. I presume so.

A. Will you ask me the reasons?

Q. You are too anxious to talk, Mr. Scott. 20

A. I thought so.

Q. Why did you consider these conversations with Mr. Bleakly so important as to put them in the notebook?

A. Because I was afraid of Mr. Bleakly.

Q. Oh, you were?

A. Yes, sir, I was.

Q. Well, what was the ground of the fear?

A. We had had a long experience with Mr. Bleakly. 30

Q. Who are "we"?

The Court: Just a moment, Mr. Stockwell; there is a limit, you know, to this line of cross-examination.

Mr. Stockwell: I know, but he has made a statement there ——

The Court: I know he has, but one wrong action does not justify another.

Mr. Stockwell: If your Honor rules it out, all right; it is a very fruitful source of examination.

10 The Witness: It is short; I am very anxious to continue, if the Court please.

The Court: I know you both are, but I am very anxious to save time.

Q. You considered and Mr. Chew considered that the Welsbach Company wanted to rent the property, didn't you? They wanted to continue as a tenant; it was only a question of terms?

20 Mr. Wescott: Well, will there ever be an end to this metaphysical, psychological examination?

Mr. Stockwell: I am taking about half the time you took on the last witness.

Mr. Wescott: Well, was my examination speculative or to the point of the case?

30 A. I knew the Welsbach had made certain offers, but when they said they had no interest in our terms, I supposed they meant what they said.

Q. When they came back with renewed offers, didn't you think they wanted the property, were anxious to get the property?

A. I presumed they wanted it on their own terms.

Q. Well, if you hadn't thought so you would certainly have destroyed the form of lease long before you did destroy it, wouldn't you?

A. The suggestion is wrong in two respects. In the first place I never said I did destroy it.

Q. Oh, it is alive yet, is it?

A. I presume it could be found some place. It is not my custom to destroy things of that kind.

Q. When Mr. Bleakly went over there the very first time, didn't you say to Mr. Bleakly, or didn't Mr. Chew say to Mr. Bleakly in your presence, "Now, we are on very friendly terms with you, Mr. Bleakly, but we don't like your client."? 10

A. No, I don't remember that at that time or anything like it; I remember an interview between Mr. Samuel Chew and Mr. Bleakly in which Mr. Samuel Chew expressed not the most cordial feelings for Mr. Mason, but I don't remember Mr. David Chew saying anything of the kind at the first interview.

Q. Well, you invited Mr. Bleakly out to lunch at the end of the interview, didn't you? 20

A. Oh, yes.

Q. And had a social chat?

A. We had; I am able to make a very clear distinction between my legal relations with Mr. Bleakly and my social ones. I am not afraid of him socially.

By Mr. Weaver:

Q. When you gave me instructions on the 5th of July, or thereabout of 1916 to bring proceedings to reclaim the property at Gloucester, was I given any authority to enter into any negotiations respecting a lease or sale of the property? 30

A. You were not.

Q. Now, I overlooked one question yesterday: Mr. Mason testified that he called sometime in June

and saw you and some of the other gentlemen present respecting the sale of the sprinkler system. Just tell this jury what happened at that interview.

A. On June 7th Mr. Mason came to the office and asked for Mr. David S. B. Chew. I told him that Mr. Chew was not in and he asked me whether I would give Mr. Chew a message. I said that I would, and the message was to say to Mr. Chew that the Welsbach Company would be willing to sell to the
10 Ancona Company the sprinkling system and other fixtures—I have forgotten any particular enumeration of them; I don't think there was—in case the Ancona Company desired to purchase them. I said I would give that message. I said to Mr. Mason, "Are you moving out?" and he said, "We are going to start moving out in about a week."

By Mr. Stockwell:

Q. Won't you look at your notebook and give me
20 the memoranda of that conversation?

A. "June 7, 1916. Mr. Sidney Mason of the Welsbach Company called to see Mr. David Chew, who was out. He said to me the Welsbach Company would begin moving out of the Ancona property in about a week. He wanted to know whether the Ancona Company wanted to purchase the sprinkling system, gas plant, heating plant, and any other of the things belonging to the Welsbach Company that might be useful to the property. He also said they could
30 not get the government permit to bulkhead their own property, as they, as well as the Ancona, were already over the bulkhead line, and that the pier headline cut a corner off the Ancona pier. I said I would report the conversation to Mr. Chew."

Mr. Weaver: We want to recall Mr. Mason for just one question in cross-examination.

SIDNEY MASON, recalled for further cross-examination.

By Mr. Weaver:

Q. Now, Mr. Mason, I show you a letter signed by Sidney Mason, dated January 19, 1914, and ask you if you wrote that letter to the Ancona Printing Company?
10
A. I did, yes.

(Said letter is marked Exhibit P13.)

DAVID S. B. CHEW, recalled.

By Mr. Wescott:

20

Q. Mr. Chew, are you a director of the Ancona Company?
A. Yes, sir.
Q. Did you as a director and officer of the company or as an individual ever give the Welsbach Company, the defendant, permission to hold over?
A. No, sir.
Q. Do you remember a visit to you by the president of the Welsbach Company?
A. Yes, sir, June 22, 1916.
30
Q. Where was that?
A. At my office; he walked into my office.
Q. What was said there?
A. He came to see me about the sprinklers, which he said ought to belong to the property, but which there was a legal question about, that they were go-

ing to vacate the premises on or before June 30, 1916, and that unless I agreed that those sprinklers and the 500 horse-power boiler, a new boiler which they had installed to take the place of some boilers which had worn out—that unless I would agree that those should remain pending arbitration as to their ownership and would agree to pay for them if the arbitration should decide that they belonged to the Welsbach and not to the Ancona, that he would rip them
10 out. I replied to him that those sprinklers were replacements of a sprinkler system which they had removed and utilized in the new sprinkler system which they had installed, and that the boiler was a replacement of other boilers which they had worn out, and under the terms of the lease and the understanding they were to remain on the property, that they would remove them at their peril, and if they dared to remove them they would be held responsible. When he left he said he was in just the same position as be-
20 fore, that they were going to vacate ——

Q. You stated yesterday that you had tried to rent this property and failed to rent it, that is, the property of the Ancona Company. Now, why did you fail to rent it?

A. On account of the condition it is in; there is no sprinklers there.

Q. Well, you need not give us details; on account of the condition the property is in?

A. Yes, sir.

30 Q. Were you present when pictures were taken, the four or five that were identified here this morning?

A. Yes, sir.

Q. Where are they?

A. They are in the folder.

Q. I show you those five pictures and ask you if you saw them taken?

A. Yes, sir.

Q. And were they taken of parts of your property, the property of the defendant or the plaintiff?

A. Yes, sir; this was the property of the Ancona Printing Company which had been vacated two days previous by the Welsbach Company, less than forty-eight hours after they had vacated.

Mr. Wescott: I offer them in evidence.

10

Mr. Stockwell: I object, because they are immaterial and irrelevant.

The Court: Why?

Mr. Stockwell: Why, in this suit I don't see that we are trying the condition of the property in January, 1916; we are here to decide whether or not ——

The Court: No, but one of your defences is that you remained in this property after the first of December for the purpose of putting it in condition. 20

Mr. Stockwell: That is true; if they are offered for the purpose of showing that we weren't there for that purpose, were not putting it in condition, that is another thing. What is the purpose of the offer?

The Court: Well, if they are admissible for any purpose the Court cannot reject them, you know. 30

Mr. Stockwell: Oh, I don't stand on the objection. I would like my objection to stand on the record.

Mr. Wescott: It is not a strenuous objection.

Mr. Stockwell: Well, I will remove the strenuous objection; I make it plain that I do object because they are immaterial and irrelevant.

The Court: I don't know which to take; you blow hot and cold. Which is it you want now? Do you want me to rule on it or don't you?

Mr. Stockwell: That stands.

10

The Court: Well, I have it both ways, so I will keep still. Go on, gentlemen.

Mr. Stockwell: I understand you allow them to come in, your Honor, over my objection?

The Court: I put them in by consent; I don't know what you have got to say about it now. The record shows, Mr. Stockwell, just what has taken place.

20

Mr. Stockwell: Very well, I will stand on the record.

The Court: I have no doubt, though, about their competency, but I would rather fortify it by your agreement that they were competent.

Q. Did you tell Mr. Mason to come back after the interview with you and make a lease and did you offer to lease the property to him for $12,000?

30

A. No, sir.

Q. Did you tell Mr. Bleakly or Mr. Mason or anybody else that you would lay the matter over until Wednesday?

A. When was that, what Wednesday?

Q. In July?

A. No, sir, I didn't see Mr. Bleakly after Thursday, the 29th of June.

Q. Then you did not tell him to lay this matter over?

A. No, sir.

Cross-examination.

By Mr. Stockwell: 10

Q. Did you see him on July 3rd?

A. No, sir.

Q. Did you see him ——

A. That was the only conversation, June 28th.

Q. That was the only time when you were present?

A. June 27th and 29th.

Q. But you did not see him after those dates?

A. Not after the 29th; on the 29th he was to come the next day, when he left on June 29th after we had lunch at the League, where we did not discuss any business at all, just general topics. 20

Q. That was a friendly, social dinner, wasn't it, lunch?

A. A friendly, social lunch.

Q. You were not hostile personally, were you, to Mr. Bleakly?

A. Not personally, no, sir.

Q. Good friends, weren't you?

A. Tried to be friends, yes. 30

Q. You didn't have a notebook out putting down everything that was said at that lunch, did you?

(Objected to.)

Q. Now, let's take this time then. I see you pro-

duce here five pictures, Mr. Chew; that is correct, isn't it?

A. Five, yes.

Q. Why didn't you produce the other fifteen that were taken?

(Objected to.)

The Court: I think it is competent.

10

Q. Why didn't you produce the other fifteen?

Mr. Wescott: I object to that, if your Honor please.

The Court: No, I think it is competent; he has been asked about the truthful representation by pictures of the property; it seems others were taken.

20 A. The others were not deemed necessary to be placed in evidence.

Q. Well, who decided that they were not necessary—who was the Judge, Judge Wescott?

A. The Judge.

Q. You showed the pictures to him, did you?

A. Showed some of them to him.

Q. He thought those were all that were necessary?

A. At this trial.

Q. At this trial?

30 A. Yes.

Q. You have got more guns for another trial?

A. Yes.

Q. Did Mr. Scott report to you the conversation he had with Mr. Weaver on July 5th or 6th, 1916, which communicated through Mr. Weaver to your company an offer from the Welsbach Company of a lease for two years at $15,000 a year?

A. He reported that Mr. Bleakly had called to see him and that Mr. Bleakly's reply was that it was a short horse and quickly curried and he went out.

Q. Now, that short horse that was quickly curried was brought into this proceeding several days before that, wasn't it?

A. No, sir.

Q. Are you sure about that? That was when Mr. Bleakly was present in your office that they curried the short horse, wasn't it? 10

A. Not in my office, no.

Q. Not in your office?

A. No, I wasn't there.

Q. You weren't there, but you were told what happened in your office, weren't you? I think you are mistaken about that, Mr. Chew; according to the testimony of Mr. Scott as I recall it, the short horse was quickly curried in your office in the presence of Mr. Scott. Now, I am asking you whether you had knowledge of the fact that Mr. Weaver had a communication from the Welsbach Company through Mr. Bleakly that they were willing to take a lease for two years at $15,000 a year and that this was communicated on July 5th or 6th? 20

A. I think the first knowledge I had of that was in this court room.

Q. You never heard of that before? Mr. Scott didn't tell you, did he?

A. I don't remember that he said it.

Q. You would be apt to remember a thing like that, wouldn't you? That is coming pretty close to the terms you wanted, isn't it? You were getting $15,000 a year? 30

A. No, sir.

Q. Well, you were getting $15,000 a year, weren't you?

A. No, sir, I told Mr. Bleakly on his first visit that the only thing ——

Q. I am not asking you what you told Mr. Bleakly; I am asking you whether you were not getting closer together. The figure you wanted was $15,000 a year and here was an offer of $15,000 a year.

A. Only for two years.

Q. Yes, but you were closer together than you had been?

10 A. When Mr. Bleakly talked about a two-year lease on the 28th of June, the 27th of June, I told him that the company did not want to entertain a short lease, that at that time there was a large demand for plants, which would be satisfied within two years, that people were building their own plants or leasing other plants and that at the expiration of two years there would not be the same opportunity of leasing the property as there was a present; that the company, as they had already been informed, would

20 entertain no lease less than five years, for a shorter term than five years; and when he left and told me that he thought so, too, he thought that it was to the interest of the company to have a longer lease and he was going to recommend his company to accept the terms which we offered September 24th, 1917.

Q. Now, you thought they would come up and give those terms, didn't you?

A. He said he thought they would.

Q. You thought so, too, didn't you?

30 A. No, I did not; Mr. Mason told me distinctly on the 22nd they were going to vacate and move their property, and were in process of moving it, and would not only move their own property, but would also rip out our sprinklers and our boiler.

Q. He didn't say he would move your property, did he? Wait a minute; did he say he would move your property?

A. He said he would remove the property to which we had a claim.

Q. Did he say that or ——

A. He did.

Q. Or did he say he would remove the sprinkler system which we, that is the Welsbach Company, think we own?

A. No.

Q. You said you thought you owned it?

A. No, he said they were advised by their counsel that they owned it, that they could remove it. 10

Q. Now, you had visited this property from time to time, hadn't you?

A. Yes.

Q. You had your inspections, your annual inspections or semi-annual inspections of the property that was leased by you?

A. Well, yes, occasionally.

Q. And you and other members of the board went down and went through the property to see its condition? 20

A. The last time I went down to see it I was put off the property.

Q. When was that?

A. That was in May, 1916, the end of May, 1916.

Q. You mean you were ejected?

A. Well, I was told that I must go off the property.

Q. How did you get on?

A. I walked in.

Q. Who told you to get off?

A. The watchman in charge, one of the watchmen. 30

Q. Well, you walked through a gate which is supposed to be not open for everybody?

A. No, I walked in the front door.

Q. Walked straight in?

A. Through the usual entrance.

Q. Now, before May you were around there making your inspections, weren't you?

A. I hadn't been there for a number of months.

Q. Well, when were you last there before the month of May?

A. About in—about the end of July, at the end of July.

Q. You mean the end of July, 1916?

A. 1915.

10 Q. Oh, you hadn't been there since July, 1915?

A. No.

Q. Had other members of your board been down within that time?

A. One other.

Q. Who is that?

A. My mother, who was with me.

Q. Went down at the same time?

A. Yes.

Q. Did you go through the buildings?

20 A. We went through only one or two of the buildings.

Q. Which buildings did you go through?

A. Nos. 1, 2, 16, 17, I think it was, through into the yard.

Q. Employees were working in those buildings, were they, at the time?

A. Yes.

Q. You knew the character of the business which the Welsbach Company was carrying on, didn't you,

30 what its business was, manufacturing of gas mantles—you knew that?

A. Yes.

Q. And you knew that they had a considerable amount of machinery in there which they had put in?

A. Yes.

Q. You knew that?

A. Yes.

Q. You knew they ran into a great number and also considerable bulk, didn't you?

A. The machinery is not bulky.

Q. At the interview between you and Mr. Mason on June 22, 1916,—I think that is the date you gave—in your office, didn't you say to Mr. Mason that you had always looked upon the Welsbach Company as the logical purchaser of the plant?

A. I did.

Q. And that very remark of yours led to a discussion about the purchase of the property by the Welsbach Company right at that time, didn't it, so that you went over values, you stated what you thought it was worth and you compared it with other properties in the vicinity? 10

A. I stated some figures on other properties; I didn't mention and figure on this property at all, because I was without authority to sell it.

Q. Well, the company was willing to sell if it got a proper price, wasn't it? 20

A. That was not my instruction; it was not to sell.

Q. Well, wasn't that the understanding, that the company was willing to sell the property if they got a proper price for it, what you considered a proper price?

A. No, the company didn't want to sell it, refused to sell it.

Q. Didn't want to sell it, wanted to lease it?

A. Exactly; they were willing to make a long term lease. 30

By Mr. Wescott:

Q. Mr. Chew, on the 29th day of June, 1916, who were the officers of the Ancona Company—just name them, say who they were.

A. Martha M. Brown, Mary J. B. Chew, Samuel Chew, David S. B. Chew and Henry B. Chew, I think.

Q. Directors?

A. Yes.

Q. Who was the president?

A. The president was Henry B. Chew, David S. B. Chew was treasurer and Samuel B. Scott was secretary.

10

SAMUEL CHEW, sworn.

By Mr. Wescott:

Q. Did you on any occasion say to Mr. Bleakly or any of the officers of the defendant company that they should come back and prepare a lease on the best terms that they could make?

20 A. Nothing like that whatever, ever.

Q. Did you say to Mr. Bleakly or to anybody representing the defendant that you would postpone this matter until Wednesday?

A. I never said any such thing on any date; I don't know what date that is supposed to be, but I didn't on any date.

Q. It was supposed to be in July, 1917?

A. No, sir, nothing like that.

30 Cross-examination.

By Mr. Stockwell:

Q. What office do you bear in the Ancona Company?

A. I am a director.

Q. Well, do you bear any office, any other office?

A. No, sir.

Q. How about the year 1916, in June, did you have any office then?

A. Director.

Q. Did you have an office with your brother in the same suite of offices?

A. The same suite, yes.

Q. In business with him?

A. I am not in business with him, no, I am a member of the bar. 10

Q. Excuse me; I didn't know you were, I am glad to hear it. You say you didn't have any conversation with Mr. Bleakly at all or you simply did not say what Judge Wescott has put in his questions?

A. I said that I didn't have any such conversation as suggested. I had quite a conversation with Mr. Bleakly on July 3rd and on July 5th.

Q. Do you remember saying to Mr. Bleakly on July 3rd, "There is a lease in the next room all drawn up; why don't the Welsbach Company take it?" 20

A. There is a difference in the tense; I said, "There is a lease in that next room, been there for months; why didn't they take that?"

Q. Well, you were willing, as far as you were concerned on that day that they should take a lease on those terms?

A. What day?

Q. When you made that remark? 30

A. What day was it; name the day.

Q. Well, I name July 3rd.

A. That is right.

Q. Is that correct?

A. I think it was July 3rd or July 5th, one of those two days, the only two days I saw Mr. Bleakly.

Q. All right, answer the question.

A. What is it?

Q. You remember making that remark?

A. What remark? If you can't remember anything you can't expect me to.

Mr. Stockwell: Now, hold on; just go back, Mr. Stenographer; will you kindly repeat that question?

10 (Former question repeated as follows: "Well, you were willing, as far as you were concerned on that day that they should take a lease on those terms?")

Q. Now, have you answered that?

A. Read it again, please.

(Question repeated.)

20 A. You haven't expressed any terms.

The Court: The terms of the written lease, Mr. Chew, that you had drawn?

The Witness: Oh, I should not have objected to the company taking that lease, not at all; I thought it was long ago a foregone conclusion; I was very much annoyed that he should be in the office at all. The first thing I said to him was, "Mr. Bleakly, 30 how-do-you-do? I am glad to meet you, but you can't come here representing the Welsbach Company; you will have to step out in the hall. I will meet you gladly and have lunch with you as well, but I cannot allow you to come here and converse with me as a representative of the Welsbach." On July 7th Mr. Mason came in this office and tried

to inveigle my brother or Mr. Scott, I believe it was, into talking about matters, I suppose. I immediately went out to the owners in the country and said, "Mason has been in the office." I said, "I wish you would express your wishes clearly ——"

Mr. Stockwell: What is this we are listening to?

By Mr. Wescott.

Q. When was this, June or July?
A. This was in June when Mr. Mason came into the office and talked to Mr. Scott. 10

Mr. Wescott: You said July.

The Court: This is quite foreign to any question pending. Now, put another question.

By Mr. Stockwell:

Q. Mr. Chew, did you hold any office in 1904? You remember speaking to Mr. Mason prior to the execution of the 1904 lease and saying to him that, "You can't have that property under $10,000 a year; if you don't take it at that you can get out; you will have to get out."? 20
A. 1904?
Q. Just prior to the execution of the 1904 lease.
A. I would have said it was $9,000; we had decided on $10,000, that is to say, the owners, but Mr. David S. B. Chew said that Mason said he could not pay more than $3,000. They were then paying $5,000. He said the company was so poor they couldn't pay but three. I said, "What, a twenty million dollar corporation can't pay but three thousand dollars rent?" So we modified it, the owners modified it. 30
Q. Who were "we"?
A. "We" represents the family, I suppose, other-

wise incorporated into the Ancona Company, the stockholders ——

Q. You modified your ideas on the rental?

A. The owners did, I never did, but I had to carry out the wishes of the owners.

Q. Who did you mean by "we"?

A. Mason said he wouldn't pay a cent over $6,000; he snapped his fingers in my face.

Q. And you snapped your fingers in his face and said, "Not a cent under $10,000."?

10

A. Yes.

Q. Then you both compromised?

A. Yes.

Q. And that was done because Mr. Hayes went out to see Mrs. Chew?

A. I never knew of that visit, perhaps it was.

Q. Did you see Mr. Bleakly at your office on July 5, 1916?

A. Yes.

Q. Did you have a conversation with him then?

20

A. Mr. Bleakly, as he did on a previous occasion ——

Q. Did you have a conversation with him then?

A. He conversed with me.

Q. Who else was there?

A. I think Mr. Scott was in that room, maybe in the next room, but I previous to this ——

Q. Now, one minute; you have answered the question.

A. Oh, no, I haven't finished the question.

30

Mr. Stockwell: Judge, your Honor ——

The Witness: Your Honor, mayn't I finish my answer?

Mr. Wescott: Never mind; it is not of any consequence.

Townsend Stites, recalled in cross-examination.

By Mr. Wescott:

Q. Have you the records with you we requested you to produce yesterday?
A. Yes, I believe I have them all.
Q. Kindly show us when you began to move.

Mr. Stockwell: Move what, Judge, fixtures? 10

A. I don't know.

Mr. Stockwell: All right, go ahead, Mr. Stites.

A. The first shop order for moving stock from the old stock rooms to the new stock rooms was dated January 28, 1916.
Q. Where is the order?

(Witness produced paper.) 20

Q. Where is the date that you spoke of?

(Witness indicated on paper.)

Q. Then you did not begin to move at all until January 28, 1916?
A. No.
Q. That is correct, isn't it?
A. Yes. 30
Q. And the records you have there then are all subsequent to that date of your moving?
A. Yes.
Q. How long did it take you to move according to your records?
A. Well, we did not finish entirely until December.

Q. Of what year?

A. 1916. That shop order ——

Q. Wait a minute; then it took you a year to move, did it, or substantially so from the 28th of January to the December following?

A. Yes, according to that order.

Q. Well, is that correct?

A. Yes.

Q. Now, what did you move in January, 1916—
10 tell me what you moved in that month.

A. This shop order is issued ——

Q. I don't care about the shop order, when it is issued. What did you move in the month of January?

A. What is covered by that shop order.

Q. What was it—what is it?

A. Well, I undertook to tell you.

Q. Tell us, how many machines did you move on the 28th?

20 A. Not any.

Q. How many machines did you move in January?

A. Not any.

Q. What did you move in January?

A. Stock.

Q. What kind of stock?

A. Glassware, mantles.

Q. Where did you move them to?

A. The new stock rooms.

Q. Where were the new stock rooms?

30 A. In our new plant adjoining the old.

Q. How many rooms in the new plant did you occupy in January, 1916?

A. I can't tell you.

Q. Well, give us an idea?

A. I can't give you an idea. I have got to explain these shop orders or they can't be understood.

Q. What did you move in February?
A. This particular ——
Q. What did you move in February?
A. I can't tell you in detail.
Q. What was the nature of the stock you moved in February?
A. I can't tell you.
Q. Haven't you it right before you there?
A. If you would let me explain what this means I could make it clear. 10
Q. Haven't you it right before you?
A. I have the shop order that covers the moving, yes.
Q. Well, you have no idea from your records then what you moved in February?
A. There is very little moved in February.
Q. What was the nature of it?
A. I can't tell you.
Q. Where did you move it to?
A. If there was anything moved it was moved to the new building. 20
Q. What did you move in March?
A. There wasn't very much moved in March; I can't tell you what it was.
Q. If you moved anything in March, where did you move it to?
A. It was moved to the new plant.
Q. Then in February and March you moved very little; how was it in April?
A. Probably the same. 30
Q. February and March and April you moved very little. How much did you move in May?
A. Now, in May there was another shop order issued.
Q. How much did you move in May?
A. I can't give you the detail of just what we moved.

Q. What was the nature of the stuff you moved in May?

A. The shop order covers the installation of the fluid factory apparatus in the new building.

Q. What was the nature of the stuff you moved in May?

A. I will read you some of the items. "6 cooking pots, 10 cast iron saucers, 2 acid cooking pots, 2 more acid cooking pots, 80 feet terra-cotta pipe." Then
10 there is page after page of just such items here.

Q. Where did you move them to?

A. They were moved over into our other plant.

Q. Into the new building?

A. No, not necessarily in the new building. This went into some of the old buildings in our other plant.

Q. Well, moved into another plant of yours?

A. Yes.

Q. What did you move in June? Let me with-
20 draw that question. Did it take you a month to move these trifling things you mention there?

A. They are not trifling; they are very voluminous.

Q. Very well; these are voluminous.

A. I can't tell you when we discontinued. These shop orders run for a long time.

Q. Very well, what did you move in June?

A. Well, we have several more here covering May.

Q. All right, do you want to tell us further about
30 May?

A. Yes, another one, "Hanging shafting in paper box factory," seven or eight pages. The 5th of May, "Hanging shafting in mantle packing room."

Q. You took those all over to the new building, eh, or to another building?

A. Another building, yes; on the 8th of May

temporary A. C. installation in plant No. 1. On the 11th of June blacksmithing work in connection with moving. On the 12th temporary wiring for Public Service power. Another one on the 12th, electrical equipment for paper box factory. On the 13th installing machinery in paper box shop in building No. 4, that is one of the new buildings—on the 13th of May. On the 20th work in connection with raising or setting tanks in fluid factory. Do you want me to read all these? 10

Mr. Bleakly: It depends on whether he wants them.

Q. It took you a month to move those things, did it?

A. I would say it took us a month, more or less.

Q. How much less?

A. I can't tell you.

Q. Why didn't you move them in February or March? 20

A. There was no necessity for moving them in February or March.

Q. Why not—your lease ended on the 30th of June?

A. We expected to make some new terms.

Q. Oh, that is the reason you didn't move, eh?

A. That is one of the reasons.

Q. Any other reason why you didn't move?

A. Yes, the new buildings were not completed. 30

Q. The buildings were not ready for them yet?

A. Not all of them.

Q. And as fast as your buildings were ready then you moved, didn't you?

A. No, we moved quite a little before the new buildings were ready; we had quite a plant.

Q. Now, let's go to June; what did you move in June?

A. Well, here is 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,—there is 17 shop orders dated between the 24th and the 30th of May; the work was probably all done in June.

Q. Very well; now, what was the nature of that stuff, machinery or goods?

A. Piping and setting machinery in inverted
10 hardening rooms.

Q. Tell me generally; was it manufactured stuff or machinery?

A. I can't tell, Judge, until I look at the heading of the shop orders. Hanging shafting in dipping room; installing and repairs to equipment in paper box label room; installing and repairs to equipment in light packing room; installation of equipment in ring department; installation of equipment of C. E. Z. car lighting and rag mantle department; install-
20 ing equipment in knitting department; installing machinery in washing department; installing machinery in cutting and drying department; installing equipment in saturating department; installing equipment in fixing department; installing equipment in trimming department; installing equipment in inverted packing room; installing equipment in upright mantle hardening room; installing equipment in upright sewing room; installing equipment in inverted sewing room.

30 Q. Why didn't you move these the month before?

A. Why, it is utterly impossible to move the equipment that we had in our plant like you would move the furniture out of a four room house; you can't do it, physically impossible.

Q. Couldn't you have moved them just as well in

the month of February as you could in the month of June?

A. No.

Q. Why not?

A. As I stated before we believed we were going to retain the old property and that would give us ample time to move them, and secondly, our buildings were not ready.

Q. Now, when did you get the notion out of your head that you were not going to get a lease, a new lease from the Ancona people—when did you get that notion out of your head? 10

A. I think it got out of my head after we were served with notice to quit or notice of suit.

Q. You got it in your head then?

A. No, I got it out then.

Q. Got it out of your head then?

A. Yes.

Q. And still you held on for six months in the expectation that you would get a lease—that is correct? 20

A. No.

Q. That is to say you had it in your head when you got the notice to get out that you had to get out?

A. And we did get out just as quick as we could.

Q. Oh, yes, yes, and the reason you didn't get out quicker was because you thought all the time that you might come to terms?

A. No, the reason we didn't get out quicker was because it was a physical impossibility to get out any quicker. 30

Q. Now, then, go to July; tell us what you moved then.

A. Well, there is three shop orders in July, one dated the 10th of June that probably went into July, one the 6th of July and one the 12th, all covering machinery about the same as the others.

Q. Why didn't you move that in the preceding month?

A. For the same reason I have stated in my other answer.

Q. Had no place to put them?

A. No, and the other thing, that we hoped ——

Mr. Stockwell: A little louder, Mr. Stites.

10 The Witness: Together with the other reason that we hoped to make some terms with the landlord.

Q. Now, what did you move in August?

A. Two shop orders covering practically the same class of work.

Q. Why didn't you move them before—you had no place to put them?

A. Because we believed we would make terms with our landlord and the buildings for this small part

20 here weren't completed.

Q. What did you move in August?

A. I have no shop orders dated August; the ones in July ——

Q. You quit moving in August?

A. No, we did not.

Q. What did you move in August?

A. Probably a great part covered by these former shop orders was moved in August. These shop orders run for a long while.

30 Q. What did you move in September?

A. Two shop orders in September.

Q. How many?

A. Two.

Q. Why didn't you move those things before?

A. The same reasons as I have given to the other questions.

Q. What did you move in October?

A. Four shop orders in October, all small ones.

Q. Did it take you a month to move them?

A. I can't answer; these shop orders can't be spoken of in that way, as to how long it did or did not take to move them, because they run over a considerable period.

Q. Why didn't you move them before?

A. The same reason.

Q. What did you move in November? 10

A. Two small shop orders.

Q. Did it take you a month to do it?

A. I can't say whether it took us a month more or less.

Q. Why didn't you move them before, the same reason?

A. The same reason.

Q. What did you move in December?

A. Everything that was left in the plant.

Q. What was that?

A. Well, it was very little; I can't tell you just what it was. 20

Q. It took you a month to move that little?

A. No, we were out of there well before—had practically moved out well before the end of December, and it took us the last part of December to put the plant in order.

Mr. Wescott: I offer these in evidence, if your Honor please. 30

The Witness: Do we have to give up those records?

Mr. Wescott: They are in evidence.

(Some seventy odd pages were then marked by the stenographer as one Exhibit, P 14.)

By the Court:

Q. Mr. Stites, what proportion of the occupancy of the building was for operation and manufacture, and what proportion—I mean to say the amount of time, labor, etc.,—for the removal of fixtures during
10 the summer and fall of 1916? Have you any idea about that?

A. What proportion of the labor?

Q. Of the occupancy of the buildings, yes, for the purpose of removing, and what proportion of it was for the purpose of use in your business, manufacturing?

A. Well, along toward the latter part of the summer we were pretty well out as far as our mantle manufacturing was concerned.

20 Q. Well, general manufacturing, I mean, the general uses of the building?

A. Well, I should say fifty per cent.

Q. Half and half?

A. Half and half, yes.

By Mr. Stockwell:

Q. Was the manufacturing continued in this property after June 30th in such fashion as to delay in
30 any manner the removal of the fixtures which you

A. No.

had there?

Q. Was it physically possible to move all of the fixtures out at one time?

A. It was.

Q. I say, was it physically possible?

A. Oh, it was not, no.

By the Court:

Q. Mr. Stites, is your other answer quite correct?

A. It was not.

Q. No, I don't mean that; I mean the earlier question. You were asked whether or not the business you were carrying on in any way was interfered with or interfered with the removal of the fixtures; you were using lots of those fixtures, weren't you, right along in the manufacture? 10

A. Yes.

Q. So you could not remove them while you were manufacturing, could you?

A. No, but as soon as we had a place to put them we stopped the manufacturing and moved them over. We were running both plants simultaneously.

Q. I am not talking about your needs, your necessities; I am talking about the use of the building, regardless of the needs for it.

20

By Mr. Stockwell.

Q. What I want to know is whether, considering the labor conditions at that time, you could have moved that machinery any more quickly than you did move it, beginning June 30, 1916?

A. No, we could not.

Q. And did the use of the machinery while it remained there pending removal interfere in any way with the removal of the fixtures? 30

A. No.

Q. Did you have to remove—take the individual machines and complete the removal of one batch before you started on another batch?

A. Yes.

Q. And that continued until you had taken them all out?

A. A continuance performance, yes.

Q. What the Judge wants to know and what we want to know is whether the use of the machinery which remained while you were taking the other portions of the machinery out interfered in any way with the removal of the machinery from the plant and delayed it in the least?

A. It did not, no.

Q. These shop orders have certain dates on them; does that indicate when the work was begun or when it ended or what?

A. Not necessarily so; the date on the shop order indicates the time it was issued; for instance, a foreman may be told to do a job, and he says, "What account will I charge that to?" and he is told a certain account. Then he goes to the shop order clerk and gets the shop order covering that work. He may begin the day it is issued or he may begin sometime later on.

Q. Was the moving under these shop orders continuous?

A. Yes.

Q. And their execution was as prompt as they could be executed?

A. Yes.

Q. In view of the labor conditions prevailing?

A. Yes.

Q. You were asked, I think, by Judge Wescott to produce bills showing the cost of fixtures and the cost of something, the cost of removal?

A. Yes.

Mr. Stockwell: Is that right, Judge? That is my recollection.

Mr. Wescott: I guess so.

Mr. Stockwell: Do you want it?

Mr. Wescott: Yes.

The Witness: You want our purchasing department order showing contracts for removing these fixtures?

Mr. Stockwell: Yes. 10

The Witness: What do you want me to do, read it?

Q. Did the company spare any expense in the expeditious removal of these fixtures from the Ancona property?

A. It did not; we let separate contracts to contractors for the removal of a great many of them covered by these orders that I have here. 20

Q. As a matter of fact, did you have to pay exorbitant prices for a part of that work in removal in order to get it done promptly?

A. Yes, we paid seventy cents an hour for foremen, fifty cents an hour for common labor.

Q. You mentioned yesterday about a dollar an hour for somebody?

A. That was in connection with the removal of the boiler; they were skilled mechanics.

By Mr. Wescott. 30

Q. Pick those out, will you please, let me have them; I want to offer them in evidence.

The Witness: Do we get these back?

Mr. Bleakly: Yes, you will get them, don't worry.

The Witness: Well, we don't in patent cases.

(Package of papers produced by the witness is marked as one exhibit, Exhibit P15.)

By Mr. Stockwell:

10 Q. Did you produce any record showing the cost of the fixtures which you put on the property?

A. No; the cost of the fixtures that we put on the property?

Q. Yes.

A. Yes, my estimate yesterday was about $750,-000. It is actually $780,792.04.

Q. Did you bring any figures showing the cost of repairs and improvements put on the property by the Welsbach Company?

20 A. Yes, from 1904 to 1916, the company spent about $113,000 which they left on the property in the form of new buildings and repairs, maintenance and alterations.

Q. $113,000?

A. Yes; previous to 1904 they spent $49,000 for the same purpose.

Q. Is this $113,000 inclusive of the fixtures which were allowed to remain or exclusive of them?

A. They are not included, what we allowed to re-

30 main.

Q. Not included?

A. No.

SAMUEL CHEW, recalled.

By Mr. Wescott:

Q. Did you say to Mr. Bleakly at any time, "Let's go out and talk the matter over," or anything to that effect?

A. Nothing like that. I said, "Let's go out and have lunch; we can't receive you in the office as counsel for the Welsbach Company; we can't have any conference with the Welsbach people." 10

PLAINTIFF RESTS.

DEFENDANT'S REBUTTAL.

SIDNEY MASON, recalled. 20

By Mr. Stockwell:

Q. Did you say to Mr. David S. B. Chew in conversation with him that the Welsbach Company would vacate the property on or before June 30th at the interview of June 22nd?

A. I said nothing of the kind.

Q. What did you say to him?

(Objected to.) 30

The Court: Well, that conversation has been all gone over on both sides, hasn't it?

Mr. Wescott: Yes, he has been called back now to contradict a statement he has made.

The Court: It is entirely legitimate to say whether the other testimony is correct, that is to contradict that, but he cannot, of course, go into the conversation again.

Mr. Stockwell: No, but this is a statement made by David S. B. Chew.

The Court: No, your question now is directed
10 apparently to what was said. That has been gone over by both sides until it is worn threadbare, I suppose.

Mr. Stockwell: This is very short; I just want it cleared up, that is all.

The Court: Well, if it is anything explanatory of what this remark calls for, you may make it, but don't let's rehash the whole business. Can't you make it a little more specific so his mind will be
20 drawn directly to the point you want?

Q. What statement did you make to him along that line with reference to getting out of the property?

A. I made no statement about the company's vacating the property or getting out of the property; I referred solely ——

30 Mr. Wescott: No, I object, if your Honor please; you see what trouble we are getting into. We denied it, say no such thing occurred; then he comes on and repeats the conversation, then we have to go back again with denials.

Mr. Stockwell: No, this has not been covered; it

is a direct reply to what Mr. David S. B. Chew testified.

The Court: Well, if it is part of that remark that seems to be essential here, I will admit it.

Q. State what you did state to Mr. Chew with reference to getting out of the property or removing any property from the Ancona premises.

A. I didn't state anything to him about getting out of the property. I referred to moving the sprinkler system, the heating system and other things, and suggested that as they would probably be of value to them, that we would be very willing to sell them. 10

The Court: Well, that has all been told.

Mr. Wescott: He repeated that, this is the fourth time. 20

BOTH SIDES REST.

Mr. Stockwell: This motion is to direct a verdict, and I have put the points down formally. May I read them?

The Court: Yes. 30

Mr. Stockwell: "The defendant moves to direct a verdict in its behalf, on the following grounds:

1. This action is a penal action and must be strictly construed and strictly followed by the plaintiff, and each and every element set up in the act

must be established by the plaintiff by a preponderance of the testimony.

2. Under the terms of the written lease, expiring June 30, 1916, the defendant had the right to remove the fixtures installed by it upon the premises. There is no evidence in the case that the defendant took more than a reasonable time in which to remove its fixtures from the property.

3. The defendant paid the taxes for the six 10 months running from June 30, to December 30, 1916, upon said premises, pursuant to the terms of the lease. This money has not been refunded by the plaintiff and amounts to an acceptance of a portion of the rent and a recognition of the relation of landlord and tenant between the parties, and, therefore, precludes any right in the plaintiff to sue for the penalty under the statute.

4. There is no evidence that the defendant remained in possession, otherwise, than bona fide, pur- 20 suant to the terms of the written lease, allowing it to remove all its fixtures from the property at the termination of that lease.

5. The authority of Mr. Scott, secretary of the company, to make demand for possession and serve the notice to quit, as well as the authority to initiate the landlord and tenant proceedings, were at least in doubt in point of law and precluded any right of recovery by the plaintiff by reason thereof.

6. There is no evidence that the defendant held 30 over wrongfully, or that it or its officers had any knowledge that such holding over was wrongful.

7. The plaintiff is estopped to assert fraud as against the defendant as to the retention of possession after giving its tacit consent in July, 1915, to the defendants remaining in possession until its new building should be completed.

8. The admitted fact that the defendant tendered to the plaintiff the rental called for by the last lease at the end of the quarter following June 30, 1916, and also at the end of the six months' period, shows that no fraud was intended by the defendant as against the plaintiff.

9. We also urge that the same reasons stated in the motion for a non-suit are equally applicable here."

10

The Court: Mr. Stockwell, what do you base the theory on that the defendant had a right to remain on the property for the purpose of removal?

Mr. Stockwell: In the first place the lease says that they shall have the right to remove fixtures at the termination of the lease. It does not say in terms that they must have the fixtures all out before the lease is terminated; and under the terms of the lease they had a right to do it, and as a proposition of law we feel that they had a right at the termination of their lease to remove their fixtures and to take a reasonable time in which to make that removal, and no charge of wrongdoing or illegal holding over or anything wrongful could be imputed to them by any such act. Not only was it legally lawful; but no assumption of wrongdoing could be imputed to them. That covers that particular point.

20

The Court: It seems to be laid down in the text books that where there is a provision in the lease that the tenant shall have a right to remove fixtures at the termination of the lease, that that implies a reasonable opportunity to do it after the lease expires.

30

Mr. Stockwell: Yes, there is absolutely no evidence here that there was more than a reasonable opportunity taken; all the evidence that has been offered ——

The Court: Passing that immediate difficulty, what have you to say to the testimony very clearly established now that the company remained in for a twofold purpose; one was to locate its machinery
10 in the other plant and the other was to operate its business.

Mr. Stockwell: I didn't catch that first point.

The Court: One to remove its fixtures and the other to operate its business.

Mr. Stockwell: I think your Honor has misunderstood the testimony, because I don't recall testimony
20 to that effect.

The Court: There is testimony here that fifty per cent. of it was for manufacture and fifty per cent. for removal.

Mr. Stockwell: Your Honor said retained possession for the purpose of doing that, and I say that under my view of the testimony there is no such testimony. That is our proposition.
30

The Court: I think the case is one entirely of good faith, and I do not see how I can grant this motion. The defendant's term expired definitely on the 30th of June according to the terms of the lease. Assuming that it had a right to enter the premises and to make such use of them as was necessary to re-

move the fixtures which belonged to them under the terms of the lease, that necessarily must have been the sole use that could be made of them; it did not imply a right to stay there for several months and manufacture their goods. The question as to the estoppel, which has been suggested in the case, that the actions of the parties were such as to induce the defendants to believe that they would not be removed, seems to me to present a jury question rather than a legal one. On the one side the testi- 10 mony is directed to the establishment of some form of acquiescence in the defendant, at least staying where they were temporarily; on the other side there seems to be a denial of many of those circumstances, and the question as to whether or not there was a remaining over by the assent and acquiescence of the plaintiff becomes a jury question. I would like to hear counsel fully on both sides on the question of the construction of that lease as to the right to remove; I must charge the jury on that question, and 20 I see it is embodied in one of the plaintiff's points, to the contrary. The language is, "At the expiration of the lease," as I understand it. I have not yet seen the lease; I will be obliged if counsel will hand it to me.

Mr. Wescott: Yes, sir, that is exactly the language.

The Court: Well, I will be glad to hear anything 30 further that counsel has to add.

Mr. Wescott: If your Honor please, I am quite persuaded that this is a case where the Court ought to direct a verdict and ought to direct it in behalf of the plaintiff and I will make that as a motion.

My reasons for it are that in the first place here is a contract in writing under seal between two corporations, intelligently made and without any ambiguity in it. It provides that the tenant should turn over those premises in good condition on the 30th day of June, 1916. Now, that contract, I respectfully suggest to your Honor, speaks for itself; it defines the rights of the parties in unequivocal terms; it is binding upon them; you can't make any other contract
10 between the parties unless you get their minds together; you can't change that contract outside of the mutual consent or the consideration of the parties to it, and I do not imagine that that question need be argued. Now, there is not a suggestion of evidence in this case that the terms of that contract were ever altered or changed one iota; on the contrary, the evidence is overwhelming and conclusive that the effort between the parties to change that contract failed utterly, and therefore the contract
20 stands in its original effectiveness and meaning. Now, then, to allow this defense to be considered by the jury is to change the very terms and nature of that contract, because you can, for the purpose of illustration, submit to this jury this question: Did this defendant hold that property for manufacturing purposes after the term provided in this contract told them they should get out? That is not just what I have in mind; you can say to the jury, upon their theory that notwithstanding that contract
30 tract stands there in its original terms you can in effect change it by injecting into it a doctrine of reasonable time. Now, I deny that that is legal or possible.

The Court: You mean as to the removal of the fixtures?

Mr. Wescott: As to moving the fixtures. The contract says on the termination of the lease the fixtures should go; it don't mean after the termination of the lease; it means just what it says, on the termination of the lease, and the parties cannot misunderstand that; therefore, the tenant when he put his fixtures in there knew he had to get them out on the termination of that lease; it didn't matter if it took him his whole term to do it, he had to do it, that is what he was required to do. Now, there may be, if your Honor please, as you suggest, some intimation in the text books that on the termination of a lease, of a term, the tenant may have a reasonable time—although I have seen no authority on the subject—not to change the contract, but to move his goods; not to change the contract by retaining possession of the leasehold. 10

The Court: I am quite with you on that; I don't think you need argue that proposition, that the right to manufacture here under the terms of the lease was gone, or the right to hold for the purpose of manufacture. 20

Mr. Wescott: Yes; now, he can't hold for any purpose.

The Court: But let me call your attention to what it says here on this question of construction of just such a provision in a lease. After discussing the general right and the reasoning which enters into it, namely, the obligation to abandon upon the theory of a surrender to the landlord the fixtures which the tenant has put on under the law, he says it rests solely upon that principle and that seems to be established not only in the English cases but in a 30

very finely worded opinion of Chief Justice Beasley; but when it comes to a provision in the lease such as the one before me, it makes this broad proposition: "A reasonable time for removal after the expiration of the term will also be allowed in the case of a stipulation in the lease that the tenant may remove the fixtures at the expiration of the term," then citing two or three English cases for it. Of course, this whole lease law comes down to us from
10 the English law and their construction of leases arising under it would be very helpful.

Mr. Wescott: He can have an opportunity, a reasonable opportunity perhaps, to remove his fixtures, but he can't have a reasonable opportunity to occupy the property.

The Court: That I agree with you on, that the limitation must necessarily be for the purpose that
20 he has a legal right.

Mr. Wescott: For instance, let me illustrate. If you own a house ——

The Court: Well, you and I are one on that, Judge; we won't quarrel on that proposition; you don't want to convince me in some other way, do you?

30 Mr. Wescott: No, but what I want to convince you, if your Honor please, is that they were totally wrong in staying over at all even for the purposes of removing their fixtures. Now, let me illustrate; this case threatens to be a leading case in this state; this doctrine of reasonable time to occupy premises for the purpose of removing goods threatens to rev-

olutionize the law of landlord and tenant in New Jersey; it threatens to break up a contract under seal made by a party agreeing to go out on a certain day and yet disrupting the agreement by asserting the right to a reasonable time to stay in to move out the goods, which is an absurdity. It will never stand in the world, because if you do that you will have all kinds of trouble in this state. Let me illustrate it: You own a house and you rent it for one year and you put in it that the tenant shall have a right to move his goods out of that house, any pipes he had put in it, any fixtures he had put in it, at the end of the year. Now, that is the entire agreement; you mean it when you sign that contract and he means it. Now, there comes a time when you get into trouble; the tenant says, "Well, I am not going out at the end of the year," and you immediately adopt a device conceived by the legislature for punishing a man who holds over under such circumstances, who won't go out, and you invoke that proceeding, you serve notice on him and get him in court. Now, the tenant comes in and says, "Well, Mr. Judge Lloyd, I will tell you what I will do"—before you start the proceeding, in order to make the case identical—"I will buy that property of you, give you so much money." You say, "No, I don't want to sell it." "Well, if you don't want to sell it I will lease it for another year." You say, "No, I don't want to lease it for another year." "Very well, then, I will stay in." Then you begin your proceedings against him. That is this case identically.

The Court: Except he didn't say he would stay in.

Mr. Wescott: No, he didn't say so, but he did.

The Court: If you had that, I would be very strongly with you, if you had that in the case.

Mr. Wescott: I will say he does stay in and don't say a word about his intending to stay in. Now, what a man does, if your Honor please, he intends to do; if he stays in he intends to stay in, and he could say to you until he was black in the face, "I am going to stay in," and it wouldn't make it a bit stronger
10 than the fact he does stay in. He don't stay in without knowing it, he don't stay in without intending it, and it wouldn't help you or help him a bit if he said, "I intend to stay in." You would say, "Why, you fool, you are staying in; what is the use of your saying to me, 'I intend to stay in,' when I see you staying in all the time?" Now, then, you begin proceedings against him to turn him out just as we did in this case. Along come a couple of sharp lawyers who say, "Oh, we are staying in in good faith; we want
20 time to move goods," and the lawyers advise the tenant who is in your house that he has that right. Now, the tenant a couple of blocks away builds himself a house, not a manufacturing plant as in this case, but a house. The first thing he builds in that house is a parlor; he then moved the goods out of the parlor over into the parlor of the house he is building, occupying the balance of the house. Well, the next room he finishes is the dining room; then he moves the goods from your house over into his
30 house and occupies the dining room, but he keeps the balance of the house and occupies in that way room after room, accommodating himself as he moved over into his new house at your expense and contrary to the terms of his written contract. Now, he says, "I do that in good faith; I had no place to go; I could not put my goods out in the street, I was building a

house, and if you don't like it you can lump it; that is the law; the law now is that a contract between a landlord and tenant no longer has a binding effect, no longer means what it says." The parties can by that sort of subterfuge disrupt that contract and upset the whole system of tenancy in this state. Why, your Honor knows that every day in the week in this town constables go with warrants and turn people out into the street because they are holding over at the end of the term. Now, suppose you once have a theory that they can under circumstances justifying good faith on their part remain and retain possession; what is going to happen? You will never get a tenant out. Why, the upper courts would laugh at such a proposition as that and your Honor would laugh at it, but it is involved in this particular case; you are allowing these tenants to determine the terms of the contract when the parties have solemnly defined and determined them and put their signatures and seals to it. Now, then, I say that the question of good faith cannot arise as a question to be agitated in this case by a jury, and the term "unlawfully" in the statute in this case must be interpreted by your Honor, it cannot be interpreted by a jury. Now, the legislature put the adverb "unlawfully" in there advisedly ——

Mr. Stockwell: Wilfully, Judge.

Mr. Wescott: I mean wilfully, I beg your pardon, wilfully. A tenant might be sick, he might be crazy, he might not understand the terms of his contract; he might innocently hold over without knowing that he was doing anybody a bit of wrong in the world; in that case I concede that the penalty provided by the legislature could not be inflicted upon

him; but do you mean to tell me for a second that these people, as intelligent as they are, held over without knowing that they were holding over? Of course, they didn't. Now, the next question is, did they hold over knowing that they had no right to hold over? Of course, they did. How did they know that? They knew it first by the terms of their lease; they knew it second by a series of letters that had been served on them and received by them from the 10 plaintiff in this case that they would expect them to surrender that property at the end of the term. They knew it in the third place by their efforts first to buy the property, and second, to form a new contract which resulted in failure. They knew then they had no right to hold over and they knew they were wrongfully holding over. Then, not satisfied with that, a notice was served on them to turn them out, and they came into court and set up the very defence that is set up in this case, and a Judge and jury decided against them and that is a finalty. The 20 president of this defendant company admitted they set up the same defence in that court. Now, your Honor remarked the other day that the proceedings in the District Court settled the rights of the plaintiff, and I accord with that; it did settle the rights of the plaintiff, and it seems to me it settled the rights of the defendant. It settled the rights of the plaintiff to the effect that he was entitled to possession of that property for all purposes; at the instant that judgment became a judgment that settled his 30 right. Now, the defendant, notwithstanding that notice of a solemn judgment of a court of record that the plaintiff's right to that property was there and then settled, took an appeal, a certiorari on one phase of the case in order to keep in possession of a property that he already knew from the writings,

from the failure to make a new contract and from the proceedings in the District Court that he had no right to retain—he takes his writ and he is defeated. Then he knows again from the voice of the Supreme Court that he has no right there for any purpose either to get his goods out or to manufacture. Not satisfied with that he takes an appeal from the Supreme Court to the Court of Errors and Appeals, and then after he gets his goods out, he gets the situation to suit himself, abandons that proceeding. Now, then, I say it is the merest idleness to argue that in the face of these facts this defendant did not know two things, first, that the lease settled their rights, that it required them to get out on the 30th day of June, 1916, secondly, that they knew that they were holding over unlawfully and without rights. I say, it is idleness to argue any other view; it is mere moonshine to say, "Now, give these people a chance to disrupt this contract and revolutionize the law of contract in New Jersey by taking the theory that contrary to the terms of the contract they can hold that property as long as they please in order to remove fixtures which the contract said they had to remove on the 30th day of June, 1916. If that were the law of this state nobody would know where he stood in dealing with real estate, or at least that element of it which is confined to tenancy. Who is going to decide what is reasonable? It is not in the contract; your Honor cannot put a limitation upon what is reasonable; can a jury do it? Never in the world. When this defendant went in there they knew they were going to put fixtures in that property; they put fixtures there at a great cost, $700,000 or $800,000; they knew it; they knew likewise that at the end of that term they had to get out, fixtures and all, they had a right to take their fixtures, they

knew it and they took chances on that contract. They tried to get the contract extended and modified and failed. Now, before the 29th day of June, 1916, they had to be ready to take those fixtures out and their contract imposed that upon them as a duty, and they took a chance; they said, "We are satisfied with that condition, we will spend seven or eight hundred thousand dollars in fixtures on this property in improvements and take them out and sur-
10 render this property on the 29th day of June." Now, if they had taken their things out and put them in the yard or something of that sort, mere courtesy would have required them to have a reasonable opportunity of loading them up and taking them out, but couldn't they have done that just as well before the 29th day of June? Of course, they could; they didn't have to wait until the 29th of June for the reasonableness of an opportunity to take them out to begin, did they? That will upset the entire law
20 of this state on tenancy if that construction is adopted, and I strenuously urge on your Honor the gravity of this case. Don't allow this fine-spun theory to disrupt the settled law of the state and the law of the land.

(Further argument was then had between Court and counsel.)

30

The Court: Well, my conclusion is that I cannot grant either of these motions, that to withdraw the case upon either application would be to deny the jury an opportunity of passing upon fact questions which are involved and are essential to the proper disposition of the case.

(Exception noted for the plaintiff and for the defendant.)

Mr. Wescott: Would I be discourteous if I should ask your Honor to intimate what question of fact or questions of fact?

The Court: Yes, I was going to elaborate a little bit, because I think counsel are always entitled to the mind of the Court as far as it can properly be given. Upon the one side it is alleged here that in violation of the rights of the parties the defendant remained in possession of the property. That was a violation of a legal right; that is the first proposition. Secondly, that that was done not only in contravention of the written agreement, but that it was done with knowledge on the part of the defendants that it was a violation. Against that there is the denial of the defendant, both of the fact of the violation to this extent—there is a denial of the fact of violation to this extent, that it is claimed that the parties by interviews during the month of June and early July were in negotiations whereby impliedly there was an acquiescence by the plaintiff in the continued possession of the defendant, and that, therefore, the obligation to follow literally the terms of the agreement and get out on the 30th of June was waived. There is a second contention by the defendant that regardless of the legal right the defendant was actuated in the matter by an honest belief that it did have such right, and that it was remaining in under such belief. Just what would be the relationship between these parties if there were an acquiescence in the defendant remaining over, perhaps, it is not essential for me to decide, whether it be a tenancy at will or sufferance or whether it would be no

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tenancy at all. It seems to me, however, that it would establish that the lease had not been enforced, that the parties did not insist upon the defendant getting out at the instant of the expiration of the written lease, and that their remaining in was with the acquiescence of the plaintiff. Under such circumstances the remaining in at that time under the terms of the statute would not be established. Now, in that situation, assuming for the purposes of the present discussion that that is a fact, the plaintiff gave notice on the 7th of July to the defendant to vacate, one of the essentials under the statute to predicate this proceeding upon. I am inclined to think that if there was an acquiescence by the parties in the defendant remaining over after the 30th of June, that the right under the lease to have an absolute vacation at the expiration within the meaning of the statute was gone, and that there was a new tenancy at least to the extent of making an indeterminate lease, an indeterminate relationship which would require some other form of notice which would not be available for the purpose of this action. But all of that is denied by the plaintiff; the plaintiff in substance says there was no agreement of any kind whereby the defendant was misled or permitted to remain in the property; there was no acquiescence; that what they did they did with full knowledge that it was at their peril; therefore, it becomes a question for the jury whether the defendant in the language of the statute refused to vacate after notice and after the expiration of the term of the lease and did so wilfully. I am quite inclined to agree with the construction which has been put upon the word "wilful" here I think by both sides, that it means nothing more or less than a wilful refusal to do that which its contract calls for

with the knowledge that the contract does call for it. I don't think that malice, ill-will, or anything of that sort necessarily enters into it; it is a question of good faith in the performance of the contract. The motions upon both sides are refused.

At this point a recess was taken until 1:30 o'clock P. M.

The trial of this matter was then adjourned until Monday morning, October 1, 1917. 10

Camden, New Jersey, October 1, 1917.

Trial of the cause resumed at ten o'clock A. M., on the above date, pursuant to adjournment, in the presence of the counsel for the respective parties.

(During the course of Mr. Stockwell's argument 20 to the jury a question arose as to the pleadings, and the following colloquy took place between the Court and counsel.)

The Court: I apprehend that the pleadings are intended to cover simply a method of ascertaining the penal value?

Mr. Weaver: It seems that is the only way it can be arrived at. 30

The Court: The statute says double the rent, doesn't it?

Mr. Weaver: Double the rent and this was a part of the rent.

Mr. Stockwell: Of course, your Honor, that was never paid as a penalty; we didn't pay that on account of any penalty.

The Court: Oh, I understand that, but the statute treats it as though their right to recover double the yearly value of the land—you see, the difficulty with this statement is it makes the rent itself the basis of recovery in the computation. In the clause
10 of the complaint it does set out the liability under the statute, but that has no relation to the rent whatever. Double the value of the property may be anything for the next year. Your introduction of the previous term and the previous rental is only evidential to show what the value for the next year might be. Now, your suit apparently is not on that in your statement of claim; it is for the rent itself.

Mr. Weaver: Our suit is for the double value
20 of the property.

The Court: I know, but you don't state so. Why isn't the proper way to state that the double value of this property was $11,144.50 instead of the rental value. You see, you are suing here for rent. I don't know how far that may embarrass you later on and act as an estoppel even if I allow an amendment now, but it is quite obvious that you cannot recover rent as such and deny your relation as landlord.
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Mr. Weaver: Of course, the theory of the complaint is that it is a suit for double the annual value of the property, and as evidential of what that value was we took last year's rental, and as part of last year's rental were these taxes, and we gave them credit for what they paid.

The Court: Don't you see you are introducing your evidence in the form of a complaint and claim?

Mr. Weaver: Yes, it would have been better, of course, to have said the annual value of the property was whatever double that is, $22,000, and divide it in half for the six month's period.

The Court: I am inclined to think that that estops you as it stands. I am very sure that you cannot recover as rent and then repudiate the relation of landlord.

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Mr. Weaver: Then, if your Honor please, how about amending this complaint by striking out that part of the declaration and standing on the main body of our complaint for double the value of the annual rental of the property? There was no necessity for adding to this complaint this method of calculating our damages; it is superfluous anyhow and I think it might be stricken from the complaint and the complaint allowed to stand alone without this calculation.

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Mr. Stockwell: If it please the Court, we must object to any amendment at this time, and even if they amended, that would not call back the tax money. I made this point as one of my points in the motion for non-suit and also in the motion to direct a verdict.

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The Court: Yes, it was not called to my attention though that the claim itself specified ——

Mr. Stockwell: Well, that was my intention. Mr. Bleakly said it was done and it is my recollection that I had done it.

The Court: Well, I didn't hear it; it may be it escaped me.

Mr. Stockwell: Of course, Mr. Weaver says it wasn't necessary for that to be there. We say it wasn't necessary for him to bring this suit at all; but now that he has brought it he must lie on the bed that he has made for himself and ought not to be able to change it at this late day.

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Mr. Wescott: If your Honor please, is it not perfectly obvious that this suit is brought on this statute to recover double the value of the property? All the evidence has been adduced on that theory and the case has been tried on that theory. Now, to say that the theory could be repudiated ——

The Court: Well, Judge, I am not inclined to rule this case on the theory that the plaintiff is here completely estopped from proceeding. I think it is quite
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obvious that the statement of claim, as it is called, was not intended as a basis of the recovery, but as a basis of evidence, and taking that view of it I am not inclined to hold that it is an estoppel preventing the plaintiff from asserting the termination of the lease—on the 30th of June; but with this record in here as a pleading, I am quite clear that if it stands it would estop the plaintiff from repudiating or denying the leasehold which that very statement contemplates, seems to recognize. I will allow that
30
motion to strike out the portion of the complaint.

(Exception noted for the defendant.)

The Court: The object, of course, of litigation is always to get at the kernel of the matter if it is possi-

ble to do it without injustice to the parties, and I can see no injury whatever to the defendant. If there is value in the fact that there has been stated upon the record the statement, "Less proportion of taxes paid six months," the defendant has the value of that for whatever it is worth. If, however, the plaintiff has inadvertently made such a statement and incorporated it in such a way that it becomes not a basis of evidence but a matter of pleading whereby his record precludes him, and has done 10 that, as I say, by inadvertence, the Court I think ought not to stand in the way of its correction, and I can see no embarrassment to the defendant by allowing the correction and the case proceeding.

Mr. Stockwell: We ask for an exception.

The Court: I will give you an exception. I think there ought to be an averment here that the double value of this land was so much money. 20

Mr. Weaver: I have that in the fourth paragraph.

The Court: Yes, you have simply got in there the statement that you claim double the yearly value of the premises.

Mr. Weaver: That the defendant has not paid the same, a formal complaint that the value was $11,000, etc., I think that covers that point. 30

The Court: I think that fourth paragraph, Mr. Stockwell, shows clearly the purpose of the annexation of this statement of claim to be merely evidential and not the basis of the claim of action, but with the statement of claim struck out, Mr. Weaver,

you have no basis unless you state some sum as the yearly value. You see, without an averment of that kind you do not apprise the defendant of what you allege the double value to be. You do say it is according to the statement of claim annexed, but with the statement of claim out, it leaves it with nothing to stand upon.

Mr. Weaver: Then I will ask to add to that after
10 the fourth paragraph and before the words, "according to the statement of claim annexed," the sum of $22,289.

The Court: Anything further anybody wants to say?

Mr. Stockwell: Except that, following your Honor's suggestion, I will take my exception.

20 The Court: I say, have you anything further to say on it, anything to allege why I should not rule on it?

Mr. Stockwell: No.

The Court: I will allow an amendment striking out the portion of the complaint from the words "statement of claim" down to the end of the figures, dollars and cents, and also an amendment of the
30 fourth paragraph setting out the double value of the premises to be $22,289. Note an exception for the defendant.

At this point a recess was taken until 1:30 o'clock P. M.

Trial of the cause resumed at 1:30 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

CHARGE OF THE COURT.

LLOYD, J.

Gentlemen of the Jury. The legislature has passed certain legislation in this state regarding the relations of landlord and tenant, among which is a provision to this effect: "That in case any tenant * * * for years * * * shall wilfully hold over any lands, tenements or hereditaments after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof, by his, her, or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his, her, or their agent or agents, thereunto lawfully authorized, then and in such case, such person or persons so holding over, shall, for and during the time he, she or they shall so hold over, or keep the person or persons entitled out of possession of the said lands, tenements or hereditaments as aforesaid, pay to the person or persons so kept out of possession, his, her or their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, for so long a time as the same are detained;" I have read you that section because upon it is predicated this action.

Many years ago the defendant became the tenant of the plaintiff of a property down in Gloucester City. Their relations continued by various leases up to 1916, June 30th, and were by virtue of written

agreements or leases, the last of which was dated March 7, 1914, leasing the property from the 30th of June, 1915, to the 30th of June, 1916, and then reference is made to the other terms and conditions and covenants in former leases. The defendant did not move out of the premises at the expiration of the term of the last lease, namely, the 30th of June, 1916; thereupon a few days later the plaintiff gave a written notice to the defendant to vacate the property.
10 That notice you will have out with you; it is dated the 6th of July, and my recollection is that it was served on the 7th of July. Now, you see the pertinence of this statute; it says in effect that if a tenant shall wilfully hold over after the expiration of the term and after notice to vacate, then such person shall pay double the value of the property for the time such tenant shall occupy it, and it is for that value which this action is brought.

By the terms of the lease, gentlemen, I have al-
20 ready said to you the defendant was obliged to vacate on the 30th of June, as far as the possession of the property went. There was, however, in the lease a provision authorizing the tenant to remove the fixtures at the expiration of the lease. My examination of the law both of England and of a number of states in this country, leads me to the conclusion that that gave to the defendant a right to remove the fixtures within a reasonable time. It did not, however, give the defendant a right to exclude the
30 plaintiff from those premises. The right to remove the fixtures must be limited to the reasonable necessities of such right. If I have a piece of property on your land and I have the right to go remove it, it doesn't mean that I have the right to exclude you from the whole possession of your property only insofar as it may be necessary for me reasonably to oc-

cupy it for the purposes and for the time contemplated in the lease, namely, a reasonable time for the removal. Now, gentlemen, it is in evidence in this case that the defendant did two things here; it did remove these fixtures, but it also occupied the premises for the purposes of manufacture. Now, it justifies that to you or seeks to justify it as far as this case is concerned, upon one or two grounds or both, first, that it had the legal right to remain in there by reason of the acquiescence and tacit consent 10
of the plaintiff, the Ancona Company, that the defendant should remain in possession, and to that end there has been considerable testimony adduced as to negotiations respecting the subsequent possession either by lease or purchase of the property by the defendant; and this testimony would indicate that those negotiations were going on for some time during June and into July; and the defendant's contention is based upon that line of testimony, and it is, as I have already said, to the effect that the landlord 20
acquiesced in the continued possession of the property by the defendant and thereby created a new relation which precluded the defendant from bringing this action. The defendant also claims, gentlemen, that even if that be not the case it believed it had such a right, that it had a right to occupy this property, and that believing so it remained in possession. An analysis of this statute will clearly show you that not only must the deprival of the landlord of his property be illegal, but it must also 30
be wilfully done; that is to say, the tenant must not only deprive the landlord against his legal right, but must do so with knowledge that he has that legal right, that the landlord's legal right exists to the possession and that he has deprived him of it. As I have stated, the defendant's second contention is

that there was a belief on the part of the defendant that it had this right. Well, gentlemen, around those two questions has developed largely the testimony in this case. The plaintiff claims that by the acts and conversations of the plaintiff through its officers legally authorized or lawfully authorized there was a remaining over in the property by the consent and with the acquiescence of the landlord.

10 Mr. Bleakly: The defendant, your Honor meant, I guess.

The Court: No, I didn't, I meant the landlord.

Mr. Bleakly: Pardon me; I thought you said the plaintiff.

The Court: I say, a remaining in the property by the defendant with the acquiescence and consent of 20 the landlord.

Mr. Bleakly: I think you used the word "plaintiff" where you meant defendant.

The Court: Oh, possibly I did that. Well, gentlemen, you will understand it; I think there will be no confusion. I say that around those two questions has developed very largely the testimony in this case, the one side attempting to establish that the 30 defendant occupied the property without a legal right and wilfully, knowing that it had no such legal right; the other side contending first that it had a legal right, and secondly that it believed it had a right. Now, either one of the latter conditions would prevent a recovery by the plaintiff in this action, because, as you have already been told, it

must be established that there was not only a legal right being kept from the plaintiff, but that legal right of possession must have been kept away from the plaintiff by the defendant knowingly and conscious of the fact that the legal right existed.

The testimony that has been adduced relates largely to conversations taking place between the various officers of this plaintiff company who happened to be also, some of them, directors of it, and persons representing either as officers or agents the Welsbach Company, the defendant, the testimony introduced by the defendant tending to establish conversations whereby extensions of time were conceded by some of the officers, that is to say, negotiations were carried over a period which was inconsistent, so the defendant claims, with the idea that the plaintiff was demanding or insisting upon possession of the property, but indicative of the fact that the plaintiff was consenting to its continued occupation. On the other hand, gentlemen, there is by the officers of the plaintiff company a denial of such conversations in substance; some little things perhaps are admitted, but generally speaking the conversations are denied. They take the position that the lease spoke for itself, that it was to expire on the 30th of June, 1916, and that they made no arrangements, either tentative or otherwise, which would in any way modify that obligation on both parties.

Now, gentlemen, the third question in this case if you pass those two in favor of the plaintiff and if you are satisfied that a notice was given by the plaintiff company to vacate in compliance with the statute is, what should the defendant pay in a sum of money for the value of these premises? It is not the actual value which is the criterion; the statute says double the value of the premises for the time

being. The preceding year's rental has been introduced to you, and I recall no other evidence of the value from which you could determine what the value of the premises were for the time the defendant occupied it, namely, from the 7th day of July—that would be the date of the notice—and the last day of December, 1916. The preliminary question, gentlemen, for you to consider is first, Did the defendant have a right in these premises after the first of June? 10 If it did, then all of this proceeding goes for nothing, because the plaintiff's claim is predicated upon the fact that the lease terminated with the term stated in the written agreement. Secondly, if they did not have the right, did they believe that they had such a right? If they did, why, then, the plaintiff's claim goes for nothing, because the statute is based upon wilful action in violation of the plaintiff's rights. The third thing that the plaintiff must establish is notice and its service in accordance with the statute. 20 If you pass any one of those against the plaintiff, then your verdict is no cause of action in this case. If you solve them all in favor of the plaintiff's contention, then you reach the question of how much money the defendant should pay under this penal statute. That is all, gentlemen, that I feel called upon to say to you in a general way respecting this case.

The parties on both sides have handed me certain written requests which I will deal with, insofar as I 30 think they are correct statements of the law or essential or not otherwise covered. The only request, gentlemen, handed me by the plaintiff that I feel called upon to deal with is the last one, in which this request is made:

"5. Under the circumstances of this case the payment of taxes by the defendant to Gloucester

City is not an acquiescence in the defendant holding over." The mere payment of taxes by the defendant to the city of Gloucester without any action of any kind on the part of the plaintiff is purely a voluntary payment for which the plaintiff would be in no wise responsible.

Gentlemen, the defendant has asked me to charge certain requests:

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"1. This action is a penal action and the landlord, in order to recover, must clearly bring his case within the terms of the statute."

The second is already charged. The third I charged in substance, though not in this language, perhaps:

"3. You are first to consider and determine whether the plaintiff, the Ancona Company, made the demand and gave the notice in writing required by the statute. The notice and demand were signed by the secretary of the company. Unless the secretary was authorized by the company to make and serve said demand and notice, it is invalid and would not form the basis for this action." That would be true, gentlemen, if that is the fact, that it was not authorized by the company. You will observe, however, that the company is here resting its action upon that notice.

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"4. You are next to consider whether the possession of said premises by the defendant, after the termination of the written lease on June 30, 1916, was rightful." The only part of this request, gentlemen, that I feel called upon to deal with is the last sentence. Speaking of the removal of fixtures, "In determining what was a reasonable time, you must

consider the character of the fixtures installed, their number and the labor conditions prevailing at that time.'' That is all true, gentlemen, but let me remind you again that it is in proof in this case that the defendant held this property for the purpose of manufacture; they did not hold it simply for the purpose of removing fixtures. While they had a perfect right to remove the fixtures and to use a reasonable time for that purpose, that gave them no
10 right to exclude the plaintiff from the property for uses that were not inconsistent with that right.

''5. The burden is upon the plaintiff to show to you by a preponderance of the evidence that the defendant took more than a reasonable time in which to remove these fixtures.'' Gentlemen, all the burden is upon the plaintiff in every case to establish by a preponderance of evidence every fact essential to recovery. How does the 12th differ from the second?

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Mr. Bleakly: The first, you mean?

The Court: Yes.

Mr. Bleakly: That is not important. I think you have charged that.

The Court: Gentlemen, the twenty-first request: ''There could be no wilful holding over while the
30 right of the defendant was doubtful in point of law.'' I suppose that would be true if in point of fact the right was in doubt, there would be necessarily a basis for an honest belief.

Gentlemen, in the twenty-seventh request I am asked to say to you that the action in the District Court and in the Supreme Court were not conclusive

of the present issue. That in substance is the request. I don't think I have dealt with that and I now say that is a fact. Otherwise, they are charged, I think, as fully as I feel called upon to do.

Gentlemen, certain pictures were put in evidence in this case, as I recall they were put in by the consent of both sides; afterward objection was made when one side felt that it ought not to have agreed to it, but I do not understand that courts can predicate action on that. But I am asked to say to you 10 that those photographs are not relevant in this case as sustaining any basis of recovery. This action is not for the condition of the property at all; it is for the one thing that the Court has already called your attention to, namely, the penalty for holding over unlawfully, if such it were. The Court did concede that these pictures had a possible relevancy upon the claim of the defendant as to their occupancy of this property, that they had occupied it for the greater part of the month of December for the pur- 20 pose of putting it in repair, and for that reason the Court admitted it, with the additional reason that it was consented to by the defendant. But it does not establish anything, gentlemen, as to the measure of liability or the right of liability in this case.

Well, gentlemen, I don't know what else there is: You may take the case.

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PLAINTIFF'S EXCEPTIONS.

Mr. Wescott: I would like to ask whether all our requests to charge were refused by your Honor?

The Court: All except the last one, I think.

Mr. Wescott: There were some that I gave you to-
10 day.

The Court: I don't think I received those as coming in time; nothing except requests that are handed up before the argument are receivable.

Mr. Wescott: Well, the others all rose out of the argument.

The Court: Let me glance over them. Yes, I told
20 you I would look at them, but would not receive them as requests. Judge Wescott, in these requests I think I have dealt already with No. 14, which restricts the rights of the tenant to the reasonable necessities of the removal. The others I cannot assent to with possibly the exception of the eighth. Well, I will deny them.

Mr. Wescott: I want an exception noted to the Court's refusal to charge the requests of the plain-
30 tiff.

The Court: In order to get that you have to take an exception to each and every one. You don't have to enumerate them, understand, just make your exception apply to each and every one, so that each distinct legal proposition is presented.

Mr. Wescott: I take an exception to each and every request.

I also take an exception to what the Court said about the acquiescence of the plaintiff in the tenant's holding the premises in question.

Also to what your Honor said with reference to the belief that the defendant had concerning his right to hold.

Also what your Honor said about the defendant's right to hold outside of his belief that he had a right to hold. 10

Also to what your Honor said about the extension of time by agents and officers of the plaintiff company.

Also to what your Honor said with reference to the payment of taxes by the tenant and its relation to the controversy.

Also to what your Honor said with reference to the efficacy of a notice served in this case.

Also an exception to leaving the question of reasonable time to the jury. 20

Also an exception to the charge of the twenty-first request of the defendant on the subject of doubt as arising from the proceedings in the District Court.

Also an exception to the affirmance of the twenty-seventh request of the defendant.

Also an exception to what the Court said about the relevancy of the photographs offered in evidence. Our legal position in reference to each one of these exceptions was fully argued not only to the Court but to the jury, and hence I won't elaborate on the record the grounds on which those exceptions are taken. 30

Mr. Weaver: The plaintiff also excepts to what the Court said about the defendants keeping posses-

sion consciously and knowing that the legal right existed.

Also to what the Court said as follows: "If they, the defendant, believed they had a right to remain, then there was no cause of action."

Also to what the Court said in respect to while the law was in doubt there would be a basis for an honest belief.

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The Court: Note the exceptions.

PLAINTIFF'S REQUESTS REFUSED.

1. The right of the defendant in this case to hold the premises in question after the 30th day of June, 1916, was finally settled in favor of the plaintiff and
20 against the defendant in the District Court. The same defence to the present suit, having been set up, if you so find, in the District Court case, the finding of the Court in the latter case finally settled the defence in the present case and the defendant is bound thereby.

2. The contract between the parties is in writing and under seal. It provides that the term of the defendant must end on the 30th day of June, 1916.
30 It also provides that, the defendant "shall have the right at the termination of the lease, to remove all fixtures erected by it or by the Welsbach Light Company during the occupation of said premises." This does not mean that after the 30th day of June, 1916, the defendant should have liberty to remove its fixtures. It was obliged to remove its fixtures at the

termination of the lease. A written contract cannot be changed by parole. It can only be changed where its terms are ambiguous and uncertain, in which case oral testimony may be used to explain the meaning of the terms of the contract. That is now the case here. In the second place it can be changed by an agreement between the parties. In this case there was no agreement between the parties to change the written contract. Therefore the parties are bound by the terms of that contract. 10

3. An illegal act is a wrongful act. If the party committing an illegal act is conscious thereof and understands the import of the same, he commits that act wilfully. In this case the plaintiff had given several written notices to vacate the premises at the termination of the lease. The defendant did not vacate. Thereupon the plaintiff brought proceedings in the District Court to oust the defendant. Those proceedings were successful. Therefore the defend- 20 ant knew from two sources, namely; first, written notice from the plaintiff; second, by decision of the District Court that it was illegally holding over. The defendant then reviewed a part of the District Court proceedings in the Supreme Court and was there defeated, and, therefore, from the decision of the Supreme Court knew that it was unlawfully holding over. Finally the defendant appealed from the decision of the Supreme Court to the Court of Errors and Appeals, and thereafter voluntarily 30 abandoned its appeal. Therefore, you are instructed as a matter of law that the defendant wilfully held the premises contrary to the terms of the agreement and the demands in writing of the plaintiff.

4. The term "wilful," as used in our statute, does not involve a moral question. If a tenant holds

over knowingly after the termination of his lease, that holding over imports wilfulness. The legislature of New Jersey, in such case, has imposed a penalty for such wilful holding over. In this case you are instructed that the defendant's holding over was wilful and therefore your verdict must be for the plaintiff.

7. The lease between the plaintiff and defendant
10 provided that, upon the termination thereof, the defendant should turn the property over in good condition. The defendant, therefore, had no right to hold the premises leased any length of time, in order to make improvements and repairs that the lease provided should be made at the termination thereof. You may, therefore, dismiss that fact from your consideration in examining the defendant's justification for holding over.

20 8. If you should believe, from the evidence, that the defendant held the demised premises for any other than the honest purpose of removing fixtures, you would be justified in finding that they did not hold over in good faith.

9. There is no legitimate evidence in the case from which you can infer that the parties, even by implication, entered into an indeterminate term. There is no legitimate evidence from which the jury
30 may infer that the parties entered into any other contract than that which ended on the thirtieth day of June, nineteen hundred and sixteen. Consequently, you would not be justified in inferring that the defendant held over by virtue of any contract between the parties.

10. If you believe that the defendant held over for the purpose of using the plaintiff's property for manufacturing, then the defendant did not hold over in good faith and your verdict should be for the plaintiff.

11. Whatever may have been said by Mr. Bleakly to Mr. Weaver, or by him to Mr. Bleakly, or whatever may have been said by Mr. Bleakly to Mr. David S. B. Chew or Samuel Chew or Mr. Scott, or by them to him, could have no binding effect on the plaintiff, nor could such conversations, by implication, change the terms of the lease, nor could such conversations, impliedly or otherwise, constitute a new contract between the parties. 10

12. A lease is a contract, and it must arise from the meeting of the minds of the parties thereto, either by direct terms or by implication. But it is essential that the minds of the parties should meet in order to constitute a contract between them. In this case, neither Mr. Weaver, nor Mr. David S. B. Chew, nor Samuel Chew nor Mr. Scott, had the authority or power to bind the plaintiff and make its mind meet that of the defendant and thus constitute a contract, either directly or by implication. 20

13. If the jury believes that the defendant held possession of the leasehold in this case, for manufacturing purposes, then your verdict should be for the plaintiff.

14. While it may be true, in some cases, that a tenant may have a reasonable opportunity, and may remove goods, without becoming a trespasser, no tenant, after the termination of his, her or its lease, can hold possession of the property to the exclusion of the landlord for the purpose of removing goods without becoming a trespasser. Therefore, your verdict in this case must be for the plaintiff. 30

EXHIBIT D1.

Cable Address
"Welsbach" Philadelphia
Lieber Western Union or A B C. Code
Bell-Gloucester 166 and 167
Telephones Keystone-Main 3880 3881 & 1539
Eastern-Gloucester 59

10 Shield
Sidney Mason,
President. N
Welsbach Company
Gloucester City, N. J.

December 30, 1916

To the Ancona Printing Company,
Philadelphia, Penna.

Gentlemen:

We herewith hand you the keys for the property
20 of the Ancona Printing Company, at Gloucester City, New Jersey, heretofore occupied by us, and we herewith deliver to you possession of said premises.

We also herewith hand you in cash the sum of Five Thousand Dollars, ($5000.00), for rental of said premises from July 1, 1916, to date, and hereby notify you that all taxes against said premises and charges for water or gas used upon said premises have been paid by us.

Very truly yours,
30 Welsbach Company
By Sidney Mason
President
J. W. Devlin
Treasurer

T. W. Maclary

EXHIBIT D2.

Edwin G. C. Bleakly
Henry F. Stockwell

Telephones
Bell-392 and 393
Keystone-387

Bleakly & Stockwell
Counsellors at Law
317 Market Street
Camden, N. J.

June 30, 1916. 10

S. B. Scott, Esq.,
826 Commercial Trust Building,
Philadelphia, Pa.

Dear Sir:

In re *Ancona Printing Company.*

I received your letter of this date just before I was about to take the train to the shore and I will not be back until Monday. I will come over and see you Monday between eleven and twelve o'clock.

Very truly yours, 20

E. G. C. Bleakly.

EGCB-IS

EXHIBIT D3.

Check-Voucher

This check-voucher when properly endorsed is a receipt in full settlement for invoices as listed below 30

Check No. 15140 Voucher No. 9389

Shield

Welsbach Company

Gloucester City, New Jersey, Sep 29 1916

Pay to the order of Ancona Printing Co., $2,500.00

Commercial Trust Bldg., Phila. Pa.
Two Thousand Five Hundred Dollars
Countersigned
I. W. Morris

To
First National Bank — Welsbach Company
Philadelphia Pa. — I. W. Morris — J. W. Devlin
Member of Finance Committee — Treasurer

This check void is detached from voucher

10 1916*
Sept. 30 $2,500.00* — In Full Settlement Of Rent For Quarter Ending Sept. 30, 1916 For Premises Known As The Ancona Print Works, Lying Between Ellis St. And The Delaware River, Between The Land Formerly Of The Gloucester Mfg. Co., And Mercer St. In Gloucester City, N. J.;
20 And Also A Tract Of Land Beginning At The Southwest Corner Of King And Essex Sts., Thence Southwardly Fronting On King St. 180 Feet And Extending Westwardly Between Parallel Lines of That Width 128 Feet More Or Less To Ellis St. In Gloucester City, N. J.

30 Written across face of voucher in red ink.
Ancona Printing Co refused to accept check
Same returned & cancelled & credit entry made
Oct 3-1916
E M

EXHIBIT P1.

This Agreement made this Twenty-sixth day of September A. D. 1904, between the Ancona Printing Company, of Gloucester, New Jersey, party of the first part, and the Welsbach Company, a corporation organized under the laws of the State of New Jersey, party of the second part, Witnesseth That:

1. The party of the first part doth hereby let unto the party of the second part for the term, commencing March first 1905 and ending upon the thirtieth day of June 1915, at the rental of Six thousand five hundred dollars ($6,500.) per annum, payable quarterly, the first quarterly payment thereof to be made on the first day of June A. D. 1905, and payment of all taxes properly assessed and levied upon the premises herein leased, the premises known as the Ancona Print Works, lying between Ellis Street and the Delaware River and between the land of the Gloucester Manufacturing Company and Mercer Street, in Gloucester City, State of New Jersey, being the same premises which were let by the Ancona Printing Company, party of the first part hereto, to the Welsbach Light Company by agreement of lease dated the Twenty-eighth day of February, 1895; provided, however, and it is expressly understood and agreed that the party of the second part may terminate this lease on June Thirtieth 1910, by giving to the party of the first part notice in writing, six (6) months prior to June Thirtieth 1910, stating that the party of the second part elects to terminate the lease on June Thirtieth 1910, and in the event of such election and notice to terminate this lease, the same shall be on that date, viz: June Thirtieth 1910, terminated.

2. The party of the second part hereby agrees that it will pay said rent to said party of the first part on the days and in the manner specified in this lease, and that it will not assign this lease nor underlet the said premises or any part thereof, nor use or occupy the same other than for the purpose of its business without the written consent of the said party of the first part had and obtained (excepting however, that the lease of said premises, or any part
10 thereof may be assigned, or these premises or any part thereof, sub-let to any company or companies which may be controlled by the party of the second part by lease, by operating agreement, by ownership of a majority of the capital stock thereof or otherwise, provided that such assignment of sub-letting shall not be construed as lessening, imparing or abrogating any of the obligations to the party of the first part assumed by the party of the second part under the terms hereof); and the party of the second
20 part shall and will during the continuance of this lease, keep and at the termination hereof deliver up the said premises in as good order and repair as of the day of the date hereof, reasonable wear and tear, acts of God and public enemies and accidents by fire excepted.

3. It is hereby agreed that in case said premises become untenantable by reason of fire, the elements, or other unavoidable casualty and shall not on that account be occupied or used by the party of the
30 second part, no rent shall be payable for the time the premises are not in use or occupied, and the tenant shall have the right, if it so desires, to declare the lease terminated. On the event of such termination, no rent shall be payable for the period subsequent to the date of the termination, but it is expressly understood that the untenantable condition

of the property shall not be by reason of the neglect of the party of the second part in not keeping the property in proper repair and condition; it being understood, anything in this lease to the contrary notwithstanding, that the lessee hereunder shall observe, and keep the roofs, the glazing, buildings and premises in proper repair, including the necessary painting, in order to properly preserve the same.

4. The party of the second part further agrees that it will make and pay for all repairs to the premises hereby leased, during the term of this lease, which shall be necessary for the purpose of the business of the said party of the second part and for keeping the property in proper repair and condition; and the said party of the first part agrees that the said party of the second part shall be at liberty to make any and all changes in the premises, buildings, fixtures, &c., doing no material damage to the property, which shall seem to it desirable or necessary for the convenience or necessity of its business, and shall have the right at the termination of the lease, to remove all fixtures erected by it or by the Welsbach Light Company during the occupation of said premises by either of said parties, whether during the term of this lease or any previous lease, including therein the gas works, holders and appurtenances &c., provided, however, that any and all buildings that may be erected by the party of the second part shall be and become the property of the party of the first part hereto.

5. The party of the second part further agrees that it will pay all water rents for water used by it on the hereby demised premises and will pay for all gas consumed by it during the continuance of this lease and after that time until it has procured the same to be stopped by the proper authorities.

6. Said party of the second part agrees that if the rent shall remain unpaid on any day on which the same ought to be paid, that the party of the first part may enter the premises and proceed by distress and sale of the goods there found to recover the rent and all costs and officers commissions, and said party of the second part further agrees that all goods in said premises and for thirty (30) days after removal shall be liable for distress for rent, and it
10 hereby waives all right to the benefit of any law now made or hereafter to be made exempting personal property from levy and sale for arrears in rent.

7. It is mutually understood and agreed that if any rent shall be due and unpaid, or if default shall be made by the lessee in its covenants to pay all taxes properly assessed and levied upon the premises hereby leased, as the same become payable, and to pay all water rents for water used by the lessee on the hereby demised premises, and to pay all gas con-
20 sumed by the lessee during the continuance of this lease, and after that time, until it has procured the same to be stopped by the proper authorities, then and in any of such events, it shall be lawful for the lessor to re-enter the said premises and the same to have again, to repossess and enjoy.

8. It is stipulated and agreed by and between the parties hereto, that in the event of the rate of insurance on the property of the lessor, herein leased, being increased during the period of this lease, beyond
30 the rate of twenty cents per hundred dollars (by reason of the business conducted thereon or therein, whereby the risks shall be deemed more hazardous), then and in that event any such increase in the rate of insurance, required (by the Factory Insurance Association of Hartford), to be paid by the lessor, shall be paid by the lessee to the lessor, in addition

to the payments hereinbefore stipulated to be made by the lessee.

9. It is further understood and agreed that the lessor by its representative, shall have the right to inspect the property herein leased semi-annually, upon notice in writing in advance thereof, to the Superintendent in charge of the leased property.

10. It is hereby agreed between the parties hereto, that all the rights and liabilities herein given to or imposed upon either of the parties hereto, shall extend to the successors and assigns of such party. 10

In Witness Whereof, the parties hereto have duly executed these presents the day and year aforesaid.

Ancona Printing Company
by Henry B. Chew, President
(Seal)

Attest:
David D. B. Chew,
Secretary.

Signed, sealed and delivered in the presence of 20
Samuel Chew
James E. Hays

Welsbach Company
by Sidney Mason,
President
(Seal)

Attest:
James Ball,
Ass't Secretary.

Signed, sealed and delivered in the presence of 30
E. MacMorris
W. R. Guckin, Jr.

EXHIBIT P2.

Supplemental Lease, made and entered into this Fourteenth day of March A. D. Nineteen hundred and five, by and between the Ancona Printing Company of the one part, and the Welsbach Company of the other part, Witnesseth:

That the Ancona Printing Company for the consideration hereinafter mentioned, to be paid as hereinafter stated, doth hereby lease and let to the Welsbach Company, its successors and assigns, the tract of land in Gloucester City, New Jersey, beginning at the southwest corner of King and Essex Streets thence southwardly fronting on King Street one hundred and eighty feet and extending westwardly between parallel lines of that width one hundred and twenty-eight feet more or less to Ellis Street. To Have And To Hold the same for the same period of time and as fully and to the same extent as in the lease now existing between the parties hereto under date of September 6th, 1904, subject to the same terms, conditions and provisions as in said lease provided and as if originally included therein.

In consideration of which the Welsbach Company agrees to pay to the Ancona Printing Company the annual rental of two hundred and fifty dollars, payable quarterly at the time and times as in the said lease now existing between the said parties is provided, and to pay any taxes and assessments thereon as in said lease provided.

In Witness Whereof, the parties hereto have duly executed the same of the day and year first aforesaid.

Ancona Printing Company
by Henry B. Chew,
President
(Seal)

Attest:
David S. B. Chew,
Secretary.
Welsbach Company
by Sidney Mason,
President
(Seal)
Attest:
James Ball,
Ass't Secretary. 10

Signed and delivered in the presence of
Benjamin Chew
E. MacMorris

State of New Jersey } ss
County of Camden }

20

Be It Remembered, That on this Fourteenth day of March in the year of our Lord nineteen hundred and five, before me the subscriber, a Master in Chancery of New Jersey, personally appeared David S. B. Chew, who being by me duly sworn did depose and say that he is the Secretary of Ancona Printing Company, the lessor in the within indenture mentioned; and that he well knows the corporate seal of said corporation, and that the seal affixed thereto is the proper corporate seal of said corporation, and that 30 the same was so affixed thereto and the said indenture signed and delivered by Henry B. Chew, who was at the date of the execution thereof, the President thereof, in the presence of said deponent, as the voluntary act and deed of the said Company, by the order and direction of the Board of Directors there-

of, and that the said deponent signed his name as subscribing witness.

David S. B. Chew

Sworn and subscribed before me this 14th day of March A. D. 1905.

James E. Hays
M. C. C. of N. J.

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10 State of Pennsylvania }
County of Philadelphia }

Be It Remembered, That on this 14th day of March, in the year of our Lord nineteen hundred and five, before me the subscriber, a Notary Public in and for said County and State, personally appeared James Ball, who being by me duly sworn did depose and say that he is the Assistant Secretary of the Welsbach Company the lessees in the within indenture mentioned; that he well knows the corporate seal of said 20 corporation, and that the seal affixed thereto is the proper corporate seal of said corporation, and that the same was so affixed thereto and the said indenture signed and delivered by Sidney Mason, who was at the date of the execution thereof, the President thereof, in the presence of said deponent, as the voluntary act and deed of the said Company, by the order and direction of the Board of Directors thereof, and that the said deponent signed his name as subscribing witness.

30

James Ball

Sworn and subscribed before me this 14th day of March, A. D. 1905.

F. H. MacMorris,
(Seal) Notary Public,
My Commission Expires February 12th 1909
Prothonotary's Certificate as to Notary Attached.

EXHIBIT P3.

This Agreement made this 7th day of March, A. D. 1914, between the Ancona Printing Company, a corporation organized and existing under the laws of New Jersey, party of the first part, and the Welsbach Company, a corporation organized and existing under the laws of New Jersey, party of the second part, 10

Witnesseth, That the party of the first part doth hereby extend the term of a certain lease made and entered into between the parties aforesaid, on the 26th day of September A. D. 1904, recorded in the Register of Deeds Office in and for Camden County, New Jersey, in Deed Book 288, page 82, leasing certain property known as the Ancona Print Works, lying between Ellis Street and the Delaware River, between the land formerly of the Gloucester Manufacturing Company and Mercer Street, in Gloucester 20 City, State of New Jersey, for the further term of one year from the 30th day of June, A. D. 1915, at the rental of Ten Thousand Dollars, ($10,000.00) per annum, payment for rent accruing during the month of June A. D. 1915, on the aforesaid lease, and supplemental lease hereinafter mentioned, to be made on June 30th, 1915 and payment of the ten thousand dollars, ($10,000.00) rent for the extended term of one year to be made quarterly, the first quarterly payment to be made on the thirtieth 30 day of September, A. D. 1915, and payment of all taxes properly assessed and levied upon the premises herein leased, including one half of all taxes for the year A. D. 1916, all other terms, covenants and conditions to remain in the same as in the above recited lease and the party of the second part hereby re-

news the terms, covenants and conditions of the said above recited lease and agrees to be bound thereby for the extended term herein mentioned.

In consideration of the execution by the party of the second part of this lease, and the payment by the party of the second part of all taxes properly, assessed and levied upon the premises hereinafter mentioned, the party of the first part also extends a certain supplemental lease made between the
10 parties hereto, the 14th day of March, A. D. 1905, recorded in the Register of Deeds Office in and for Camden County, New Jersey, in Deed Book 292, page 544, whereby the party of the first part hereto leased to the party of the second part, a tract of land in Gloucester City, New Jersey, beginning at the Southwest Corner of King and Essex Streets, thence Southwardly, fronting on King Street, one hundred and eighty feet (180′) and extending Westwardly, between parallel lines of that width, one hun-
20 dred and twenty-eight feet (128′) more or less to Ellis Street, for the further term of one year from the 30th day of June, A. D. 1915, all the terms, conditions and provisions to be the same as in said lease just recited, except the provision concerning the rental of two hundred and fifty dollars ($250.00) a month, which is to be void and of no effect, it being the intention that the ten thousand dollars ($10,000.-00) per annum above mentioned shall be the rental for both premises herein mentioned, and the party
30 of the second part renews the terms, covenants, and conditions of the said last recited lease and agrees to be bound thereby for the extended term herein mentioned.

In witness whereof the parties hereto have duly executed these presents the day and year aforesaid.

Ancona Printing Company
by Henry B. Chew,
President
(Seal)

Attest:
Oswald Chew,
Secretary

Signed, sealed and delivered in the presence of 10
David S. B. Chew
Samuel B. Scott

Welsbach Company
by Sidney Mason,
President
(Seal)

Attest:
James Ball,
Asst. Secretary.

Signed sealed, and delivered in the presence of 20

State of Pennsylvania }
County of Philadelphia } ss.

Be It Remembered, That on this eleventh day of March in the year of our Lord nineteen hundred and fourteen, before me the subscriber, a Master in Chancery of New Jersey, personally appeared Oswald Chew, who being by me duly sworn did depose and say that he is the Secretary of Ancona Printing Company, the lessor in the within indenture mentioned; that he well knows the corporate seal of said corporation, and that the seal affixed thereto is the proper corporate seal of said corporation, and that 30

the same was so affixed thereto and the said indenture signed and delivered by Henry B. Chew, who was at the date of the execution thereof, the President thereof, in the presence of said deponent, as the voluntary act and deed of the said Company, by the order and direction of the Board of Directors thereof, and that the said deponent signed his name as subscribing witness.

Oswald Chew

10 Sworn and subscribed before me this eleventh day of March, A. D. 1914.

Martin V. Bergen,
Master in Chancery of New Jersey

State of Pennsylvania }
County of Philadelphia } ss.

Be It Remembered, That on this 7th day of March
20 in the year of our Lord Nineteen Hundred and fourteen before me the subscriber, a notary public in and for the County of Philadelphia, personally appeared James Ball, who being by me duly sworn did depose and say that he is the Assistant Secretary of the Welsbach Company the lessees in the within indenture mentioned; that he well knows the corporate seal of said corporation, and that the seal affixed thereto is the proper corporate seal of said corporation, and that the same was so affixed thereto and
30 the said indenture signed and delivered by Sidney Mason, who was at the date of the execution thereof, the President thereof, in the presence of said deponent, as the voluntary act and deed of the said Company, by the order and direction of the Board of Directors thereof, and that the said deponent signed his name as subscribing witness.

James Ball

Sworn and subscribed before me this 7th day of March, A. D. 1914.

(Notarial) D. N. Ogden,
(Seal) Notary Public.
Commission Expires Jan. 28, 1917.

EXHIBIT P4.

10

To Welsbach Company:

Take notice, that Ancona Printing Company demands that Welsbach Company deliver unto Ancona Printing Company forthwith, the possession of the premises known as the Ancona Print Works, lying between Ellis Street and the Delaware River and between the land formerly of the Gloucester Manufacturing Company and Mercer Street, with the improvements thereon, in Gloucester City, N. J., and also a tract of land beginning at the Southwest corner of King and Essex Streets, thence Southwardly fronting on King Street one hundred and eighty feet, and extending Westwardly between parallel lines of that width, one hundred and twenty-eight feet, more or less, to Ellis Street, with the improvements thereon, in Gloucester City, N. J. The right of possession of said Welsbach Company to said premises having expired on the thirtieth day of June, 1916.

20

Dated, July 6th, 1916.

30

Yours respectfully,
Ancona Printing Company,
By Samuel B. Scott
Secty

(Seal)

EXHIBIT P5.

State of New Jersey, } ss.
County of Camden, }

Samuel B. Scott, of full age, being duly sworn according to law, on his oath says, that he is the secretary of Ancona Printing Company, a corporation of
10 the State of New Jersey, and is the agent of the said corporation for the purpose of instituting proceedings against Welsbach Company, to obtain possession of premises hereinafter mentioned; that Ancona Printing Company is the owner of the premises known as Ancona Print Works, lying between Ellis Street and the Delaware River and between land formerly of the Gloucester Manufacturing Company and Mercer Street, with the improvements thereon, in Gloucester City, New Jersey, and is also the owner
20 of a tract of land beginning at the southwest corner of King and Essex Streets, thence southwardly fronting on King Street one hundred and eighty feet and extending westwardly between parallel line of that width one hundred and twenty-eight feet more or less to Ellis Street, with the improvements thereon, in Gloucester City, New Jersey, that Welsbach Company, a corporation of the State of New Jersey, is now in possession of said premises by virtue of an agreement made on the seventh day of March,
30 1914, between Ancona Printing Company and Welsbach Company, whereby Ancona Printing Company let and rented said premises Welsbach Company, for the term of one year, from the 30th day of June, 1915, to the 30th day of June, 1916, for the rental of ten thousand dollars per annum, to be paid in quarterly payments, the first quarterly payment to be

made on the 30th day of September, 1915, and the further payment of all taxes properly assessed and levied upon the premises thereby leased, including one-half of all taxes for the year 1916; that the agreement made on the seventh day of March, 1914, above mentioned, is an extension of a certain lease made and entered into between the parties aforesaid on the 26th day of September, 1904, and of record in the Office of the Register of Deeds in and for the County of Camden, at Camden, New Jersey, 10 in Deed Book 288, page 82, etc.; and is also an extension of a certain supplemental lease made between the parties aforesaid, dated the 14th day of March, 1905, and recorded in the office aforesaid in Deed Book 292, page 544, etc.; that on the 13th day of June, 1916, deponent served notice in writing upon Sidney Mason, president of Welsbach Company, by registered mail, requiring said Welsbach Company to vacate and deliver possession of the above-mentioned premises to Ancona Printing Company 20 at the expiration of the term, as provided in said lease or agreement, a true copy of which notice is annexed to this affidavit; that thereafter, on the 7th day of July, 1916, deponent caused to be served a notice upon Sidney Mason, president of the Welsbach Company, personally, requiring the said Welsbach Company to deliver possession of said premises to Ancona Printing Company forthwith, a true copy of which notice is annexed to this affidavit; that the right of possession of said premises of the said 30 Welsbach Company expired on the 30th day of June, 1916, but that nevertheless the said Welsbach Company still holds over and continues in possession of said premises up to the present time.

Samuel B. Scott.

Sworn to and subscribed before me this 13th day of July, 1916.

Ralph N. Kellum,
Master in Chancery of New Jersey.

June 13th, 1916.

Mr. Sidney Mason, President,
The Welsbach Company,
Gloucester City, N. J.

10 Dear Sir: Pursuant to your conversation with me on June 7th, I reported the same to the officers of the Ancona Printing Company, and also to the directors, and have been instructed to inform you that the Ancona Printing Company does not desire to purchase any property belonging to the Welsbach Company, and also to inform you that as two buildings of the Ancona Printing Company were originally supplied with a sprinkler system, that the present sprinkler system should be allowed to remain in
20 order to satisfy conditions of the lease.

I was also instructed to notify you that the Ancona Printing Company expects that you will vacate the property immediately upon the expiration of the lease and turn it over to the Ancona Printing Company at that time in the condition required by the lease.

Very truly yours,
Samuel B. Scott,
SBS—M. Secretary, Ancona Printing Co.,

30

(Copy.)

To Welsbach Company:

Take notice, that Ancona Printing Company demands that Welsbach Company deliver unto Ancona

Printing Company forthwith, the possession of the premises known as the Ancona Print Works, lying between Ellis Street and the Delaware River, and between the land formerly of the Gloucester Manufacturing Company and Mercer Street, with the improvements thereon, in Gloucester City, N. J., and also a tract of land beginning at the Southwest corner of King and Essex Streets, thence Southwardly fronting on King Street one hundred and eighty feet and extending Westwardly between parallel lines of that width, one hundred and twenty-eight feet, more or less, to Ellis Street, with the improvements thereon, in Gloucester City, N. J. The right of possession of said Welsbach Company to said premises having expired on the thirtieth day of June, 1916. 10

Yours respectfully,
Ancona Printing Company.
By Samuel B. Scott,
(Seal). Secretary. 20
Dated, July 6th, 1916.

County of Camden, }
State of New Jersey, } ss.

Roy M. Snyder, being duly sworn according to law, on his oath deposes and says, that on the seventh day of July, one thousand nine hundred and sixteen, at the office of the Welsbach Company, in the City of Gloucester, he served a notice, of which the annexed is a true copy, upon Welsbach Company, by delivering the same personally to Sidney Mason, President of said corporation. 30

Roy M. Snyder.

Sworn and subscribed to before me this 15th day of July, 1916.

Raymond R. Donges,
Master in Chancery of New Jersey.

Camden County, }
Camden City, } ss.

10

L. S. The State of New Jersey, to any Constable of Camden County. You Are Commanded to require Welsbach Company, in possession of the premises known as Ancona Print Works, lying between Ellis Street and the Delaware River and between land formerly of the Gloucester Manufacturing Company and Mercer Street, with the improvements thereon, in Gloucester City, New Jersey, and also the tract
20 of land beginning at the southwest corner of King and Essex Streets, thence southwardly fronting on King Street one hundred and eighty feet and extending westwardly between parallel lines of that width one hundred and twenty-eight feet, more or less, to Ellis Street, with the improvements thereon, in Gloucester City, New Jersey, forthwith to remove from the same or to show cause before the District Court of the City of Camden, to be held at the Court Room, in the Camden County Court House, third
30 floor, Sixth and Market Streets, in said city, on Tuesday, the twenty-fifth day of July, nineteen hundred and sixteen, at ten o'clock in the forenoon, why possession of said premises should not be delivered to Ancona Printing Company, claiming the same.

Witness, William C. French, Esquire, Judge of said Court, at Camden, aforesaid, the fifteenth day of

July, in the year of our Lord, one thousand nine hundred and sixteen.

Edwin Hillman, Clerk.

I served the within summons on Sidney Mason on the 17th day of July, 1916, by delivering to him a copy thereof.

John T. Wright,
Sergeant at Arms.

10

DISTRICT COURT OF THE CITY OF CAMDEN.

Ancona Printing Company, Plaintiff, vs. Welsbach Company, Defendant.	On Landlord and Tenant. Demand for Jury.

20

To Edwin Hillman, Clerk of the Camden City District Court:

My Dear Clerk: On behalf of the defendant, Welsbach Company, we demand a jury of twelve men for a trial of these proceedings.

July 21, 1916.

Bleakly & Stockwell,
Attorneys for Defendant.

30

[ENDORSED]

Filed July 21, 1916.
Edwin Hillman, Clerk.

DISTRICT COURT VENIRE.

Camden City, ss.

The State of New Jersey, To John T. Wright, Sergeant at Arms of the District Court.

You Are Hereby Commanded that you cause to
10 come before The District Court Of The City Of Camden, holden in the Camden County Court House, third floor, Sixth and Market Streets, in the said City and County, on Friday, the eighth day of September, 1916, at 11 o'clock in the forenoon six good and lawful men, being citizens of this State, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are in no wise akin to Ancona Printing Co., plaintiff, and Welsbach Company, de-
20 fendant, nor interested in the suit, to make a jury for the trial of the action between the parties aforesaid, because as well the said plaintiff as the said defendant have put themselves on that jury. And have you there the names of those jurors and this writ.

Witness, William C. French, Esq., Judge of said Court, at Camden, aforesaid, the seventh day of September, in the year of our Lord one thousand nine hundred and sixteen.

Edwin Hillman, Clerk.

30 By virtue of the above Venire Facias, I have duly summoned the following lawful jurors to appear before the District Court Of The City Of Camden, at the time designated:

1. Robert Woolston 7.
2. Edward Guyant 8.
3. William Fogg 9.

4. Howard Mortland 10.
5. Clayton Moore 11.
6. Charles Thompson 12.

John T. Wright, Sergt. at Arms.

Dated September 8th, 1916.

Camden, N. J., Friday, Sept. 8th, 1916.
District Court of the City of Camden,
Frank Smathers, Esq., Judge,
Edwin Hillman, Clerk.

11568—Printing Co. vs. Welsbach Co. L. & T. 10

Parties appeared ready for trial, jury called, jury sworn, counsel opened case, Sidney Mason sworn on part of plaintiff, Roy M. Snyder, David S. B. Chew, sworn on part of plaintiff, two leases and copy of notice to quit premises offered in evidence, plaintiff rests; E. G. C. Bleakly, sworn on part of defense, letter offered in evidence for defense, letter offered in evidence by plaintiff, motion for directed verdict for plaintiff. The Court held motion in order to allow counsel to submit briefs, and the jury were 20 dismissed by the Court.

DISTRICT COURT VENIRE.

Camden City, ss.

The State Of New Jersey, to John T. Wright, Sergeant at Arms of the District Court.

You Are Hereby Commanded that you cause to 30 come before The District Court Of The City Of Camden, holden in the Camden County Court House, third floor, Sixth and Market Streets, in the said City and County, on Wednesday, the twenty-seventh day of September, 1916, at 10.30 o'clock in the forenoon, six good and lawful men, being citizens of this

State, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are in no wise akin to Ancona Printing Co., plaintiff, and Welsbach Company, defendant, nor interested in the suit, to make a jury for the trial of the action between the parties aforesaid, because as well the said plaintiff as the said defendant have put themselves on that jury. And have you there the names of those jurors
10 and this writ.

Witness, William C. French, Esq., Judge of said Court, at Camden, aforesaid, the twenty-fifth day of September, in the year of our Lord one thousand nine hundred and sixteen.

Edwin Hillman, Clerk.

By Virtue of the above Venire Facias, I have duly summoned the following lawful jurors to appear before the District Court Of The City Of Camden, at the time designated:

20 1. Francis S. B. Wallen 7.
2. Charles M. Ferat 8.
3. William Bottger 9.
4. R. R. Stewart 10.
5. Samuel M. Shay 11.
6. H. K. Oakford 12.

John T. Wright, Sergt. at Arms.

Dated September 27th, 1916.

30

11568.—Printing Co. vs. Welsbach Co. L & T.

Parties appeared with counsel ready for trial, jury called, jury sworn, counsel opened case, lease, supplemental lease, extension lease, notice to quit premises marked P-1, 2, 3 and 4 offered in evidence. Samuel D. Scott, Sidney Mason and E. G. C. Bleakly

sworn on part of defense. Samuel D. Scott recalled by defense. Letters offered in evidence, marked P-5, 6, 7, 8, 9 and 10. Samuel Chew, and Wm. S. B. Chew sworn in rebuttal, Samuel D. Scott and E. G. C. Bleakly recalled in sur-rebuttal, letters marked P-11, 12, 13 and 14, offered in evidence, case closed. Counsel argued case, judge charged jury, officer sworn, jury retired. The jury returned and announced that they find a verdict for plaintiff.

Adjourned, 10

Edwin Hillman,
Clerk.

I, Edwin Hillman, Clerk of the Camden City District Court do hereby certify that annexed hereto are true copies of the proceedings in the Camden City District Court in the matter of the Ancona Printing Company vs. Welsbach Company, as appear on the files of this office.

In Witness Whereof I have hereunto subscribed my name and affixed the Seal of said Court this 22nd., 20 day of September A. D. Nineteen hundred and seventeen.

Edwin Hillman
Clerk.

(Seal)

EXHIBIT P6.

September 24, 1915. 30

Mr. Sydney Mason, President,
Welsbach Company,
Gloucester City, N. J.

Dear Sir:

I am directed by the Ancona Printing Company to offer to the Welsbach Company *an extension* of

the lease for five (5) years at a rental of Fifteen Thousand ($15,000.) Dollars.

The property is not for sale.

Yours very truly,

Oswald Chew
Secretary,
OC*M Ancona Printing Company.

Cable address
10 "Welsbach" Philadelphia
Lieber Western Union or A B C. Code

Bell-Gloucester 166 and 167
Telephones Keystone-Main 3880 3881 & 1539
Eastern-Gloucester 59

Welsbach Company

(Shield)
Sidney Mason,
President.

Gloucester City, N. J.
20 L. October 6, 1915.

Ancona Printing Co.
Mr. Oswald Chew, Sec'y.
Commercial Trust Bldg. Philadelphia.

Dear Mr. Chew:

Your favor of the 24th ultimo received.

If the Ancona property which we are now occupying is not for sale we are without further interest as new buildings are now under construction which make it no longer necessary for us to consider a
30 further lease of the premises.

In letter of September 18th we invited a counter-offer of sale of the premises, but owing to the action we have now taken we are without interest in considering the purchase of the property above the figure of offer in our letter of June 30th last.

Should you care to reconsider same we shall be

glad to hear from you prior to the first proximo, on which date we desire our offer to be considered withdrawn.

Yours very truly,

Sidney Mason

President.

December 23, 1915.

Mr. Sydney Mason, President,
Welsbach Company, 10
Gloucester City, N. J.

Dear Mr. Mason:

We are in receipt of your letter of the 21st inst. and note that you say that you are without acknowledgment or reply to your letter of October 6th.

Upon a careful re-reading of your letter above referred to, we admit we cannot see what acknowledgment or reply is needed. It is, as appears to us, an ultimatum from you in no uncertain terms. Had we been ready to meet your proposal we naturally would 20 have sent a reply. The contrary would argue that we did not care to meet your proposal.

As your last letter, to wit of 21st inst., makes no new offer, we can but reply that we have not changed our mind with regard to the matter.

Yours very truly,

Oswald Chew Secretary,

OC*M Ancona Printing Company.

January 22, 1916. 30

Samuel T. Bodine, Esq.,
U. G. I. Building,
Philadelphia.

Dear Mr. Bodine:

Referring to our conversation of 12th inst., I enclose you a copy of the letter of the Ancona Printing

Company to Mr. Sydney Mason, President of the Welsbach Company, dated September 24th, 1915.

The Company has not changed its position in the matter of the disposition of its property.

Yours very truly,

D S B Chew

DC*M

Cable address

10 "Welsbach" Philadelphia

Lieber Western Union or A B C. Code

Bell-Gloucester 166 and 167

Telephones Keystone-Main 3880 3881 & 1539

Eastern-Gloucester 59

(Shield)

Sidney Mason,

President.

Welsbach Company

Gloucester City, N. J.

20 L. March 1, 1916.

Ancona Printing Company

Mr. Oswald Chew, Secretary,

Commercial Trust Building,

Commercial Trust Building,

Philadelphia, Pa.

Dear Mr. Chew:

Mr. Samuel T. Bodine, one of the Directors of this Company, on his return from the south, handed me Mr. D. S. B. Chew's letter to him of January 22nd

30 in reference to the property which this Company now occupies under lease from your Company. With this letter he enclosed a copy of a letter from you as Secretary of the Ancona Printing Company to this Company, dated September 24, 1915, and stated that your Company had not changed its position from that stated in said letter.

In reply thereto, as new buildings are now under construction on land of the Camden County Land Company, which, upon completion, will be occupied by our Company, under no conditions can we consider an extension of the present lease of the Ancona Printing Company's property for a period of five years at a rental of $15,000. per annum.

Yours very truly,

Sidney Mason

President. 10

March 3, 1916.

Mr. Sydney Mason, President,
Welsbach Company,
Gloucester City, N. J.

Dear Sir:

Your letter of March first, with regard to the Ancona property, has been received.

We understand, therefore, that, pursuant to the rejection last Autumn of our offer of a five year 20 extension of the lease, the Welsbach Company will vacate the premises by June 30th, and shall act accordingly.

Meanwhile, certain members of the board of directors will visit the Ancona property probably this or next week.

Yours truly,

Ancona Printing Company,

By

Samuel B. Scott 30

Secretary pro. tem.

SBS*M

June 13, 1916.

Mr. Sidney Mason, President,
The Welsbach Company,
Gloucester City, N. J.

Dear Sir:

Pursuant to your conversation with me on June 7th, I reported the same to the officers of the Ancona Printing Company and also to the directors, and have been instructed to inform you that the 10 Ancona Printing Company does not desire to purchase any property belonging to the Welsbach Company, and also to inform you that as the buildings of the Ancona Printing Company were originally supplied with a sprinkler system, that the present sprinkler system should be allowed to remain in order to satisfy conditions of the lease.

I was also instructed to notify you that the Ancona Printing Company expects that you will vacate the property immediately upon the expiration of the 20 lease and turn it over to the Ancona Printing Company at that time in the condition required by the lease.

Very truly yours,

Samuel B. Scott
Secretary Ancona Printing Co.

SBS*M

June 30, 1916.

E. G. C. Bleakley, Esq.,
30 317 Market Street,
Camden, N. J.

Dear Sir:

I have taken up with the Directors your offer of twelve thousand dollars made yesterday on behalf of the Welsbach Company for an extension of its lease with the Ancona Printing Company. It seems

strange that at this late date the matter should be agitated at all; but, as you have made the offer, I beg to say that the Ancona Printing Company has made and will make no change from their position indicated in the letter of Mr. Oswald Chew, Secretary, to Mr. Sidney Mason, President, of September 24th, 1915, and beg to reiterate that the Ancona Printing Company expects the Welsbach Company to vacate immediately on the expiration of the lease.

Very truly yours, 10

Samuel B. Scott.

EXHIBIT P7.

Cable address
"Welsbach" Philadelphia
Lieber Western Union or A B C. Code

Telephones Bell-Gloucester 166 and 167 20
Keystone-Main 3880 3881 & 1539
Eastern-Gloucester 59

Welsbach Company
Gloucester City, N. J.

(Shield)
Sidney Mason,
President.

L. July 30, 1915.

Ancona Printing Co.
Mr. Oswald Chew, Sec'y. 30
Commercial Trust Bldg. Philadelphia.

Dear Mr. Chew:

I herewith acknowledge receipt of your favor of the 30th ultimo quoting resolution passed by the stockholders of your Company, i. e.

That the property now leased to the Welsbach

Company be offered to them for rental for ten years from the expiration of the existing lease, on a sliding scale, beginning at $10,000 and increasing annually by $1000.00 until it reaches $15,000, and from then to be continued at $15,000 annually until the end of the term, other terms and conditions to be the same as now in force in the existing lease."

This offer we cannot favorably consider either in respect to the terms or duration of the lease, and
10 accordingly it is hereby declined. At my suggestion, under date of July 13th representatives of our respective companies inspected the Ancona premises, at which time there was pointed out to yourself and representatives the many structural weaknesses and defects of certain buildings, namely Nos. 23, 24, 27, 35, 36, 44 and 47, occasioned by settling of foundations, etc. We subsequently retained the services of Wm. Steele & Sons Co. whose engineers have reported on the condition and safety of the above men-
20 tioned buildings. In brief, their report indicates that none of the buildings are in immediate danger or involve any undue risk owing to their occupancy of one year, but as a precautionary measure certain minor reinforcements of said buildings should be made involving an expenditure estimated at approximately $6000., and with an additional expenditure on building #27 of approximately $14,000.00, the buildings would be deemed safe by them for a continued occupancy of not exceeding five years.
30 Inasmuch as we contemplate the construction of modern buildings on premises now owned by us in order to conduct our manufacturing efficiently and economically, it would seem a waste of either your money or our money to make the additional expenditure on building #27 as your plant has served its usefulness so far as our requirements are concerned.

To avoid this I am prepared to renew authorized offer to purchase the Ancona premises now leased by us for $150,000.00. The premises would serve the purposes of our fluid and chemical department and thereby relieve us of an expenditure for bulkheading and extending our own property.

I have had measurements taken of the Ancona premises, which were reported to contain a total of 9-1/4 acres. Hence we consider the above offer a very full and liberal price taking into consider- 10 ation all of the conditions involving our present occupancy of the premises.

Should this offer not be accepted, we are prepared to consider a renewal of our lease for a further period of not exceeding three years, in which we would require that provisions be made to place the buildings in a safe condition for our occupancy and use. If you should neither care to sell or make a short term lease we would then ask for a six months extension of our current lease upon terms 20 and conditions as now in force in order that we may have ample time in which to surrender and vacate the premises.

Yours very truly,

Sidney Mason
President.

30

EXHIBIT P13.

Cable address
"Welsbach" Philadelphia
Lieber Western Union or A B C. Code
Welsbach Company
Broad and Arch Streets,
Philadelphia,
(Shield)
Sidney Mason,
10 President.

L. January 19, 1914.

Ancona Printing Co.
Mr. D. S. B. Chew,
Commercial Trust Bldg. Philadelphia, Pa.

My dear Mr. Chew:

I think a definite decision in respect to the Gloucester factory matter should in our mutual interest be reached without delay. To enable your Company to act in the matter I beg to submit in alternative form
20 the following offers subject to your acceptance on or before the 31st day of January next:

A. The Welsbach Company will enter into an agreement to purchase the premises now leased, free and clear of all encumbrances, for $130,000.00 cash.

B. The Welsbach Company will enter into an agreement to purchase the premises now leased, free and clear of all encumbrances, at a price proportionate, on the basis of either frontage or acreage at your option, to the price the Welsbach Company
30 paid for the property of the Gloucester Manufacturing Co., which price was $180,000.00, payable 1/3 in cash and the balance in a 20-year purchase money mortgage at the rate of 4-4/10%.

C. The Welsbach Company will enter into an agreement to purchase the premises now leased, free and clear of all encumbrances, at a price to be fixed

by arbitrators as hereinafter provided, payable 1/3 in cash and the balance in a 20-year purchase money mortgage at the rate of 4-4/10%; the seller and the buyer each to appoint one arbitrator and to be bound by the price agreed to by them. In event of their failure to agree to a price within thirty days, they are to select a third arbitrator, and in event of their inability to select a third arbitrator within ten days, then and in that event, upon application of either the buyer or the seller, the appointment of the third arbitrator is to be vested in the Chancellor or Vice-Chancellor of the State of New Jersey, whose appointment shall be final and binding, and the decision of the three arbitrators thus selected shall establish the price to be paid hereunder.

The agreement made under any one of the above offers to provide that settlement is to be made in accordance with the terms of the accepted offer on June 30th, 1915, the date of termination of the present lease.

In event of your unwillingness to accept any one of the alternative offers herein proposed, we in that event will accept an extension of the present lease for a further term of one year under the same terms and conditions as the present lease at a rental of not exceeding $10,000.00, vacating the premises upon expiration thereof.

Yours very truly,

Welsbach Company
By Sidney Mason,
President.

EXHIBIT P14.

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carp. Shop S. O. No. 17617 Date 12/8/16

Started Finished 12-1916 Shipping
10 Stock O. No.
Tin Shop
Description
Installing Apparatus In Bldg. # 28
Bld #36 Nov 1917
Charge Plant Moving & Inst. Expense—644.76

(Here Follows Sundry Items)

Form 370. 2M 8 15
20 Maintenance-Repair-Special
Shop Order Costs
Shop Shipping S. O. No. 17088 Date 1/28/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
Moving Stock From Old Building To New
Vacating This Building As Per Orders From
Mr. Rogers
30 Charge Plant Moving & Inst. Expense—2383.47

(Here Follows Sundry Items)

Form 370. 2M 8 15
Maintenance-Repair-Special
Shop Order Costs

Shop Carpenter S. O. No. 17113 Date 2/26/16

Started Finished 12-1916 Shipping
Stock O. No.

Description
Hanging Shafting In New Buildings (Paper Box Tube Room)
Charge Plant Moving & Inst. Ex 2112.16

(Here Follows Sundry Items) 10

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Tin Shop S. O. No. 17562 Date 11/3/16

Started Finished 12-1916 Shipping
Stock O. No.

Description
Install Temporary Gasoline Alumination in Hall & Stairway New Plant 20
Charge Plant Moving & Installation—57.10

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Tin Shop S. O. No. 17583 Date 11/20/16

--- 30

Started Finished 12-1916 Shipping
Stock O. No.

Description
Salvage #1 Plant
Charge Conditioning Plant #1

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop S. O. No. 17527 Date 10/11/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
Moving The Fluid Factory
10 Charge Plant Moving & Inst. Exp. 7140.34

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17528 Date 10/11/16

Started Finished 12-1916 Shipping
Stock O. No.
20 Description
Moving Power Equipment From Plant #1
Charge Plant Moving & Inst. Expense 35.94

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter Shop S. O. No. 17548 Date 10/25/16

---

30 Started Finished 12-1916 Shipping
Stock O. No.
Description
Moving Photo Studio To And Fitting Up In New Plant.
Charge Plant Moving & Installation Ex. 55.19

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Fluid Factory S. O. No. 17549 Date 10/25/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
Installing Machinery In The New Collodion House
Charge Plant Moving & Inst. Expense 197.71 10

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17457 Date 9/1/16

--- 20

Started Finished 12-1916 Shipping
Stock O. No.
Description
Salvaging Machinery In Plant #1
620 stores 121.49
Scrap & Salvage 2.79
Charge Conditioning Plant #1 2504.40

(Here Follows Sundry Items)

30

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17429 Date 8/18/16

Started Finished 12-1916 Shipping
Stock O. No.
Tin Shop
Description
Moving Alcohol Still & Connecting
Charge Plant Moving & Inst. Expense 594.43

(Here Follows Sundry Items)

10
Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17435 Date 8/21/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
Cleaning And Repairing Factory #1 For
20 Vacating Mov. Plant & Inst.
Charge Conditioning Plant #1 1095.09

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17364 Date 7/6/16

30.
Started Finished 12-1916 Shipping
Stock O. No.
Description
Moving Ammonia Concentrator To Plant #2
New Building (not Steele's Bld.).
Charge Plant Moving & Installation Expense 300.24

(Here Follows Sundry Items)

Form 370. 2M 3 16

Maintenance-Repair-Special

Shop Order Costs

Shop Carpenter S. O. No. 17276 Date 5/31/16

Started Finished 12-1916 Shipping 10

Stock O. No.

Description

Running Service Water Line To New Factory

Charge Plant Moving & Installation Ex. 276.85

(Here Follows Sundry Items)

Form 370. 2M 3 16 20

Maintenance-Repair-Special

Shop Order Costs

Shop Mechanical S. O. No. 17255 Date 5/26/16

Started Finished 12-1916 Shipping

Stock O. No.

Carp.

Tin

Description

Installation And Repairs To Equipment C. E. 30
Z., Car Light And Rag Dept. #3—Second
Floor

Charge Plant Moving & Inst. Ex 651.02

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17256 Date 5/26/16

10 Started Finished 12-1916 Shipping
Stock O. No.
Carp.
Tin
Description
Installation And Repairs To Equipment
Knitting Dept.—Third Floor
Charge Plant Moving & Inst. Expense 1130.74

(Here Follows Sundry Items)
20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17257 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
30 Carp.
Tin
Description
Installation And Repairs To Equipment
Washing Dept—Third Floor
Charge Plant Moving & Installation Ex. 1146.84

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17258 Date 5/26/16

Started Finished 12-1916 Shipping 10
Stock O. No.
Carp.
Tin

Description
Installation And Repairs To Equipment
Cutting & Drying Dept.—Third Floor
Charge Plant Moving & Installation Ex. 511.49

(Here Follows Sundry Items)

20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17259 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
Carp. 30
Tin

Description
Installation And Repairs To Equipment Saturating Dept.—Third Floor
Charge Plant Moving & Inst. Expense 1664.23

New Jersey State Library

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17260 Date 5/26/16

10 Started Finished 12-1916 Shipping
Stock O. No.
Carp.
Tin
Description
Installation And Repairs To Equipment Fixing Dept.—Third Floor
Charge Plant Moving & Installation Expense 128.89

(Here Follows Sundry Items)

20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17261 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
30 Carp.
Tin
Description
Installation And Repairs To Equipment Trimming Dept.—Third Floor
Charge Plant Moving & Inst. Expense 2.77

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17263 Date 5/26/16

Started Finished 12-1916 Shipping 10
Stock O. No.
Carp.
Tin

Description
Installation And Repairs To Equipment Inverted Packing—Third Floor
Charge Plant Moving & Installation Ex. 760.46

(Here Follows Sundry Items)

20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17265 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
Carp. 30
Tin

Description
Installation And Repairs To Equipment Upright Hardening Room—Third Floor
Charge Plant Moving & Installation Expense 1729.60

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17266 Date 5/26/16

10 Started Finished 12-1916 Shipping
Stock O. No.
Carp.
Tin

Description
Installation And Repairs To Equipment Upright Sewing Dept—Third Floor
Charge Plant Moving & Inst. Ex. 255.40

(Here Follows Sundry Items)

20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17267 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
30 Carp.
Tin

Description
Installation And Repairs To Equipment Inverted Sewing Dept—Third Floor
Charge Plant Moving & Installation Ex. 242.72

(Here Follows Sundry Items)

Form 370. 2M 3 16

Maintenance-Repair-Special
Shop Order Costs

Shop Carpenter S. O. No. 17227 Date 5/13/16

Started Finished 12-1916 Shipping
Stock O. No.
mechanical

10

Description

Installing Machinery In Paper Box Shop Building #4 Factory #2 Tube & Label Rooms.

Charge Plant Moving & Inst. Expense 5.01

(Here Follows Sundry Items)

20

Form 370. 2M 3 16

Maintenance-Repair-Special
Shop Order Costs

Shop Carpenter S. O. No. 17225 Date 5/12/16

Started Finished 12-1916 Shipping
Stock O. No.
Tin

30

Description

Electric Equipment For Paper Box Shop

Charge Plant Moving & Inst. Expense 442.44

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17224 Date 5/12/16

Started Finished 12-1916 Shipping
10 Stock O. No.
Description
Temporary Wiring For Public Service Power
Charge Plant Moving & Inst. Expense 279.74

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
20 Shop Order Costs
Shop Carpenter S. O. No.17225 Date 5/11/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
General Blacksmithing Work
Charge Plant Moving & Inst. Exp. 132.41

(Here Follows Sundry Items)
30

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17210 Date 5/8/16

Started   Finished 12-1916   Shipping
Stock O. No.

Description

Temporary A. C. Installation In Plant #1

Charge Moving Plant & Inst. Expense 12.27

(Here Follows Sundry Items)

10

Form 370. 2M 3 16

Maintenance-Repair-Special
Shop Order Costs

Shop Carpenter S. O. No. 17204 Date 5/5/16

Started   Finished 12-1916   Shipping
Stock O. No.
Mechanical
Tin

Description

20

Hanging Shafting in Mantle Packing Room

Charge Plant Moving & Inst. Expense 519.08

(Here Follows Sundry Items)

Form 370. 2M 3 16

Maintenance-Repair-Special
Shop Order Costs

30

Shop Carpenter S. O. No. 17203 Date 5/5/16

Started   Finished 12/1916   Shipping
Stock O. No.
Mechanical
Tin

Description
Hanging Shafting In Paper Box Tube Room
Refer to 17227
Charge Plant Moving & Inst. Ex. 3185.95

(Here Follows Sundry Items)

Form 370. 2M 3 16
10 Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17237 Date 5/20/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
Work In Connection With Raising Tank For
Fluid Factory
Charge Plant Moving & Inst. Ex. 379.97

20
(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17254 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
30 Carp.
Tin
Description
Installation And Repairs To Equipment Ring
Department—Second Floor
Charge Plant Moving & Installation Exp. 548.45

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17252 Date 5/26/16

Started Finished 12-1916 Shipping 10
Stock O. No.
Carp.
Tin

Description
Installation And Repairs To Equipment Light
Packing—First Floor
Charge Plant Moving & Inst. Ex. 91.89

(Here Follows Sundry Items)

20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17251 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
Carp. 30
Tin

Description
Installation And Repairs To Equipment Case
Factory—First Floor
Charge Plant Moving & Inst. Expense 378.12

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17250 Date 5/26/16

---

10 Started Finished 12-1916 Shipping
Stock O. No.
Carp.
Tin
Description
Installation And Repairs To Equipment
Square Box Shop—First Floor
Charge Plant Moving Inst. Expense 507.62

(Here Follows Sundry Items)
20

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Mechanical S. O. No. 17249 Date 5/26/16

Started Finished 12-1916 Shipping
Stock O. No.
30 Carp.
Tin
Description
Installation And Repairs To Equipment
Paper Box Label Room—First Floor
Charge Plant Moving & Installation Ex. 92.05

(Here Follows Sundry Items)

Form 370. 2M 3 16

Maintenance-Repair-Special

Shop Order Costs

Shop Carpenter S. O. No. 17243 Date 5/25/16

Started Finished 12-1916 Shipping 10

Stock O. No.

Mechanical

Tin

Description

Hanging Shafting In Dipping Room

Charge Plant Moving & Inst. Expense 2313.57

(Here Follows Sundry Items)

20

Form 370. 2M 3 16

Maintenance-Repair-Special

Shop Order Costs

Shop Carpenter S. O. No. 17242 Date 5/24/16

Started Finished 12-1916 Shipping

Stock O. No.

Mechanical

Tin 30

Description

Piping And Setting Machinery In Inverted Hardening Room

Charge Plant Moving & Installation Expense 3255.-24

(Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17375 Date 7/12/16

Started Finished 12-1916 Shipping
Stock O. No.
10 Description
Installation And Repairs To Equipment Wash
House, Building #2
Charge Plant Moving & Installation Expense 3066.-
86

(Here Follows Sundry Items)

Form 370. 2M 3 16
20 Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17295 Date 6/10/16

Started Finished 12-1916 Shipping
Stock O. No.
Description
Erecting Fixing Machines For New Factory
Charge Plant Moving & Inst. Ex. 99.23

---

30 (Here Follows Sundry Items)

Form 370. 2M 3 16
Maintenance-Repair-Special
Shop Order Costs
Shop Carpenter S. O. No. 17487 Date 9/15/16

Started Finished 12-1916 Shipping
Stock O. No.

Description

Moving General Stores

Charge Plant Moving & Installation Expense 447.-04

(Here Follows Sundry Items)

10

Form 370. 2M 3 16

Maintenance-Repair-Special

Shop Order Costs

Shop Fluid Factory S. O. No. 17188 Date 5/1/16

Started Finished 12-1916 Shipping
Stock O. No.
Tin

Description 20

Installation Of Fluid Factory Apparatus In New Building

Charge Plant Moving & Installation Ex. 52493.00

(Here Follows Sundry Items)

EXHIBIT P15.

30

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Order No. 76040
May 13, 1916

To Henderson & Brother,
25th Below Spruce St., Phila. Pa.
Welsbach Company, Gloucester N J

Place Acid Tank on wooden trestles, as per arrangement with your Mr. Ellicott.

Price: Not to exceed $70.00 and be as much less as your costs will permit.

5/20

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

10 Order No. 75801
May 5, 1916

To Henderson & Bro. Inc.,
25th St below Spruce St.,
Phila. Pa.
Welsbach Company, Gloucester N J

Move six (6) 20 ft. lead lined tanks from the second story of building on Plant No. 1 to the second story of building on Plant No. 2 and put them in place,
20 as per arrangement made with your Mr. Ellicott. Work to Commence on Tuesday morning, May 9th, 1916. Price for complete job, $502.00 as per your quotation of May 1st, 1916.

(HSM)

5/20

As Above

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30 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Order No. 77433
June 30, 1916

To Henderson & Brother, Inc.
25th St. below Spruce St.,
Phila. Pa.
Welsbach Company, Gloucester N J

Move three (3) Lead Lined Tanks now on the third floor of old Fluid Factory to pit in basement of the new Fluid Factory, as per arrangements made with your Mr. Ellicott.

Price: $200.00 for the three tanks. Work to commence on Thursday next, the 6th proximo.

7/18

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Order No. 78239
July 27, 1916

To Henderson & Brother, Inc.,
25th St. below Spruce St.,
Phila. Pa.
Welsbach Company, Gloucester, N. J.
K 7/28

20

Place Acid Tank on concrete elevated cradle as per arrangement with your Mr. Ellicott. Work to commence on Monday morning, the 31st instant.

Price: $140.00

8/7

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Liability release returned dated 9/23/1916.

30

Order No. 79862
Sept. 22, 1916.

To Henderson & Brother, Inc.,
25th St. below Spruce St.,
Phila. Pa.
Welsbach Company, Gloucester N J

Take down and hold on the outside of our building the four iron tanks now in our old Fluid Factory, directly opposite Laboratory, as per arrangement with your Mr. Ellicott.

Price: $50.00

Work to commence Tuesday morning, the 26th inst.

9/26

10

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

File

Order No. 80121

Liability agreement returned signed 10/3/16

Sept. 30, 1916.

To Henderson & Bro. Inc.,
25th below Spruce St.,
20 Phila. Pa.

Welsbach Company, Gloucester, N J

Take down and move two lead lined wood tanks.

Move and install four cylindrical iron tanks.

Move and install seven wood tanks all as explained to your Mr. Ellicott.

Price for the above jobs to be on the following basis

50¢ per hour for riggers.
70¢ per hour " " Foreman
30 plus car fare from the Philadelphia side.

Teams to be billed at $10.00 a day. Necessary poles with rigging desired to be billed at the rate of $3.50 per day.

New Jersey Court of Errors and Appeals

ANCONA PRINTING COMPANY, Plaintiff (Appellant); vs. WELSBACH COMPANY, Defendant (Appellee).	ACTION AT LAW

BRIEF FOR DEFENDANT (APPELLEE).

Plaintiff brought this action in the Supreme Court to collect the penalty of double rent provided for in Section 27, of the Landland and Tenant Act. At the trial before the Circuit Judge the defendant moved for a non-suit, and, at the conclusion of the case, for a direction of verdict for the defendant. The plaintiff also made a motion to direct a verdict in its favor. The Court submitted the case to the jury and a verdict was found for the defendant. From the judgment of the Supreme Court, following this verdict, the plaintiff appeals.

ISSUES DEFINED.

The complaint, while not referring in express terms to any statute, recites the language of Section 27, of the Landlord and Tenant Act, and obviously seeks a recovery thereunder. The suit is not in the nature of one

to recover for use and occupation. Plaintiff seeks not the value of that occupation, but rather to impose a penalty. Admittedly, the case was intended to be brought undr this statute, and it was tried on that theory by both sides. The sole basis of recovery, therefore, must be found in this Section of the Landlord and Tenant Act, reading as follows:

"Penalty for Holding Over; Double Rent; Bail."

"That in case any tenant or tenants for any term of life or lives, year or years, or other person or persons who are or shall come into possession of any lands, tenements or hereditaments by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or agents, thereunto lawfully authorized, then and in such case, such person or persons so holding over, shall, for and during the time he, she or they shall so hold over, or keep the person or persons entitled out of possession of the said lands, tenements or hereditaments as aforesaid, pay to the person or persons so kept out of possession, his, her or their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, for so long a time as the same are detained; to be recovered in any court of record in this State, by action of debt, whereunto the defendant or defendants shall be obliged to give special bail, and against

the recovering of which said penalty there shall be no relief in equity. (Rev. 1877, p. 575.)"

The complaint averred that the term of defendant's written lease expired June 30th, 1916, and that—

> "Defendant wilfully held over said premises after the determination of its term for a period of six months, and after demand made and notice in writing given for delivering the possession thereof by plaintiff."

It further averred that the rental consisted of $10,000.00 in cash and the amount due for taxes, and states that the taxes for the year 1916 were paid by the defendant.

Defendant, by its answer, admitted the written lease, but denied the other averments of the complaint.

The plaintiff was thereupon bound to prove all of the elements set up in the statute and especially—

——That the defendant, after June 30, 1916, "held over wilfully,"

—And that such wilful holding over was after demand made and notice in writing given for delivering the possession of said premises by the plaintiff or its agent or agents thereunto lawfully authorized.

At the conclusion of plaintiff's case, counsel for the defendant, the Welsbach Company, moved for a nonsuit, upon the theory that plaintiff had utterly failed to bring its case within the requirements of the statute under which the suit was brought. (See grounds of nonsuit, pages 22 to 34.)

In its motion for a non-suit, defendant also urged upon the Court that by plaintiff's own pleading and admission in open court the defendant had paid and the plaintiff had accepted a part of the rental for the property for the period following June 30, 1916, and thereby it recognized the relation of landlord tenant and was precluded from bringing any suit upon this penal statute.

Not only did the Court properly deny plaintiff's motion to direct a verdict in plaintiff's favor, but, as we contend, the Court could very properly have granted either defendant's motion for a non-suit or its motion for a direction of a verdict.

CONSTRUCTION OF PENAL STATUTE.

A proper understanding of the statute and its requirements is essential to an intelligent consideration of the facts.

We would therefore, direct the Court's attention to the following:

(a) This penal statute, upon examination, is found to have been copied verbatim from the old English statute, 4 Geo. 2-C, 28 S-1. (The English Act is cited in full in Wood on Landlord and Tenant, Ed. 1881, pages 824-825.)

The comparison of the language of the English statute and our own proves that the language in the two statutes is identical.

(b) The title of the English Act, of which our own is a counter-part, is "To prevent fraud committed by tenants." We have endeavored to discover the title of the New Jersey statute, but have been unable to trace it back to its original enactment. However, the purpose

of the enactment in New Jersey must be identical with the purpose of the enactment in English, to wit, to prevent fraud committed by tenants.

(c) Inasmuch as we find no construction of this New Jersey statute by our own courts, we must look to the construction placed upon it by the highest courts in England. Fortunately, we find the statute construed by the highest English Court, and in terms making its purpose and meaning free from doubt. The statute has evidently been copied in certain other States of the United States, and where so copied, the construction placed upon the Act is the same as that placed upon it by the English Courts.

(d) **Wright vs. Smith,** 5 Esp., 203, stands as the leading English case construing this statute.

Wright leased to one Smith certain premises for a period of twenty years, at a yearly rental, payable half-yearly. Wright died, leaving the property to his daughter for life, and then to his son John for his life, with the remainder to the grandchildren (plaintiffs), with power to lease for a term not exceeding twenty years. The son rented to J. W. for twenty years. The plaintiff insisted that the lease by the son was not pursuant to the will, and was, therefore, void and should be cancelled. The defendant, however, claimed it was a valid lease. The plaintiff served the defendant with notice to quit, but the defendant refused to quit, claiming that he had a good lease. Defendant remained in possession until put out by ejectment proceedings. Plaintiff thereupon sued for double rent for holding over. Lord Chief Justice McDonald held as follows:

> "The title of the act is to prevent fraud committed by tenants, but the act could never be meant to apply

to a case where no fraud was intended and where the resistance to the possession was under a fair claim of right."

"The true construction of the act appears to be that where there is clear contumacy in the tenant, he shall be within the penalty of the act; for if there is any doubt, if he had any fair ground of defense and that defense was bona fide taken, it would be a hard construction to subject him to a penalty, for so it is called in the act for a fair assertion of his title."

The Court further held—

"That there was no fraud or contumacy shown and that the usual course had been to sue in trespass for mesne profits where the landlord gets the full value of his land."

Stuart vs. Hamilton, 66 Ill., 253.

This statute is similar to our own and applies only to a wilful holding over after the lease had expired by efflux of time. The Court held as follows:

"An action to recover the double value of rent under their statute **is in the nature of a forfeiture,** and **is highly penal,** and the landlord to recover must clearly bring his case within the statute." (Citing 20, Ill., 120.)

"The Court held that when the lease had expired according to its terms, the holding over **although intentional,** is not within the statute, **unless it was knowingly and wilfully wrongful.**"

"And where the tenant continued to **hold under a reasonable belief that he was doing so rightfully, he** does not incur the penalty."

Belles vs. Anderson, 38 Ill. App., 128:

"This provision of the statute is highly penal and the courts will not extend acts imposing penalties beyond the very cases provided for."

"Tenant held over after his term had expired, but it was upon the supposition that he had an agreement for another year; and though it turned out in the end that the landlord was entitled to the premises and that tenant had not so complied with the conditions agreed upon as to give him the right to remain, yet we are of the opinion that there was not such a wilful holding over after the end of the term and after demand in writing as contemplated by the statute."

Chapman vs. Wright, 20 Ill., p. 120:

The Court held, as in Stuart vs. Hamilton (ante) that

"An action to recover the double value of rent under their statute **is in the nature of a forfeiture,** and **is highly penal,** and the landlord to recover must clearly bring his case within the statute." (Citing 20 Ill., 120.)

"The Courts have held that when the lease had expired according to its terms, the holding over, **although intentional,** is not within the statute, **unless it was knowingly and wilfully wrongful.**"

"And when the tenant continued to **hold under a reasonable belief that he was doing so rightfully,** he does not incur the penalty."

"Courts will not extend an act imposing penalties beyond the cases provided for by the Legislature and will require the party to bring himself strictly within its provisions."

Counsel for plaintiff, on pages 24 to 28 of their brief, cite certain authorities to show that the word "wilful" in this Penal Statute should not be given the meaning laid down in the foregoing cases. But, for the most part, those authorities (to wit, 148 U. S., 79; Blacks Law Dict.; Bouviers Law Dict.; 95 Ill., 25; Words and Phrases: 29 N. J. L., 98; 40 Cyc., 942, &c.; 169 Fed., 67; 162 Fed., 556; 133 Fed., 195; 185 Ill., 413; 162 Fed., 835), do not construe the word "wilful" in any statute of similar import to our Penal Section 27 of the Landlord and Tenant Act. They simply do not apply to the present controversy. On the specific question of landlord and tenant, counsel for the plaintiff cite, howover, the following:

Jones vs. Taylor, 123 *S. W.* (136 *Ky.,* 39.)
2 *Bouviers Law Dict., pp.* 8-9.
16 *Ruling Case Law,* 681-694-708.

These cited authorities not only do not change the law laid down by us in our cited cases, but, insofar as they are at all applicable, distinctly support the defendant's theory.

Jones vs. Taylor construes a statute in which apparently the word "wilful" does not appear. The word "wrongful" is used. But even so, it is not against us. The Welsbach Company had done more than to merely state its own belief. Acts, words and facts, admitted and undisputed, were considered by the Jury in determining whether defendant acted on an honest belief under reasonable facts and circumstances. The word "wilful" imparts into the act a different meaning from "wrongful." A thing may, as already shown, be "wrongful" and yet not "wilful" in the sense used in this statute.

16 Ruling Case Law, 681 and 694, are not antagonistic to defendant's theory of the law governing this case. Page 708 of said work is as follows:

> "The fact that the holding over is in good faith under a claim of right to do so, if unfounded, is no defense."

Standing alone, this would seem to conflict somewhat with the principles enunciated in the English case, and also the previous pages of this same authority. The author of this work states as his authority for this proposition Lehnen vs. Dickinson, 148 U. S., 71. An examination of the cited case, however, shows that it involved a Missouri statute respecting **forcible entry and detainer.** That statute contained the following clause:

> "The complainant shall not be compelled to make further proof of the forcible entry or detainer than that he was in lawful possession of the premises and that the defendant unlawfully entered into and detained or unlawfully detained the same."

The case was tried before the Lower Court **without a jury.** Its finding of facts was, of course, final and bound the Appellate Court.

> "There was no finding or suggestion in the opinion of the Trial Court to the effect that Lehnen was acting in good faith in what he did. On the contrary, the testimony tends to show that he was cognizant of the fraud perpetrated by Kempinski, &c."
>
> "Certainly, in the absence of a finding to the contrary, we should not feel warranted from an examination of the testimony in coming to the conclusion that the acts of Lehnen, the defendant, were characterized by good faith, nor are we satisfied that

good faith would take the case out of the scope of the Missouri statute for by revised statute 1897, &c., it is provided that (The Court then recites the words of the statute as given above.)

"And that would seem to be the legislative interpretation of what was meant by wilful holding over."

The Court clearly shows that, if the question of good faith entered into the proposition, that was a question for the jury, or for the Trial Judge in the absence of the jury; but that in the face of the the limitation in the statute itself, as above recited, it was a question whether good faith could be any defense.

We have no such limitation upon the New Jersey Statute and there was no such limitation in the English statute which is followed by our own. In short, the authority cited has no application to the present litigation.

Such being the law, it was essential to any recovery by the plaintiff that it prove by a preponderance of evidence:

——Not only that defendant's written lease expired June 30, 1916;

——That plaintiff gave to defendant the notice to vacate as provided by the statute, and that defendant remained in possession thereafter;

——But also that there was a **wilful** holding over; that is, that the defendant held over wrongfully, and with the knowledge that it was holding over wrongfully.

In short the statute is one to prevent fraud. It is not a method to recover the value of the use of the premises. The statute is highly penal in character and the burden is

on the plaintiff to prove every element set up in the Statute. If the plaintiff meets the measure of prima facie proof required by this Act, then that proof must be weighed with and against the proofs submitted by the defendant on the same questions of fact, and it remains for the jury to decide those questions of fact. The words and acts of the plaintiff and the defendant, through their officers and other representatives, were all to be considered by the jury in arriving at its verdict. The plaintiff could not, under the proofs submitted to the jury, claim any right to a direction of a verdict in its behalf. The most it could claim of the Court was the right to have a jury weigh the disputed questions of fact.

The defendant, however, could, and did very properly, urge upon the Trial Court that the plaintiff had not presented any evidence of a wilful holding over within the terms of the statute.

Defendant under its leases was allowed a reasonable time in which to remove its fixtures.

(1) The lease of September 26, 1904, provided for a term running from the first day of March, 1915, to the thirtieth day of June, 1915, and for a rental made up of $6,500.00 in cash and

> "the payment of all taxes properly assessed and levied upon the premises leased."

This lease contained also the following provision—

> "And the said party of the first part (Ancona Company) agrees that the said party of the second part (Welsbach Company) shall be at liberty to make any and all changes in the premises, buildings, fixtures, &c., doing no material damage to the property

which shall seem to it desirable or necessary for the convenience or necessity of its business, and shall have the right **at the termination of the lease** to remove all fixtures erected by it or by the Welsbach Light Company, during the occupation of said premises by either of said parties, whether during the term of this lease or any previous lease, including therein the gas works, holders and appurtenances, &c., provided, however, that any and all buildings that may be erected by the party of the second part shall be and become the property of the party of the first part hereto."

A supplemental lease, dated March 14, 1905, covered a small piece of adjoining property and the terms of the 1904 lease just recited were made applicable to the supplemental lease.

Under date of March 7, 1914, the parties executed a renewal lease—

"for the further term of one year from the thirtieth day of June, 1915, at the rental of $10,000 per annum, payment for rent accruing during the month of June, 1915, on the aforesaid lease and supplemental lease therein mentioned, to be made on June 30, 1915, and the payment of the $10,000 rent for the extended term of one year to be made quarterly, the first quarterly payment to be made on the thirtieth of September, A. D. 1915, and payment of all taxes properly assessed and levied upon the premises herein leased, **including one-half of all taxes for the year 1916,** all other terms, covenants and conditions to remain the same as in the above recited lease, and the party of the second part hereby renews the terms, covenants and conditions of the said above recited

lease, and it agrees to be bound thereby for the extended term herein mentioned."

It is in evidence and uncontradicted that, prior to the 1904 lease, the defendant or its predecessor, the Welsbach Light Company, had been in possession for many years. Mr. Mason, the president, said that the Welsbach Company and its predecessor had been in possession for upwards of thirty years.

It will be noted that the rental on the renewal lease was raised from $6,500 to $10,000 and taxes. The defendant, as part consideration therefor, obtained the right to remove at the termination of the renewal lease, all of the valuable fixtures it had in previous years installed upon the premises of the plaintiff.

The uncontradicted testimony on this phase of the case is as follows:

——The defendant was advised by its counsel that under the terms of the 1904 lease as re-embodied in the renewal lease of March 7, 1914, it had the right to remove all the fixtures placed by it or its predecessor, The Welsbach Light Company, upon the plaintiff's property, and that it had a reasonable time upon the expiration of the said renewal lease in which to effect such removal. (Page 141.)

——The Welsbach Company had been the tenant of the plaintiff of these premises for upwards of thirty years under sundry leases. When it took possession of this property originally, it found the buildings mere shells, totally unequipped. The Welsbach Company put up new buildings and equipped the old and new buildings and property with a vast amount of machinery and other

fixtures, until in the year 1916 there were something over three thousand machines belonging to the Welsbach Company being operated upon this property. In June, 1916, the Welsbach Company employed upon this property approximately 2,500 hands, mostly women and girls.

The processes involved in the manufacture of gas mantles are numerous, intricate, and most of the machines were of delicate and intricate construction and many of the fixtures were of great weight and bulk.

——As soon as plaintiff brought its action to dispossess in the District Court (the notice to dispossess being served July 7, 1916), the defendant immediately proceeded to remove these numerous and valuable fixtures, and did so as expeditiously as the nature of those fixtures and the labor conditions at the time would permit. (Mason, p. 106, line 9.)

——The labor conditions in June, 1916, and for many months thereafter, were abnormal and such as to make it extremely difficult to get the necessary mechanics and labor to remove these fixtures. The employees of the defendant were, for the most part, girls, and skilled mechanics had to be employed to take down and remove these fixtures and the defendant had to go into the open market for such skilled labor. (Pages 114-115.)

——Defendant's officers state unequivocably that they pushed this work of removal just as fast as possible and spared neither time nor expense to make it expeditious. (Mason, p. 54; Stites, pp. 120-121.)

——The fixtures installed by the defendant upon the premises represented an outlay by it of approximately $1,000,000 and had been installed and renewed from time to time over a long period of years. In June, 1916, the plant was fully equipped and crowded with employees of the defendant.

The general manager of the defendant gives on pages 120-121 a description of the defendant's fixtures which it undertook to remove. The cost alone, approximating $1,000,000 gives a fair idea of the immense job the defendant had to perform in this removal.

All of the testimony presented by the defendant was to the effect that the time taken in this removal was reasonable and that the defendant had done its best to be expeditious under adverse labor and weather conditions.

If now we turn to the testimony produced by the plaintiff, we shall find not a word proving or even suggesting that the time taken by the defendant for the removal of these fixtures under the rights given to it under its several leases was unreasonable or that, considering the character of the property to be removed and the labor conditions prevailing at the time, the defendant could have removed the fixtures any more promptly than it actually did remove them.

We would here direct the attention of the Court to the fact that the plaintiff's officers were fully acquainted with the character and the great number of fixtures installed by the defendant. They not only had reserved in their lease the right to make inspection of the buildings and property, but they did make these inspections each year and were in and about the property in the spring and summer of 1916. Without offering a word of testimony on its part to show an unreasonable time taken by the defendant in the removal of its fixtures, plaintiff contented

itself with criticising before the Court and jury the testimony adduced by the defendant.

Counsel, by insinuation and suggestion in their several motions made to the Court and in their arguments to the jury, attacked the credibility of defendant's witnesses and their motives, but did not presume by legitimate testimony to contradict the facts.

The lease and the law pertaining thereto gave defendant a reasonable time after the expiration of that lease in which to remove its fixtures.

Jones on Landlord and Tenant, Section 719:

"If a house is erected under a lease, giving the right of removal at the expiration of the term, the tenant is not required to remove the house during his term, but can occupy it during the full term and has a reasonable time thereafter to remove it."

"An express clause, giving a right to remove, 'At the end of the term' would not be inserted to limit the tenant's rights of removal, but to protect them."

"If by the terms of a lease the lessee has the right to use and occupy the improvements during the entire time and to remove them at the end of the term, to require him to remove them before the expiration of his term would violate his contract right to use and occupy them on the premises until the expiration of the term; to refuse him the right to removal after the expiration of the lease, provided he did so within a reasonable time, would cause him to lose his property by availing himself of his contract right. Hence, the law implies his right to removal of the premises within a reasonable time after the expiration of the lease."

CORRECTION.
Insert at top of page 17.

The reference to Chief Justice Beasley in the citation below is a mistake. The citation is from Woodfall on "Landlord & Tenant", (18 Ed. 1908), Chap. XVI, Sec. 8, (G) page 734, where the language is as follows:

"A reasonable time for removal after the expiration of the term will also be allowed in the case of a stipulation in the lease that the tenant may remove the fixtures at the expiration of the term."

... under the law applicable thereto, defendant ha dthe right to take a reasonable time in which to remove its property from the premises in question, it was a plain question for the jury to decide whether the time actually taken was reasonable or otherwise. This question was submitted to the jury and decided against the plaintiff.

It was suggested by counsel for the plaintiff on the trial that the defendant had retained possession of the premises after June 30, 1916, for the purpose of manufacturing. The president and general manager of the defendant resented this statement. The facts, as brought out by the plaintiff on the cross-examination of defendant's witnesses, and as they stand uncontradicted are—

——The 3000 machines in the various buildings had to be taken down piece-meal. Defendant secured as many skilled mechanics as it was possible for it to get to take down these machines and remove them from the premises. As each machine was taken down, its operation ceased, but the operations continued on the other machines until they were reached in their turn. The operation of the machines until their actual taking down did not in the least delay the removal of the fixtures from the plaintiff's property. (Stites, pp. 120-121 and p.). The complete cessation of all labor on the property without

The law was similiarly laid down by Chief Justice Beasley in

> "A reasonable time for removal after the expiration of the term will also be allowed in the case of a stipulation in the lease that the tenant may remove the fixtures at the expiration of the term."

If, therefore, we assume that under the leases of 1904 and 1914, and under the law applicable thereto, defendant ha dthe right to take a reasonable time in which to remove its property from the premises in question, it was a plain question for the jury to decide whether the time actually taken was reasonable or otherwise. This question was submitted to the jury and decided against the plaintiff.

It was suggested by counsel for the plaintiff on the trial that the defendant had retained possession of the premises after June 30, 1916, for the purpose of manufacturing. The president and general manager of the defendant resented this statement. The facts, as brought out by the plaintiff on the cross-examination of defendant's witnesses, and as they stand uncontradicted are—

——The 3000 machines in the various buildings had to be taken down piece-meal. Defendant secured as many skilled mechanics as it was possible for it to get to take down these machines and remove them from the premises. As each machine was taken down, its operation ceased, but the operations continued on the other machines until they were reached in their turn. The operation of the machines until their actual taking down did not in the least delay the removal of the fixtures from the plaintiff's property. (Stites, pp. 120-121 and p.). The complete cessation of all labor on the property without

regard to its effect on the actual removal of the fixtures would have afforded no benefit to the plaintiff and would have worked great loss and suffering to the numerous employees of the defendant. It must be remembered that those fixtures were installed after a period of thirty years. We may take the case of the gas works alone, which were outside of the buildings. The defendant was entitled to remove this bulky and expensive fixture; but, obviously, it took time, skilled labor and the expenditure of a good deal of money for defendant to get it off from the plaintiff's property. The same is true of the larger fixtures and equally true of the smaller machines. It is not conceivable that, if defendant is entitled to remove its fixtures at all, it is compelled to wreck them in order to satisfy the whim of a landlord. If defendant was entitled to remove its fixtures, it was entitled to remove them as fixtures and not as junk.

Counsel for plaintiff seem to have had the idea that defendant could by its order simply land a thousand or more skilled mechanics on the premises at one time and remove all of the fixtures over night without in any way considering whether the fixtures would be wrecked in the process.

Plaintiff and its officers were not misled when the leases were made, as to the amount of time which would be required by defendant to remove its valuable fixtures. Defendant was willing and ready to pay the plaintiff any fair rental for the period it retained possession of the premises after the date mentioned in the lease. Its good faith was shown by its tender to the plaintiff of $5,000 for the six months from June 30 to December 30, and by the actual payment of the taxes on the entire property for the full year of 1916.

Defendant denies that it retained possession for the purpose of manufacturing and asserts that the running

of a few machines or the operation of a few fixtures during the period of removal was a mere incident in no way interfering with or delaying the removal of the fixtures. In any event, this would all have a bearing only upon defendant's good faith and that was a pure jury question, and the jury was instructed to consider this testimony as well as the testimony on other phases of the case.

Plaintiff by its acts and words, both before and after June 30, 1916, is estopped from charging fraud or lack of good faith in the defendant in retaining possession of the leased premises after the date mentioned.

I.

In July, 1915, when defendant's president, Mr. Mason, was discussing with defendant's officers and directors, to wit, David S. B. Chew, Samuel B. Scott and Oswald Chew, the construction of a new plant on premises adjoining the Ancona property and the desirability of a further short lease after the one expiring June 30, 1916, the following conversation occurred:

BY MR. MASON:

"At the interview in June or July, 1915, when I was negotiating for a continuance of the current lease, the last lease, I told Mr. Chew (David S. B. Chew) that we had plans prepared for our new plant, and I displayed those plans to him as an evidence of our intentions and to make him realize that unless we owned the Ancona plant, we ultimately would remove from its property. I urged upon him that they seriously consider a sale of the property to us, and that if they

would not sell us the property, we would be very glad to take a short lease in order that we might complete our plant as per those plans. I explained to him that the time was short and that it was urgent and finally said: 'Mr. Chew, we, of course, having been tenants for thirty years, if our buildings are not ready by the time the present lease runs out, you surely won't throw us off the property?' Mr. Chew made no reply to that at all, and I said, "Well, I will assume your silence means that you would not do such a thing.'

Q. Did he reply to that statement?

A. No reply whatever. I would like to add that there was present at that interview Mr. Scott and Mr. Oswald Chew and Mr. Townsend Stites of the Welsbach Company." (Mason p, 66-7 Stites p149-150)

David S. B. Chew, Oswald Chew and Samuel B. Scott were officers and directors of the plaintiff company. Mr. Stites was the general manager of the Welsbach Company and Mr. Mason its president. Mr. Stites confirmed the conversation as given by Mr. Mason. (Page 149-150). Mr. David S. B. Chew and Mr. Samuel B. Scott were both witnesses for the plaintiff at the trial, but maintained a discreet silence with respect to this interview. Their silence must be taken as an admission of its truth. We, therefore, have this situation:

At the time of the interview, July, 1915, the defendant was in possession under lease which would expire the following June 30th. Defendant had bought land adjoining the Ancona property. It was a question in the mind of the Welsbach Company's president whether the new buildings could be completed by June 30th. He then stated to these officers and directors of the plaintiff company—

"Mr. Chew, of course, having been tenants for thirty years, if our buildings are not ready by the time the present lease runs out, you surely won't throw us off the property?"

Mr. Chew remained silent and his silence was then broken by Mr. Mason again addressing Mr. Chew—

"Well, I will assume that your silence means that you would not do such a thing."

Again these three directors and officers of the plaintiff remained silent.

We contend that in the face of this conversation a charge of bad faith cannot be made against the Welsbach Company with respect to its retention of the premises after June 30th.

II.

Bona fide negotiations for the purchase of the premises or for a new lease were conducted by the defendant through its officers and authorized attorneys both before and after June 30, 1916. The plaintiff, by its conduct consented by implication to the retention of the premises by the defendant after the expiration of the written lease, and thereby created a "tenancy at will" between the parties.

THE LAW WITH RESPECT TO TENANCIES AT WILL IS AS FOLLOWS:

18 Am. & Eng. Encyc. of Law, page 185 (Second Edition)

(a) "Where the tenant holds over after the expiration of his lease and with the permission of the lessor pending negotiations for a new lease, he becomes a tenant at will."

(b) Woodfall on Landlord and Tenant, Edition 1890, Section 227:

"If a tenant whose lease has expired is permitted to continue in possession pending a treaty for a further lease, he is not a tenant from year to year but a tenant at will."

(c) Fawcett on Landlord and Tenant, Edition of 1905, Eng., p. 92:

"A TENANCY AT WILL arises where possession is taken provisionally during negotiations for a lease. Where a tenant after his lease has expired is permitted to continue in possession pending a treaty for a new lease, he becomes a tenant at will."

Foa on Landlord and Tenant, Edition of 1907, page 393:

"The mere fact of occupation of the premises by permission of either one creates a tenancy at will." * * "Where a person is let into possession pending negotiations for a lease." * * "The occupation without more impliedly creates a tenancy at will." (Page 394.) * * "Though the act of holding over after the expiration of the term does **not necessarily** create a tenancy of any kind, it being in such case a question of fact what the intention of the parties was—yet when a tenant continues in possession after such expiration by **consent** of his land-

lord, he is deemed prima facie a tenant at will." (Page 395.)

(d) Underhill on Landlord and Tenant, Vol. 1, page 201, Section 143—This author holds that generally speaking, a tenant holding over becomes a tenant from year to year, but that under certain circumstances he becomes merely a tenant at will. The author then uses this language:

"Upon an examination of the language of the Court it will in most cases be found either that they have arises in states where holding over after the expiration of a term has made a tenancy at will by the statutory law of the jurisdiction, and that the holding over was regarded by the parties as merely the giving of a license for some special purpose, or that the relationship of landlord and tenant never had existed between the party holding over and the owner, or that the holding over was done and permitted by the parties not as a prolongation of the prior lease, **but while negotiations for a new and different lease were in progress between them,** or that some equally relevant and important circumstances existed, which rebutted the ordinary presumption of tenancy from year to year."

The author further says, in Section 164, as follows:

"If on the facts it appears that the holding over was with the consent of the landlord, shown either by his conduct or by his language, or by such a character or degree **of silence in connection with the conduct of the tenant, as will in equity and fairness estop the landlord to assert that the tenant is a trespasser,** the tenant will be thereafter regarded as a tenant at

will and not as a tenant at sufferance and the terms of the prior lease may then be considered in relation to the new tenancy."

(e) Doe vs. Stennet (1796-99) 2 Esp. 717, in this English case the tenant was in under a lesae; at its expiration there were negotiations for a new lease and a tentative agreement made with respect to that lease. But no valid renewal lease was executed. The Court held that the defendant must be deemed to be in the premises by the lessor of the plaintiff's permission, and that he was not a trespasser.

(f) City of Dubuque vs. Miller, 11 Iowa, 586—

"If, after his lease has expired, he (the tenant) is permitted to continue in possession pending a treaty for a further lease, he is not a tenant from year to year, but at will."

(g) Fall vs. Moore, Minn., 48 N. W. Rep., 404—

"Where a landlord notified his tenant, whose term was about expiring, that it would not be extended or the lease renewed on the conditions of the existing lease, and a subsequent holding over is referable to a contemplated new lease, or pending negotiations therefor, which are not consummated, and in the meantime rent at a different rate is paid for each month, such continued occupation or holding over will not be held to be under a lease from year to year, but at will."

Under these authorities, it is established that a permissive occupation of the premises pending negotiations for a new lease puts the tenant in a position of a tenant at will. He then, according to the common law, holds at

the will of his landlord, the intention originally being that he was there by right for a specific purpose, but that the landlord could at pleasure terminate that original occupation.

If we once concede that a tenancy at will is created, then our Landlord and Tenant Act, Section 18-C (3072 C. S.) steps in and requires that as a condition precedent to the termination of a tenancy at will a three months' notice to vacate must be given. Admittedly no three month's notice was given in this case. We have then to consider whether the facts adduced at the trial would justify a jury in finding that a tenancy at will arose in favor of the defendant.

——Plaintiff introduced in evidence certain letters from the plaintiff to the defendant in which the plaintiff used the words "expect you to vacate" (letter of July 13, 1916), and "understand that you will vacate" (letter of March 3, 1916); but, notwithstanding these letters from the plaintiff expressing such an expectation or understanding about the vacation of the premises, the plaintiff was obviously ready and willing to continue negotiations either for a sale or for a further lease of the premises.

Defendant had been dealing with the plaintiff for upwards of thirty years. Its officers were well-known to the officers of the defendant. Mr. Mason, the Welsbach Company's president, says that:

> "If they had substituted the word "demand" for "expect," I might have felt differently over it, but I had had these expectations repeatedly sent to me."
>
> Q. So that you honestly, did you, thought that that letter was a piece of false pretense?
>
> A. Certainly." (p. 98 l. 6)

The officials of the Welsbach Company fully expected the officials of the Ancona Company and the officials of the Welsbach Company to get together, either on a purchase or a renewal lease. Defendant did not believe, and still does not believe, that the plaintiff actually wanted the defendant to vacate. The state of mind of Mr. Mason on this whole transaction is shown very clearly from the following citations from his testimony:

> "We expected at all times to renew the lease or purchase that property. It was a great astonishment to me that it was not done." Page 90).

And again—

> "They, (Ancona Company) wanted a tenant, they showed that; they wanted to sell the property, they showed that. They could not have had a better tenant, they could not have gotten any more from any other tenant.
>
> Q. Now, go ahead and argue, I like to hear you argue; the more you argue, the better it is. Are you through arguing?
>
> A. I am simply showing our state of mind in this thing."

Again referring to the plaintiff's letter of June 13, 1916—

> "Q. What do you understand that letter to mean? Now, you are an intelligent business man; what did you understand that to mean?
>
> A. I understood that to be a formal proposition to put on record their views; that is what I understood that was.
>
> Q. Just a false pretense?

A. Yes, that is all. If they had substituted the word "demand" for "expect" I might have felt differently over it, but I had had these expectations repeatedly sent to me.

Q. So that you honestly, did you, thought that that letter was a piece of false pretence?

Again, page 99—

A. Well, I had had a good deal of experience in previous dealings with these people.

Q. You found them to be crooks, did you?

A. Not a bit; I don't make any charges of that kind at all, sir. I found it was a question of being pretty discreet. You never knew where they were at, and as I viewed the situation, they considered—

Q. Now, let's hear it.

A. As their attitude exhibited to me that they had us by the short hair.

Q. Oh, yes; now, that is excellent. Now, you thought all the time that they thought they had you by the short hair?

A. I certainly did.

Q. In other words, you thought they were dishonest?

A. I don't know whether you call it dishonest or not; they were negotiating to sell their plant or lease it at the very best terms they could get." (Pages 97, 98.)

Again, page 99—

"Q. You are only passing on what was in your mind?

A. Yes.

Q. All right; now, that is your defence in this case, isn't it; it is what was in your mind?

A. Why, not necessarily; it was what I was led to expect as the ultimate conclusion of this thing.

Q. Haven't you been saying from the beginning of this case and hasn't your counsel been saying, 'Oh, we were in such an honest state of mind that we held on to that property?'

A. Why, we certainly were in an honest state of mind.

Q. And the other fellows were in such a dishonest state of mind—

A. I don't know what their state of mind was.

Q. That they wanted to let go of the property?

A. I don't know what their state of mind was, but I know this. They had the plant for rent or for sale, and it was simply a question of reaching terms, that is what I know. Now, it was a question how far they could drive me."

——The defendant's officers, being in this state of mind, turned over to one of the Company's attorneys the negotiations with instructions to endeavor to arrive at terms with the plaintiff. Accordingly, defendant's attorney, by appointment, met the plaintiff's officers at plaintiff's office in Philadelphia, with a view to purchasing the property from the plaintiff. The attorney opened these negotiations in good faith with the plaintiff's acknowledged officers and representatives, and pursued those negotiations in good faith, and, as the attorney believed, with every prospect of success until July 7 or 8, whn the secretary of the plaintiff company, without intimating that the negotiations were concluded, instructed plaintiff's attorney to bring summary proceedings in the District Court to oust the defendant.

It is useless for the plaintiff to deny that there were, in fact, negotiations, or that those negotiations were in

good faith conducted on both sides. Defendant wanted the property, either by purchase or by lease, and the plaintiff unquestionably wanted to sell if it could get its price, or to give a renewal lease. It was the plaintiff's officers in its own office in Philadelphia who opened up with defendant's attorney negotiations for a new lease. The attorney had not mentioned a new lease, but had gone to their office for the express purpose of endeavoring to buy the property and without instructions in respect to any lease. It was the plaintiff's officers who then suggested that the attorney go back to his client and get the client's best terms on a renewal lease. Following this suggestion, the negotiations continued back and forth, the attorney communicating to the defendant the result of every interview and obtaining new instructions after each interview with the plaintiff's officials. These negotiations continued right up to the actual service of the notice to quit, and that notice came as a complete surprise to the defendant and defendant's attorney.

The negotiations were not discontinued by the defendant but there was a counter-proposition opened and to which defendant's attorney was awaiting a reply from the plaintiff. S. B. Scott, the secretary of the plaintiff, then presumed to end the negotiations by neglecting to communicate to his fellow officers and directors the last proposition submitted by defendant's attorney and, without any authority from the Board of Directors or even from his fellow officers, instructed plaintiff's attorney to institute summary proceedings to oust the defendant from the property.

The defendant's president asserts that the negotiations were conducted by him and by defendant's attorney under his instructions, in perfect good faith. The company's attorney says that he dealt in good faith with the officers of the plaintiff, and fully believed that the nego-

tiations would result in the parties agreeing upon terms. In fact, when plaintiff's secretary abruptly broke off the negotiations by the service of a demand to vacate, the negotiations were not concluded. The parties had arrived at an agreement on the rental. The only question open was the period for which the new lease should run.

——In the light of the foregoing unassailable facts, it is absurd for the plaintiff to assert in its letter of June 30:

> "It seems strange that at this late date the matter should be agitated at all." (p. 313)

When that letter was written, the negotiations were in progress, and the plaintiff's officers had drawn up and had all prepared for execution a renewal lease with the defendant.

Not only was it for the jury, upon all the facts, to say whether the defendant retained possession by express or implied consent or acquiescence on the part of plaintiff, but it was the jury's province, as well, to say whether the defendant's resistance of dispossession under this claim of right was bona fide made. For, if the jury should, on either of those issues, find for the defendant, the plaintiff's action would be defeated. If the defendant honestly believed that it had the right to retain possession as tenant at will in view of all the facts testified to by its own witnesses and by those of the defendant, then it cannot be charged with "holding over wilfully" within the meaning of the statute.

It is in evidence from the defendant that it contested in good faith the plaintiff's summary proceedings in the District Court to dispossess. It challenged the plaintiff's action, because of this right to retain possession as tenant at will. It raised the point that the secretary of the com-

pany had presumed to serve the demand for possession and initiate these ouster proceedings without, as the defendant claimed, either inherent or express authority so to do. Defendant's position was, that as secretary, S. B. Scott, had no authority to act for the plaintiff, and further, that by his own admission as a witness he had been given no express authority to so act.

These summary proceedings were not decided in the District Court until September 27, 1916.

On certiorari therefrom, the Supreme Court simply held that there was evidence from which the Court or jury might infer authority in the secretary to act for the plaintiff. The Supreme Court decided the certiorari proceedings in December, 1916. Surely, there is nothing in the record to indicate a lack of good faith in the defendant in thus defending what it conceived to be its just and legal rights. The uncontradicated facts all point to the good faith and honest belief of the defendant in all of these proceedings. But even if the plaintiff and its counsel considered otherwise, it was the jury's duty to decide that fact.

The charge of the Court was extremely conservative from the viewpoint of the defendant in respect of these points and, according to the defendant's opinion, a much more favorable statement of the law should have been given by the Judge upon the subject of tenancies at will, &c.

POINTS IN PLAINTIFF'S BRIEF.

Plaintiff's brief, for the most part, sets forth their argument that the defendant did not act in good faith and that this is shown by an analysis of all the tesimony in

the case. In substance, it is the argument presented by plaintiff's case before the jury in the Court below.

The learned counsel for the plaintiff argue over the major part of their brief (pp. 1 to 10, inclusive, and 13 to 19, inclusive), that, under the evidence, the defendant did not show good faith or act on an honest belief that it could rightfully retain possession.

We consider this argument entirely beside the point. We may, for our present purposes, assume all the inferences drawn by plaintiff's counsel from the testimony; but the fact remains, that the jury decided against the plaintiff and in favor of the defendant on these very facts, and that too, in the face of the very strenuous and able argument presented by plaintiff's counsel.

Although immaterial here, we feel obligated to challenge some of the statements in this brief. The citations of testimony, are in many instances, entirely inaccurate and ~~in every case altogether~~ misleading.

For example (page 9)—

> "Plaintiff then brought suit to recover for the use of its property according to the measure established by statute for such cases."

One might infer from this statement that a suit had actually been brought for use and occupation. Such is not the case, however, unless the plaintiff considers the present action of that nature. If we are to look upon the present action as one for use and occupation, as we might do if we considered certain parts of its complaint (the averment with respect to rental and the payment of part thereof by the defendant), then obviously the suit should have been thrown out on defendant's motion for non-suit.

We should then note the next sentence in the Brief, page 9:

"Defendant answered on the theory that it was only liable for rent at the same rate as under its lease, which amount it tendered."

The record will be searched in vain for a line of pleading or testimony or statement of counsel to bear out any such theory, except that tender of rental was made by the defendant.

——Again, at page 17, of the Brief, it is stated that

"On page 82 he (Mr. Mason): says they (Welsbach Company) had no other place to go and therefore determined to stay where they were."

The witness Mason made no such statement.

——At page 18, of the Brief, again citing testimony of Mason:

"On page 86 he (Mason) says they never paid the slightest heed or regard to the letters they got from the Ançona Company."

What Mr. Mason said was as follows:

"Well, we never regarded any letter we got from them as terminating the settlement of either lease or sale."

——At page 20, of the Brief, the following statement is made:

"In this case the Welsbach Company knew and admits over and over again that it knew that it had no right to exclude the Ancona Company from the use of this property."

We submit that there is not a word in the record to justify this statement.

——Again, on page 22, of the Brief, we have the following:

> "On page 82 he (Mason) said if we hadn't any other place to go it was quite important to remain in possession."

In other words, counsel would have the Court believe that the witness had said that the Welsbach Company had no other place to go. The question of counsel and the answer of the witness are as follows:

> "Q. Well, didn't it make it quite important that you should remain in the property whether as owners or whatnot?"
>
> "A. Yes, if we hadn't any other place to go."

The other citations of testimony show a few lines of testimony in each instance taken from the context and are altogether misleading. They fail to support plaintiff's charge of bad faith.

The only questions before the Court on this appeal are these:

—(a) Did the Court erroneously refuse to direct a verdict for the plaintiff;

—(b) Did the Court, to the prejudice of the plaintiff, admit unlawful testimony for the defendant or exclude lawful testimony for the plaintiff.

—(c) Did the Court improperly state the law in its charge to the jury?

We will consider these questions in the order named regardless of the order of plaintiff's brief.

A

The Court Properly Refused Plaintiff's Motion to Direct a Verdict.

Our opinion is that the Court should have non-suited the plaintiff, and failing that, should have directed a verdict in defendant's favor. We have already considered in this brief the facts of the case and have shown that if the defendant's motions to non-suit and to direct a verdict were to be denied, the Court was obliged to let the jury decide the facts.

We wish again to direct the Court's attention to the element of taxes. Admittedly, the taxes were a part of the rental. The defendant paid the taxes and for the period between June 30 and December 30, 1916. This payment was acquiesced in by the plaintiff and the rental so paid has never been refunded. This, of itself, presented at least a jury question—

> Did the acceptance of rental amount to a recognition of the relationship of landlord and tenant?

At point VII of plaintiff's brief, it is asserted that the law was misstated by the Court in its refusal to grant plaintiff's motion to direct a verdict. The language objected to is as follows:

> "I am inclined to think that if there was an acquiescence by the parties in the defendant remaining over after the 30th of June, that the right under the lease to have an absolute vacation at the expiration within

the meaning of the statute was gone and that there was a new tenancy at least to the extent of making an indeterminate lease an indeterminate relationship which would require some other form of notice which would not be available for the purposes of this action."

Counsel have overlooked entirely the word "if." That question was left to the jury.

B.

Plaintiff claims that unlawful testimony was admitted for the defendant as follows.

——1. Point V of the Brief, page 31, asserts that at pp. 57-59—

> 'Defendant was allowed to say that a tenancy at will was created and the tenant was lawfully in possession of the premises.'

Plaintiff's counsel offered in evidence and the Court admitted what was supposed to be the record of the suit in the Camden City District Court. It was subsequently discovered that the transcript of the testimony was not attached to the record.

Before the questions now challenged were put to the witness, plaintiff's counsel had, in the presence of the jury on defendant's motion to non-suit, made the following statement. (Page 33):

> "Mr. Weaver: Our answer to that is, that in such a record in the District Court as in evidence there, the Court decided that they were trespassers, that it is res adjudicata in this case. We have offered

evidence here in record that shows conclusively Scott's authority, because the Supreme Court said his authority was sufficient. Now, it is not necessary to put Scott on the stand to prove all that was testified to in the former case, because that is res adjudicata in this case."

Not only was this statement of counsel incorrect as to the issues before the District Court, but as it later developed, the evidence before the District Court was not in the certified copy of the record offered in evidence. It was entirely proper for the defendant to show what its defense actually was in the District Court, especially in view of the incorrect statement made by opposing counsel before the jury. **In any event, the question and answer now challenged do not seem to have been objected to, nor was there any exception asked or allowed.** One of the plaintiff's main arguments in the Court below was that by the record of the District Court everything was settled, including the question of "wilful holding over." Plaintiff brought that record of the District Court into the case and could not be prejudiced by having the truth stated about said record.

——2. Objection is made at point VI, page 32 of plaintiff's brief, to the testimony of defendant's witness, Stites, on pages 152-153.

As to page, 153, witness did not even answer the so-called objectionable question after plaintiff's counsel had entered their objection.

At page 152, we have the following:

"Q. Have you anything to show what amount of money was spent by the Welsbach Company in installing fixtures during their occupancy of the property?

(Objected to.)

THE COURT: Indeed, gentlemen, I don't see the importance of any of this line of examination.

MR. STOCKWELL: Except to show the magnitude of the task in removing the fixtures at the termination of the leases. I think the jury has a right to consider that, your Honor, as well.

THE COURT: Well, I suppose, in that aspect of it, it has, in view of the advice given them.

A. No, I have not, but our inventory will give it absolutely.

Q. Do you have that here?

A. No.

Q. Haven't you made up a statement showing the cost year by year of the installation of fixtures?

A. No.

Q. I thought you had.

A. No.

Q. I thought you had.

A. No.

Q. Well, do you know what the amount was?

A. For maintenance and repairs or for fixtures?

Q. No, fo rfixtures.

A. Oh, it is probably between $750,000.00 and a $1,000,000.00. That is just a guess.

There was, as indicated, a perfunctory objection to the first question. But after the explanation by the defendant's attorney and the remarks by the Court, the objection was

not pressed. The question objected to was unimportant and brought no answer except that witness did not have anything with him to show what was spent on fixtures.

The subsequent questions were not objected to; but if they had been objected to, we should say that the evidence was entirely legitimate to show the extent of the fixtures and the task with which defendant was confronted in the removal thereof from the plaintiff's property.

C.

THE COURT'S CHARGE.

1. Under point VIII of plaintiff's brief (pp. 33-34) it is contended that the Court misstated the testimony as follows:

> "The defendant claims that by the acts and conversations of the plaintiff through its officers legally authorized or lawfully authorized there was a remaining over in the property by the consent and with the acquiescence of the landlord."

Counsel have erred in assuming that the Court was here stating the evidence. The Court, however, merely stated what the defendant *claimed*. The Court likewise stated the claims of the plaintiff. The jury was entitled to determine from all the testimony in the case whether the plaintiff consented either expressly or by implication from the conduct of its recognized officers and agents.

We must remember that defendant had been a tenant of these premises under the plaintiff for many years under sundry leases and had had dealings with these officials over

a period of years and respecting other leases upon the property. They knew full well with whom they had to deal.

All of the officers were dealt with and they included David S. B. Chew, Oswald Chew, Samuel Chew and Samuel B. Scott.

2. In point IX of plaintiff's brief, counsel criticized the following language of the Court——

> "The third thing that the plaintiff must establish is notice and then service in accordance with the Statute."

Apparently counsel had overlooked the express language of the Statute under which they sued, requiring as a condition precedent to such suit, that "demand be made, then notice in writing given for delivering the possession of the premises by the landlord or their agent or agents thereunto lawfully authorized."

This had to be established by the plaintiff.

The open question was, therefore, this——

Was Scott, the Secretary, "thereunto lawfully authorized" in the making of demand for possession and starting the District Court suit?

3. Refusal to charge plaintiff's seventh request.

This request mingles facts and law. Its statement of facts is incomplete as well as incorrect. There was no evidence that the defendant held the premises to make improvements or that it made any improvements after June 30th, 1916. The evidence does show that the removal of fixtures b ythe defendant necessitated some repairs and that these repairs were made after June 30th.

The Court, therefore, was not bound to charge as true facts which were in dispute or obviously stated incorrectly.

So far as the law is concerned, this feature was completely covered in the Court's main charge.

4. Refusal to charge plaintiff's 13th request.

This request assumes that plaintiff's sole reliance was upon its right to remove fixtures after the lease expired. It ignores the defendant's contention that it had the right to remain by acquiescence or consent of the plaintiff, and that the plaintiff was estopped to charge a wilful holding over i nthe face of the actions and words of its own officers and agents.

On the question of manufacturing, the Court's charge and his statements in the presence of the jury before his main charge were most favorable to the plaintiff. The disputed facts were, of course, left to the jury.

5. The other exceptions are only given a general reference in plaintiff's brief and evidently are not pressed.

——Request No. 1. The questions involved in this action are not res adjudicata by the judgment of the Camden City District Court. The partial record of the District Court does not disclose the facts or the law presented or determined.

—Request 2. This combines facts and law. Its law is unsound in that—

(a) It required the Court to hold that the lease gave the defendant no right to remove its fixtures after June 30, 1916, and

(b) to hold that "a written contract" cannot be changed by parol; it can only be changed where its terms are ambiguous and uncertain, etc.

It also asked the Court to decide facts instead of to submit them to the jury.

——Requests 3, 4 and 14. These were, in effect, requests to direct a verdict and an argument of disputed facts in support of such a motion. Such requests were, of course, properly refused.

——Request 8. This would confine the jury to the one issue—the removal of fixtures. There were other elements for the jury to consider as we have already outlined.

——Request 9. This would take the disputed facts from the jury.

——Request 10. The question of manufacturing was thoroughly covered by the Court both in its decision on the motion to direct a verdict and in its main charge.

——Requests 11, 12. These covered purely jury questions.

The charge of the court was clear and left to the jury only questions of fact. The conduct of the trial throughout was favorable to the plaintiff. It was allowed to amend its complaint even during the concluding argument of defendant's counsel. It was given wide latitude in its attempt to show bad faith in the defendant. Every device known to a skilled lawyer was used to influence the jury in the

plaintiff's favor. Counsel's argument to the jury was very lengthy and unrestricted. The fact remains that the jury believed the testimony of the defendant's witnesses and refused to hold the Welsbach Company guilty of "wilful holding over" under the terms of the Statute.

The judgment of the Supreme Court should be affirmed.

BLEAKLY & STOCKWELL.
Attorneys for Defendant and Appellee.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Ancona Printing Company, *Plaintiff and Appellant,* vs. Welsbach Company, *Defendant and Respondent.*	Action at Law.

BRIEF FOR THE PLAINTIFF AND APPELLANT.

I.

This is an action to recover a penalty for wilfully holding over under "An Act concerning landlords and tenants." Compiled Statutes of New Jersey, Vol. 3, page 3076. It was tried in the Camden Circuit before Judge Lloyd and a jury. The principal points involved are, first, what constitutes wilful holding over; second, what constitutes a reasonable time for removal; third, whether unauthorized conversations may be the basis of the state of mind involved in the problem of wilful holding over.

In order to clarify the questions involved and especially to throw light on the state of mind of the defendant, it will be worth while to give a brief

synopsis of the circumstances, as revealed by the evidence, which produced the action.

The Welsbach Company were tenants of a large manufacturing property in Gloucester City, N. J., owned by the Ancona Printing Co. They were holding under a ten year lease (Exhibit P1), and when this lease began to draw toward a close, the Welsbach Company still desired to use the premises and began to consider making arrangements for a further extension of their tenure, or a purchase of the property outright.

The lease above mentioned expired on the thirtieth day of June, 1915. Taking time by the forelock, Welsbach Company formally opened negotiations on January 19, 1914, about a year and a half before the expiration of the term, by letter (Exhibit P13). This letter made three alternative propositions of purchase, and ended with this paragraph:

> "In event of your unwillingness to accept any one of the alternative offers herein proposed, we in that event will accept an extension of the present lease for a further term of one year under the same terms and conditions as the present lease at a rental of not exceeding $10,000.00, *vacating the premises upon expiration thereof.*"

This letter is significant as showing the clear apprehension of defendant at that early date, that it would have to vacate unless it succeeded in making other arrangements, and also the use by the defendant of its intention to vacate as a means of securing from plaintiff the terms defendant desired.

The letter just mentioned resulted in an extension of the lease for one year. It was thoroughly understood by both parties that this was a temporary ar-

rangement to give Welsbach Company time to make permanent arrangements. The extension of lease was made on March 7, 1914, so the Welsbach Company had from that date till June 30, 1916, more than two years and three months, to make its permanent arrangements. From this point on attention must be fixed on the critical date, *June* 30, 1916.

Notwithstanding the fact that Welsbach Company's offer to purchase had been refused, and a temporary arrangement had been made in order to give them time to locate elsewhere, it soon transpired that their expression "vacating the premises upon expiration thereof," had not been intended to be taken at its face value. It was, to use a modern expression, a bit of camouflage. The rest of the history is a mere recitation of the efforts of defendant to carry out what they had made up their minds to. What that was appears from the testimony of Sidney Mason, president of Welsbach Company, on cross-examination (p. 83).

> "No, we didn't make up our minds we wouldn't get out; we made up our minds we would do everything in our power to get that property. That is what we made up our minds to."

What advances the Welsbach Company next made to their landlords, after they had secured the extension above mentioned, the testimony does not reveal, but whatever they were, they drew from the Ancona Company a definite offer. This is in the form of a letter (Exhibit P6) of September 24, 1915, and as it is the pivot on which all subsequent events swing, it is worth quoting in full.

"September 24, 1915.
Mr. Sydney Mason, President,
Welsbach Company,
Gloucester City, N. J.
Dear Sir:

I am directed by the Ancona Printing Company to offer to the Welsbach Company an extension of the lease for five years at a rental of Fifteen Thousand ($15,000.) Dollars.

The property is not for sale.

Yours very truly,
Oswald Chew,
Secretary."

Thus very tersely, and very clearly, the Ancona Printing Company conveyed its terms. From these terms it never budged. Welsbach Company tried in numerous ways to make some different arrangement; made offers direct and indirect, and finally adopted the simple expedient of staying in anyway, and trusting to the astuteness of counsel to find some way of preventing their physical ejection, until, in their own good time they were thoroughly ready to go.

Their first effort was a conversation. This is given in the very words of Sidney Mason, president of the Welsbach Company (p. 66), words spoken in his direct testimony and not dragged out in cross-examination.

> "Q. * * * Did you explain to him at that time any proposed plans for the new buildings?
>
> A. No, not at that time. At the interview in June or July, 1915, when I was negotiating for a continuance of the current lease, the last lease, I told Mr. Chew that we had plans prepared for our new plant, and I displayed those plans to

him *as an evidence of our intentions and to make him realize that unless we owned the Ancona plant we ultimately would remove from its property,*" etc.

Later (p. 67) Sidney Mason says:

"The building operations were commenced, I think, by October of that same year."

On October 6, 1915, Welsbach Company replied to the letter of September 24, 1915, of Ancona Company (which we have called the pivotal letter) saying (p. 308):

"If the Ancona property which we are now occupying is not for sale *we are without further interest,* as new buildings are now under construction which make it no longer necessary for us to consider further lease of the premises."

Then, further to rub in their entire independence of the property, they put a time limit on their previous offers.

"In letter of September 18th we invited a counter-offer of sale of the premises, but owing to the action we have now taken, we are without interest in considering the purchase of the property above the figure of offer in our letter of June 30, last.

"Should you care to reconsider same, we shall be glad to hear from you prior to the first proximo on which date we desire our offer to be considered withdrawn."

Welsbach Company did not hear from Ancona Company prior to the first proximo, so the negotiation was terminated, Welsbach Company began

its new buildings, had nearly a year to complete them in, had expressed no further interest in the Ancona property and had withdrawn all offers.

On December 21st, Welsbach Company, not being content with the silence of Ancona Company, wrote to point out that no reply had been received to their letter of October 6th. This letter of 21st is not in evidence *verbatim,* but is referred to in the reply of the Ancona Company (p. 309) in which they point out that the letter was such that no reply was needed, and add, "We have not changed our mind with regard to the matter."

The next effort to get the Ancona Company to change its terms was made by Mr. Samuel T. Bodine, which brought out the following letter (p. 309):

> "January 22, 1916.
>
> Dear Mr. Bodine:
>
> Referring to our conversation of the 12th inst. I enclose you a copy of the letter of the Ancona Printing Company to Mr. Sydney Mason, President of the Welsbach Company, dated September 24, 1915.
>
> The Company had not changed its position in the matter of the disposition of its property.
>
> Very truly yours,
>
> D. S. B. Chew."

To this Welsbach replied (Letter March 1, 1916, p. 310) again refusing the terms and Ancona Company promptly answered again, (Letter March 3, 1916, page 311), acknowledging receipt of the letter and saying:

> "We understand, therefore, that, pursuant to the rejection last autumn of our offer of a five year extension of the lease, *the Welsbach Company will vacate the premises by June 30th,* and shall act accordingly."

So far the situation was that both parties knew the lease would expire, the Welsbach Company was building new buildings and using that fact to try to secure its own terms, the Ancona Company had laid down its terms on September 24, 1915, and had refused to change them. Thus as early as March 3, 1916, while there were still four months of the lease to run, Ancona Company notified Welsbach that it would be expected to vacate at the end of the lease, and at that time Welsbach Company had already begun to move, for the first order in the moving operation is dated Jan. 28, 1916, (pages 229 and 318).

As the time drew near, Welsbach Company increased its activity in moving out (Exhibit P14) and on June 7 Mr. Mason called and saw Mr. Scott, secretary of the Ancona Company, and offered to sell the sprinkler system, etc. The very object of his visit proves conclusively that his company was actually moving out of the whole property. Mr. Scott, having no authority in the matter, referred it to the officers and directors, as indicated by his letter to Mr. Mason of June 13, 1916, (p. 312). The letter closed with this paragraph:

> "I was also instructed to notify you that the Ancona Printing Company expects that you will vacate the property immediately upon the expiration of the lease and turn it over to the Ancona Printing Company at that time in the condition required by the lease."

Thus for the second time, the Welsbach Company were told to vacate.

At this point, the Welsbach Company found itself in a peculiar position. Mr. Mason had been unable to believe that his trump card, the new buildings,

would prove unavailing (p. 98). He could not imagine that owners of property could deliberately come to a conclusion as to what they would take for it and maintain their position consistently. Measuring others by his own methods, he considered their statements and letters as put out only for effect. Consequently he had not pushed the construction of his new buildings rapidly enough, resting calmly in the confidence that his "efforts to get that property" would be successful. Now, as the fateful date of June 30, 1916, approached, it began to dawn on him that possibly the landlord corporation meant what it said. As he and his company had not been able to make a business man's agreement, counsel was called in to see what the lawyer could do.

So Mr. Bleakley came over on June 27, three days before the expiration of the lease.

The advent of an attorney at such a late date aroused the suspicions of the officers of the Ancona Company. Being friendly in a personal way with Mr. Bleakley, they treated him with courtesy, but prefaced all conversation with the caution that the whole authority lay with the board of directors and that they as officers could talk with him on no other basis than that already laid down, viz., the pivotal letter of September 24, 1915. (Mr. Scott testifying from memoranda made at the time, p. 176.) Consistently maintaining their position, the officers would not make any offer or counter-offer, but agreed to submit any offer that Mr. Bleakley might be authorized to make, to the board. Mr. Bleakley had no offer, and came back next day without any offer but the day following, June 29, one day before the expiration of the lease, he came back and made an offer.

The officers of the Ancona Company, consistently maintaining their position, called a meeting of the directors and submitted the offer. The directors rejected the offer and of this Mr. Bleakley was notified on June 30, 1916, the last day of the lease, and the letter (p. 313) reiterated the expectation on the part of the Ancona Company that the Welsbach Company will vacate.

So the Welsbach Company was told for the third time to vacate.

Under these circumstances, the lease expired.

However, the Welsbach Company did not vacate.

The landlord corporation brought the statutory proceedings and judgment was given in its favor. Still the defendant did not surrender possession. They took a certiorari to remove the proceedings to the Supreme Court. Again they were unsuccessful and again they did not move. They appealed to the Court of Errors and Appeals. Finally, in their own good time, December 30, 1916, six months after the expiration of the lease, they vacated the premises and then abandoned their appeal.

Plaintiff then brought suit to recover for the use of its property according to the measure established by statute for such cases. Defendant answered on the theory that it was only liable for rent at the same rate as under its lease, which amount it tendered.

The question at issue is—Can they support their position?

Up to the expiration of the lease, there is not a shadow, not a breath of anything, to excuse their remaining on the property after June 30, 1916. The circumstances which they used to give color to their defiance occurred after that date.

Mr. Bleakley, on receiving the conclusive letter from the Ancona Company, June 30, 1916, the same day replied (Exhibit D2, p. 283):

> "I received your letter of this date just before I was about to take the train to the shore and I will not be back until Monday. I will come over and see you Monday between eleven and twelve o'clock."

On Monday Mr. Bleakley came over, but as he had not seen his clients since the last interview, he had nothing further to say. The day following he came again, but as the case had already been placed in the hands of counsel to bring possessory action, there was nothing further to be said or done. As Mr. Bleakley picturesquely expressed it, the situation was "a short horse and quickly curried." Mr. Bleakley made further abortive efforts to get his offers considered by applying to Mr. Weaver, who had no retainer except to bring dispossession proceedings, and his efforts perforce ceased, when the proceedings were begun, which was done on July 7. This was as promptly as the necessary papers could be prepared and executed, Saturday half holiday, Sunday, and the Fourth of July intervening.

It seems perfectly evident, that when Welsbach Company finally realized that it had failed to make an arrangement for a continuance of its possession, it deliberately, knowingly, wilfully, determined to stay in, and that the manoeuvres of its counsel were either for the purpose of making some kind of color of right, or else their theory of the matter was an afterthought, dug up to support, for a while, an insupportable position.

The position of the defendant is, in brief, that the plaintiff acquiesced in defendant's remaining in possession pending negotiations, and that consequently a tenancy at will resulted.

The absurdity of this position can be shown from

the uncontradicted evidence, or from the statements of defendant's witnesses.

But first and primarily it must be always borne in mind that a competent Court has held that plaintiff did not acquiesce, and that so much of the contention, a least, is *res adjudicata*, binding defendant.

Secondly, let us analyze the happenings after June 30, 1916. At the first interview, Monday, Mr. Bleakley saw only Mr. Samuel Chew and Mr. Scott. It is particularly noted that Mr. David S. B. Chew, president of the company, was not there, Mr. Samuel Chew was not an officer of the Ancona Company, but a director only. As director he had no implied power to bind the company, he had never been held out by the company as having any power to bind it. Mr. Scott was only secretary. In all his interviews with officers of the Welsbach Company and its counsel, he had made it clear that he could do nothing but act as a channel of communication with the board of directors and carry out its orders. Mr. Samuel Chew made his position clear without a shadow of ambiguity. He testified (p. 226):

> "I was very much annoyed that he should be in the office at all. The first thing I said to him was. 'Mr. Bleakley, how do you do? I am glad to meet you, but you can't come here representing the Welsbach Company; you will have to step out in the hall. I will meet you gladly and have lunch with you as well, but I cannot allow you to come here and converse with me as a representative of the Welsbach.' "

This testimony was not contradicted by Mr. Bleakley.

At the next interview exactly the same parties were present. The president of the Ancona Com-

pany was not there. The secretary who had frequently explained that he had no power in the premises, and a mere director who refused even to talk with Mr. Bleakley as a representative of the Welsbach Company, were all that were present.

The last foothold of defendant's contention, was an interview with Mr. Weaver. Mr. Weaver had no authority from the company whatever, except to bring proceedings for possession.

Of course, the testimony shows that Mr. Bleakley's principal contention about being given more time to make a proposition at his interview on July 3rd, is denied by the other two participants, but as conflicting testimony is for the jury, no emphasis is here laid on this discrepancy. The uncontradicted testimony shows that after the board of directors spoke finally on June 30th, no person authorized to act in the matter did anything to give the Welsbach Company a new tenure.

Consequently the first and cardinal error of the Court below was its failure to direct a verdict for plaintiff. (Motion on page 294, refused page 258.)

The learned trial Judge laid down, for the guidance of the jury, three propositions, first, that if the tenant believed it had the right to hold over, the verdict should be for the defendant below; second, that the defendant below had a reasonable time, after the termination of the lease, to move out; third, that the unauthorized statements of persons could constitute a state of mind of the tenant and result in an indeterminate lease. That is to say, the learned trial Judge laid down as the law of this State that any tenant can hold over after the termination of a lease if the tenant, for any reason, thinks he has a right to hold over. He further determined the law of this State to be that any tenant may have a reason-

able time, after the termination of the lease, to use the premises and hold them from possession of the landlord for the purpose of moving out. He further laid it down as the law of New Jersey that the declarations of unauthorized persons may create an indeterminate lease. It was argued at the trial that the establishment of these principles would revolutionize the law of tenancy in New Jersey and make it so uncertain as to unsettle our entire system and make sealed leases worthless.

II.

The facts produced before the jury are as follows:

Several agreements, under seal, were entered into between the Ancona Printing Company and the Welsbach Company. They are found on pages 285-296 of the State of the Case. The contracts provide that "the party of the second part shall and will, during the continuance of this lease, keep, and at the termination thereof, *deliver up,* the said premises in as good order and repair as of the day of the date hereof, reasonable wear and tear, acts of God and public enemies and accidents by fire excepted." They further provide that "the party of the second part further agrees that it will make and pay for all repairs to the premises hereby leased, during the term of this lease, which shall be necessary for the purpose of the business of the said party of the second part, and for keeping the property in proper repair and condition, * * * * and shall have the right, *at the termination of the lease,* to remove all fixtures erected by it or by the Welsbach Light Company during the occupation of said premises, etc., provided, however, any and all buildings that may be erected

by the party of the second part shall be and become the property of the party of the first part hereto." The term of the Welsbach Company ended on the 30th day of June, 1916, and the rent was $10,000, payable quarterly.

The parties to these contracts were both corporations. On December 23, 1915 (309), the Welsbach Company was notified, in writing, of the futility of its efforts to hold the premises, and that it must vacate. On pages 310 and 311 there was correspondence to the same effect. On June 13, 1916 (312), the Welsbach Company was again notified, in writing, that it would be expected to "vacate the property immediately upon the expiration of the lease and turn it over to the Ancona Company at that time in the condition required by the lease." On the same page, on June 30, 1916, the secretary of the Ancona Company wrote to the attorney of the Welsbach Company as follows: "I have taken up with the directors your offer of $12,000 made yesterday on behalf of the Welsbach Company for an extension of its lease with the Ancona Printing Company. It seems strange that at this late date the matter should be agitated at all; but, as you have made the offer, I beg to say that the Ancona Printing Company has made and will make no change from their position indicated in the letter of Mr. Oswald Chew, secretary, to Mr. Sidney Mason, president, of September 24, 1915, and beg to reiterate that the Ancona Printing Company expects the Welsbach Company to vacate immediately on the expiration of the lease."

On July 7, 1916, notice, pursuant to the terms of the statute on which this action is based, was served on the Welsbach Company (297). In pursuance of that notice proceedings were had in the District Court (297-307), by which the Welsbach Company

was ordered to vacate the premises. These proceedings were removed to the Supreme Court by certiorari and affirmed. The Welsbach Company then appealed to the Court of Errors and Appeals, and, after the Welsbach Company had vacated, to wit, in December following, it abandoned the appeal.

From this evidence, it would seem to be clear that the Welsbach Company was wilfully holding over, and the learned trial Judge should have directed a verdict in favor of the plaintiff below.

III.

But, the learned trial Judge allowed the jury to pass upon the question under the following circumstances. In the first place, the Welsbach Company, by its president, Mr. Sidney Mason, said he thought the Welsbach Company had a right to hold over, and that, in so doing, he was acting in good faith. The facts, upon which he based his opinion, were first, that Mr. Justice Garrison allowed a certiorari of the proceedings before the District Court, and that the mere allowance of a certiorari gave rise to a doubt concerning the correctness of the ouster proceedings in the District Court. The ground of the certiorari was the sufficiency of the authority of the agent who gave the notice, under the statute, to vacate. Even if it be granted that there may have been some technical question arising upon that point, it is difficult to see how it could affect the good faith of the Welsbach Company in holding over contrary to the terms of the lease. But there were other circumstances to be relied upon by the Welsbach Company to show its good faith in holding over. Mr. Bleakley, its attorney (see his testimony, 122-146), says that on the 27th day of

June he went to the office of the Ancona Company, in Philadelphia, and saw Mr. Chew, who told him to go to his company and take up the question of the lease, "Get the very best amount that they will pay in dollars for a year and the very best number of years that they will take a lease"; that the Welsbach Company instructed Mr. Bleakley to submit a proposition of $12,000 a year for two years, and that Mr. Chew agreed to take it up with the officers of the Ancona Company. He then says he got the letter of June 30th, above quoted; that he immediately wrote them that he would be over Monday, July 3, 1916; that he went over and had some talk with them which resulted in nothing, but that he left with the understanding that he was to return on Wednesday following with another proposition, when he was told by Mr. Scott, secretary of the Ancona Company, that the matter was in the hands of Mr. Weaver, and that he was directed to go see Mr. Weaver, to whom he offered $12,000 for two years, and that Mr. Weaver wanted him to make it $15,000, and that Mr. Weaver afterwards informed him, on July 7th, that he could not get his clients to agree to $15,000 for two years. Mr. Bleakley said that he reported these circumstances to Mr. Mason, president of the Welsbach Company, and Mr. Mason says that, from these circumstances, he thought he had a right to remain in possession of the premises. Mr. Weaver was simply employed to institute the District Court proceedings. He had no other authority (201).

Mr. Scott, Mr. David S. B. Chew and Mr. Samuel Chew, not only deny what Mr. Bleakley says, but state, what is undoubtedly true and uncontradicted, that neither of them had authority to speak for the Ancona Company, whose written declarations, referred to above, were the result of meetings of the directors of the Ancona Company.

So that, on the one hand, we have the lease, which speaks for itself and makes the term end June 30, 1916. We have the several written notices, addressed by the Ancona Printing Company to the Welsbach Company, requiring the latter company to vacate on the termination of its lease. On the other hand are efforts made, at the last hour, by the lawyer of the Welsbach Company, to secure a modification of the writings, by conversations with persons who had no authority in the world to bind the Ancona Corporation. From these unauthenticated and contradicted interviews the good faith of the Welsbach Company arises. Everyone is bound to know the law. Sidney Mason, a very intelligent and resourceful person, did know the law. He knew that the lease of the Welsbach Company had terminated, and that the Ancona Company wanted its property. Is it conceivable that there is the least legal substance in the position he takes? If there is, then the terms of any lease can be abrogated by the flimsiest circumstance. Any tenant can say, "I tried to get the terms of my lease changed by making different propositions to unauthorized persons, and failed; therefore, I honestly believed that I had a right to hold possession of the premises contrary to the terms of the lease between me and my landlord."

But, Mr. Mason's entire cross-examination (81-115) shows instead of good faith first, gross carelessness. For instance, on page 81, he says he never gave a thought to the 30th day of June. Second, his testimony shows utter disregard for the terms of his contract. On page 82, he says they had no other place to go, and, therefore, determined to stay where they were. On page 83, he says, "We made up our minds to do everything in our power to get that property." Third, he shows the grossest wilfulness.

On page 86, he says they never paid the slightest heed or regard to the letters they got from the Ancona Company. Fourth, he exhibits the most astounding falsity. On pages 88 and 89, he says they began to vacate the Ancona factory before the 30th day of June, and yet honestly believed that they didn't have to move at all, because they had occupied the property for thirty years, and he expected that the Ancona Company would either sell or lease his company the property. Fifth, he portrays marked cunning. On pages 90 and 91, he boldly declares that the Welsbach Company wanted to buy the property, and, failing in that, to rent it for a short term, a term long enough for them to get out. On pages 92 and 93, he says he knew that his efforts to buy or lease had failed, and that his company was accordingly proceeded against in the District Court. On page 95, he says they were delighted to get out, after holding the premises for six months after the expiration of the term. On page 97, he admits receiving the letter there quoted, which he did not answer, because, on page 98, he says he thought it was a piece of false pretense. On page 99, he says that he thought the Ancona Company considered that it had the Welsbach Company by the short hair, and that he acted accordingly. On page 102, he admits the reception of the letter there quoted, which letter required the Welsbach Company to get out at the termination of their lease. On page 106, his question to the examiner, "And throw it in the street?" shows his disregard of the law and his arbitrary spirit. On pages 112-113, he admits that he knew that his company had no right there, by asking, as a special privilege, that they have their term extended six months.

During all this time, the Welsbach Company, who were building, in the immediate neighborhood, a new

plant, were gradually moving from the Ancona plant to their new plant. They were carrying on their manufacturing in both buildings during the entire six months they occupied the Ancona property after the expiration of the term. (See the evidence of Mr. Stites, which states this fact in full.) That is to say, they held over during six months to accommodate themselves. Admittedly, all efforts to secure another lease or to purchase the property had failed. Sidney Mason, who is the Welsbach Company, in reality, concluded to hold the Ancona Company's property until such time as suited his convenience to turn it over.

IV.

Now, come to the consideration of the term "wilful" in this act. The mischief to be remedied is unconscionable holding over. According to defendant's contention any tenant, who is willing to swear that he holds over in good faith, can escape the visitation of the penalty. But much more is involved. If good faith will enable him to remain in the property after the termination of the lease, then good faith becomes a substantive right, and he can sue for its violation. In every case where a warrant of removal issues and a tenant is forcibly ejected, if the construction contended for in this case is sound, the tenant will have his right of action for damages because his good faith gave him a right of possession stronger than the terms of the lease which defines that right. The term "wilful" must find its interpretation in the object sought by the legislation. It is to punish people who knowingly hold over after their term. Its object is to punish people who, as in this case, deprive

the landlord of the exclusive possession of his property, wrongfully. In this case, the Welsbach Company knew, and admits over and over again that it knew, that it had no right to exclude the Ancona Company from the use of its property. There can be no exercise of the faculty of knowing which does not embrace the exercise of the will. To do a thing knowingly is to exercise the will. Therefore, when the Welsbach Company knew that it had no right there, it exercised its will to stay, and consequently made itself amenable to the statute.

The contract between the two corporations was in writing, duly executed and acknowledged. Its terms were simple and clear. The contract provided that the term should expire on the 30th of June, 1916. Prior to that time, repeated efforts had been made by the Welsbach Company either to purchase the property or to enter into another lease with the Ancona Company. The Ancona Company dealt with and disposed of these efforts through its board of directors, and put its conclusions in writing, addressed to the Welsbach Company. Consequently, the authoritative action of the Ancona Company was in writing, and not open to question or doubt. Therefore, the rights of the parties were expressed in writing, duly authorized and final. There could not be the slightest doubt about the meaning of these written determinations, and they concluded the parties. The Welsbach Company had full knowledge of the determination of the Ancona Company. To hold that, under such circumstances, the conversations of unauthorized persons could make another contract between the parties is, to say the least, a dangerous thing. The Ancona Company relied upon its board of directors and not upon individuals, and any notions entertained or expressed by those indiv-

iduals. If such persons could make a new contract between the two corporations, without the knowledge or authority of those corporations, all corporate contracts would be at an end. If these unauthorized conversations had no binding effect, a fact perfectly well known to the Welsbach Company, how can it be held that the Welsbach Company was legally justified in holding possession of the leasehold contrary to the terms of the contract and the wish of the Ancona Company? If such a proposition is maintainable, the law of tenancy in New Jersey is in a state of chaos and uncertainty. All that a tenant has to do, in order to exclude his landlord from possession contrary to the terms of a lease, is to have some unauthorized person indulge in a conversation, or state propositions, to other unauthorized persons, and the contract, sealed and acknowledged, is at an end. Indeed, if this rule is adopted as the law of New Jersey, it will be quite impossible to draw and execute a contract between a landlord and tenant that will bind either of them, so far as the possession of the premises is concerned.

The whole situation amounts to this. Judge Lloyd said the state of mind was the thing; if Mason was in an honest state of mind in holding over, he was entitled to a verdict. All he had to do, therefore, was to say that his state of mind was honest. No one could contradict him on this proposition. Hence the absurdity of the theory. A thief may be in an honest state of mind. It is *the mind,* not the *state* that counts. It is actual knowledge that counts, not a characterization of a state of mind. If his knowledledge and purpose, as he repeatedly declared them, are considered, he established his wilful wrong. It was no longer a jury question, but one of law. A state of mind is not a defense.

Let us put the argument, on this element of the case, in this way.

Sydney Mason alone published and declared the state of mind of the Welsbach Company. On pages 70 and 71, over objection, he stated that he believed his company had the right to hold possession. This is the sole proof as to that fact. His testimony in chief (50-80) shows (1) that he tried to buy or lease before June 30th, 1916, and failed. It shows his reasons for buying or leasing. Therefore, he knew, before June 30th, 1916, that he could neither buy nor lease. It was absolute knowledge. Having failed in his efforts to buy or lease, he began to build a new plant in October of 1915 (66, 67).

On cross-examination he said (81) "I never gave a thought" to the question as to whether his company should get out by June 30th, 1916. On page 82 he said "if we hadn't any other place to go" it was quite important to remain in possession. "We failed" in our negotiations to buy or lease. On page 83 he said "We knew we had to get out ultimately and we made up our minds we would do everything in our power to get that property." On page 84 he said "I knew the lease was through on the 30th day of June." Having failed (84) in his negotiations with Mr. Chew on June 22nd, 1915, a year before the lease expired, he began to build the new plant (85-86). On page 86 he says "we never regarded any letters we got from them as terminating the settlement of either lease or sale." On page 88 he says "we started to move out the latter part of June, 1916." On page 89 he says "we began to move out before the expiration of the term." This question was then put; "now, if you began to move out of there before the expiration of the term, I want you to tell this jury why you honestly believed that you

did not have to move at all.'' His answer was; ''the only reason we didn't believe we had to move at all was because we had every reason to believe that the Ancona plant, which had been leased to us for thirty years, would either be sold to us or rented to us for a short term,'' notwithstanding all negotiations to buy or lease had failed. On page 90 he says that, if there had been no negotiations, they would have gone out, he imagines. On the same page he says he took some things out before June 30th, 1916, but did not take out other things because the new building was not ready for them. On pages 90 and 91 he says the Ancona people ''had no idea of putting us out; it was a great surprise to us all when they brought this action.'' On page 91 he says ''I am simply showing our state of mind in this thing,'' which was this, ''we wanted to buy it and when we could not buy it we were willing to rent it for a short term.'' ''A term long enough to let you get out?'' Ans. ''Why, of course.'' On pages 92 and 93 he again says that he knew all efforts to buy or lease had failed. On page 94 he says ''they occupied the plant for thirty days longer in order to put it in the best of condition.'' On page 95 he says, ''we are delighted we are not there.'' On page 97 is the letter of June 13th, 1916, by which he admits that the Ancona Company required vacation of its property. On page 98 he says that he regarded this letter as a piece of ''false pretense.'' On page 99 he says he thought the Ancona people conceived that they had ''us by the short hair.'' On page 100 it was a question how far the Ancona people could drive him; ''I was short haired.'' On pages 100 and 101 he tried, after negotiations had failed, to sell the sprinkler system to the Ancona people. On page 102 he admits getting a letter, dated March

3rd, 1916, from the Ancona people again requiring vacation because negotiations had failed. On page 103 he admits getting notice from the District Court to vacate. He fought that (103, 104, 105, 106) in the Supreme Court, and, after defeat, appealed to this court, and, after getting everything into the new plant, abandoned his appeal. On page 106 he says he could have moved everything in from two to three months, yet they stayed in six months in order to manufacture. On page 112 he admits his failure to get the extension and then justified his good faith by falling back on the Bleakley, Weaver, Scott and Chew interviews and conversations, none of which were authorized by or known to the Ancona Corporation.

On this proof the learned trial Judge refused to direct a verdict for the plaintiff. Mason's testimony plainly establishes (1) his knowledge that he had no right to hold the premises, (2) that he did it wilfully and contemptuously, (3) that he defied the law, (4) that he used the courts to defeat justice by trickery, (5) that he knew he was doing a wrong. He says so. Yet, because he had the effrontery to declare that his "state of mind was honest," the trial Judge permitted the jury to so find. It was pure casuistry.

The law on this phase of the case is as follows:

"Wilfully" is defined by Webster to mean: Obstinately; stubbornly; by design; with set purpose. Rev. St. Mo. paragraph 5102 providing that an action for unlawful detainer may be brought against the tenant for "Wilfully holding over" means any holding over by the tenant without right. The fact that he holds over in good faith is no defence to the action. *Lehnen vs. Dickson,* 148 U. S. 79.

In Black's Law Dictionary, 1242, "wilful" is defined as false; proceeding from a conscious motion

of the will, intending the result which actually came to pass; design; intentional; malicious.

The only definition Bouvier in his Law Dictionary gives of "wilfully" is "intentionally," and in *Stratton vs. Central City Horse Railway Co.*, 95 Ill. 25, the Supreme Court says: A jury would doubtless understand the word "wilfully" to mean the same as the word "intentionally."

Words and Phrases, Vol. 8, 7468.

In common parlance, wilful is used in the sense of intentional, as distinguished from accidental or involuntary. Whatever one does intentionally he does wilfully. The term "wilful" in the Act of 1855, paragraph 70, making the wilful opening, breaking down, or injuring of any fences belonging to or in the possession of any other person a misdemeanor, refers only to such acts as would amount to trespass, and does not relate to an intentional opening of a fence for the purpose of going upon the land of another, if done by permission or for a lawful purpose. *State vs. Clark*, 29 N. J. Law, p. 98.

> "An allegation that a thing is done wilfully is equivalent to alleging that it is done knowingly. Consequently it has been held in a number of cases that where one *bona fide* believes that his act is right, it is not wilful; but the mere assertion of a right, without any reasonable grounds of belief, although *bona fide*, will not prevent the act from being wilful. And it has been held that an act, although *bona fide*, may be wilful."
>
> 40 *Cyc.*, pp. 942, 944.

"Counsel for the defendant contend that the word 'wilfully' as employed bythe statute neces-

sarily implies an evil purpose or bad motive, and have in their brief collected and reviewed many cases dealing with the meaning of this word. We find no occasion, however, to follow them through this maze of authority. The word is here employed in connection, not with a crime or offense *malum in se,* but with an offence purely statutory subjecting the offender to a civil action only. In view of our former rulings on this question, we are of the opinion and so hold that as here employed the word means only the intentional doing of an act forbidden by the statute."

U. S. vs. Union Pac. R. Co., 169 Federal, p. 67.

"The word 'wilfully' has various meanings, and is used to denote the quality of an act, or the intent with which it is done. It is frequently used in the sense of intentionally, willingly, designedly, or with set purpose. When used in criminal statutes, it usually means with a malevolent purpose or motive, with a wicked or criminal intent, especially if the forbidden act is one that is wrong in itself or involves moral turpitude; but if the forbidden act is not wrong in itself, or does not involve moral turpitude, the word is then used in the sense of intentionally or purposely, so that when the act is so done it is done wilfully. The word, however, should be given that meaning only which the context indicates was intended."

U. S. vs. Sioux City Stock Yards Co., 162 Federal, p. 556.

" 'Wilful' is a word of familiar use in every branch of law, and although in some branches

of law it may have a special meaning, it generally, as used in courts of law, implies nothing blamable, but merely, that the person of whose act or default the expression is used is a free agent and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent."

Fulton vs. Wilmington Star Min. Co., 133 Federal, p. 195.

Odin vs. Deman, 185 Ill., p. 413.

"The use of the word 'wilful' in Elkins Act to characterize offenses thereunder, conceding it to apply to the granting of rebates from the published schedule rates, does not require that there should have been an evil intent to constitute the offense, but it is sufficient if the act was done knowingly and purposely."

Chicago Ry. Co. vs. U. S. 162 Federal, p. 835.

In *Jones vs. Taylor*, 123 S. W. 328 (136 Ky. 39) the Court said:

"And so, unless it appears that in refusing to deliver the possession the tenant is acting in good faith, produced by an honest belief, based on reasonable facts and circumstances, he cannot escape the penalty for refusing to deliver possession according to the contract, or when his term expired. The tenant cannot relieve himself from the statutory penalty by the mere statement that he believed he had a right to hold the premises."

"After the tenancy has ended, the right of possession reverts to the landlord, who may re-enter upon the premises if he can do so without violence."

"The tenant, on his part, is bound quietly to yield up the possession of the entire premises, although he still retains a reasonable right of egress and regress for the purpose of removing his goods and chattels."

Bouvier's Law Dictionary, Vol. 2, pages 8 and 9.

"Where a tenant holds over after the expiration of his term, the landlord may, at his election, treat him as a trespasser or a tenant at sufferance."

Ruling Case Law, 16 R. C. L. page 681.

In this case the tenant was treated as a trespasser and was not allowed to remain in the premises by sufferance.

ib., page 694 says:

"If the holding over is with the consent of the landlord it is not wrongful, and therefore does not subject the tenant to the penalty, but the landlord's delay for a short time after the expiration of the term to make a demand for the possession does not constitute a consent to the holding over so as to relieve the tenant from liability after demand."

ib., page 708:

"The fact that the holding over is in good faith under a claim of right to do so, if unfounded, is no defense."

The learned trial Judge instructed the jury (268) that the defendant below had a reasonable time, after the expiration of the term, to move out and declared that the text books and decisions so held. We challenge this doctrine. If it be true, it imports into the contract a term and a right nowhere found within it. The parties wrote and executed their contract. It required the tenant to vacate on the 30th day of June, 1916, and the tenant agreed so to do. This new doctrine says that the contract does not mean what it says, but *does* mean that the tenant can retain possession long enough to move out after the day fixed in the contract for vacating the premises. And the strangest part of this doctrine is that the landlord has no conceivable rights in the matter. He is perfectly helpless. Either the tenant or a jury can arbitrarily determine how long the tenant may stay in after his term expires. The tenant may conclude, as in this case, that he will stay in long enough to suit his convenience, not the convenience of the landlord. Or the jury may say that he can stay in indefinitely. There is no possible limitation except what a jury may find to be reasonable. If this is the law in cases of tenancy, no lawyer exists who can draw a binding contract, for the reason that this unwritten and unexpressed term cannot be foreseen or provided against. Even if the tenant agrees under seal to waive this unknown, uncertain and incalculable term of reasonableness, it still exists for the reason that it is not reducible to admeasurement. Even if the tenant agrees to waive all sorts and degrees of reasonableness, the fact remains that a jury, such being their province, can excuse the tenant for holding over, because, in their opinion, he held over reasonably.

Some cases hold that a tenant, after his term, may

promptly enter the premises, for the purpose of gathering elements, or remaining goods, without being a trespasser. We doubt the validity of this practice, unless it is provided for in the contract. But, if such be the law, no case can be found which excludes the landlord from possession of his premises while the tenant moves his goods. In the case at bar, the tenant excluded his landlord from possession for six months, and, for the same period, used the premises for manufacturing purposes, and, for the same period, used the courts dishonestly, in order to exclude the landlord and use its property unlawfully.

III.

The learned trial Judge (269) said "It is to the effect that the landlord acquiesced in the continued possession of the property by the defendant and thereby created a new relation which precluded the plaintiff from bringing this action." All that this rests upon is the unauthorized conversations between Mr. Bleakley and Samuel Chew, Scott and Weaver. It is admitted that the Ancona Company knew nothing of these conversations. There was no meeting of minds, There could be no contract, no new relation, to prevent this suit. The trial Judge was requested to so charge and refused. (279, 280.)

IV.

The learned trial Judge refused to charge the plaintiff's first request (278). The evidence shows, without contradiction, as pointed out above, that no-

tice under the statute was received on the 7th day of July, 1916. The defendant below put up in the District Court for its defense identically the same matters that are set up in the present suit. The case in the District Court was between the same parties and involved the same subject-matter. In the District Court the jury found against the defendant and judgment was accordingly entered. That judgment was removed by certiorari to the Supreme Court and there affirmed. It was then appealed to the Court of Errors and then abandoned at the end of six months, when the defendant below had finished its new plant and moved its goods into it. We contend that the judgment of the District Court is final and was binding upon the Circuit Court. As the matter now stands, there is one judgment in the District Court between the same parties on the same subject-matter and a contrary judgment in the Circuit Court between the same parties on the same subject-matter.

> "The judgment of a Court of competent jurisdiction, whether of record or not, and whether in a proceeding according to the course of the common law, or summary in its character, if upon a point litigated by the parties, is conclusive in all subsequent suits directly involving the same question, until reversed or legally set aside." 16 R. C. L., page 711.

V.

On pages 57 and 59 appear a situation in which, over objection, the defendant below was allowed to say that a tenancy at will was created and the tenant was lawfully in possession of the premises.

The ~~case~~ lease in question provided the following things: (1) the payment of $6,500 per annum quarterly;

(2) the payment of $10,000 per annum quarterly; (3) payment of all taxes; (4) notice to terminate; (5) not to underlet; (6) no assignment of lease or premises; (7) good repair; (8) in case untenantable by fire, tenant's right to terminate; (9) glazing, painting, &c.; (10) tenant to make repairs; (11) removal of fixtures; (12) new buildings by tenant to become the landlord's; (13) tenant to pay water rent and gas; (14) payment of increase insurance rates; (15) right of inspection.

This contract terminated June 30th, 1916. It was never recreated. Now, what contract took its place? If, as was held by the learned trial Judge, a new contract, a new relation, could be found by the jury, what was that new contract, new relation? Minds had not met on any proposed terms. What could be substituted by the fiat of the injury? What was the tenant obliged to do? What were the rights of the landlord? It may be suggested that the unauthorized talks between Messrs. Bleakley, Weaver, Chew and Scott suggested a new contract. But minds did not meet and no contract was formulated. Therefore, the jury was permitted to make a contract out of nothing, a contract the terms of which cannot be even guessed. Obviously a new contract abrogated the old and the landlord lost thereby every provision of the old one; but what took its place?

VI.

On pages 152 and 153 the defendant below was permitted, over objection, to introduce in evidence all the cost of the installation of fixtures. This act undoubtedly had a powerful influence on the jury. Indeed, it was strongly argued by defendant's counsel.

VII.

A motion was made (249-258) to direct a verdict. It was refused, the learned trial Judge on pages 259 and 260, states his views. Amongst other things (260) he said: "I am inclined to think that if there was an acquiescence by the parties in the defendant remaining over after the 30th of June, that the right under the lease to have an absolute vacation at the expiration within the meaning of the statute was gone, and that there was a new tenancy at least to the extent of making an indeterminate lease, an indeterminate relationship which would require some other form of notice which would not be available for the purpose of this action." The law, as above quoted, gives the landlord a reasonable time in which to serve his notice. The lease expired on the 30th of June, and the notice was served on the 7th of July. It is, we maintain, a legal impossibility to allow the jury to infer from this circumstance the creation of a new contract between the parties, especially in the absence of a single iota of evidence showing that their minds had got together and formed a new contract. It cannot be the law to say that the mere passage of seven days of time in itself created a new contract between the parties. Yet, the learned trial Judge told the jury that that was the law and that they could so find.

VIII.

On page 270, the learned trial Judge said: "The plaintiff claims that by the acts and conversations of the plaintiff through its officers legally authorized

or lawfully authorized there was a remaining over in the property by the consent and with the acquiescence of the landlord.'' The proof offered was exactly to the contrary. It was that neither of the persons, whose acts and words the learned trial Judge refers to, were the lawful and legal agents of the Ancona Printing Company. The evidence is that the Ancona Printing Company had reached all its conclusions, in dealing with the Welsbach Company, through its board of directors, and not one of the witnesses referred to said anything to the Ancona Printing Co., nor did the Ancona Printing Company say anything to them.

IX.

On page 272, the learned trial Judge said: ''The preliminary question, gentlemen, for you to consider is first, did the defendant have a right in these premises after the first of June? * * * Secondly, if they did not have the right, did they believe that they had such a right? If they did, why, then, the plaintiff's claim goes for nothing, because the statute is based upon wilful action in violation of the plaintiff's rights. The third thing that the plaintiff must establish is notice and its service in accordance with the statute.'' What this means, we do not know. There was no evidence on that subject and the record of the proceedings in the District Court and Supreme Court shows that that question was settled.

X.

On pages 276-281 are found exceptions taken by the plaintiff below. Everyone of the requests of the plaintiff below have substance and should have been charged. Take point 7 for example: "The defendant, therefore, had no right to hold the premises leased any length of time, in order to make improvements and repairs that the lease provided should be made at the termination thereof." Note also point 13. "If the jury believes that the defendant held possession of the leasehold in this case, for manufacturing purposes, then your verdict should be for the plaintiff." The defendant below boldly admitted that it held possession of the premises for manufacturing purposes. Note also request 14, which is obviously a correct statement of the law. Had the learned trial Judge charged that point, he would have been obliged to direct a verdict for the plaintiff.

Respectfully submitted.

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