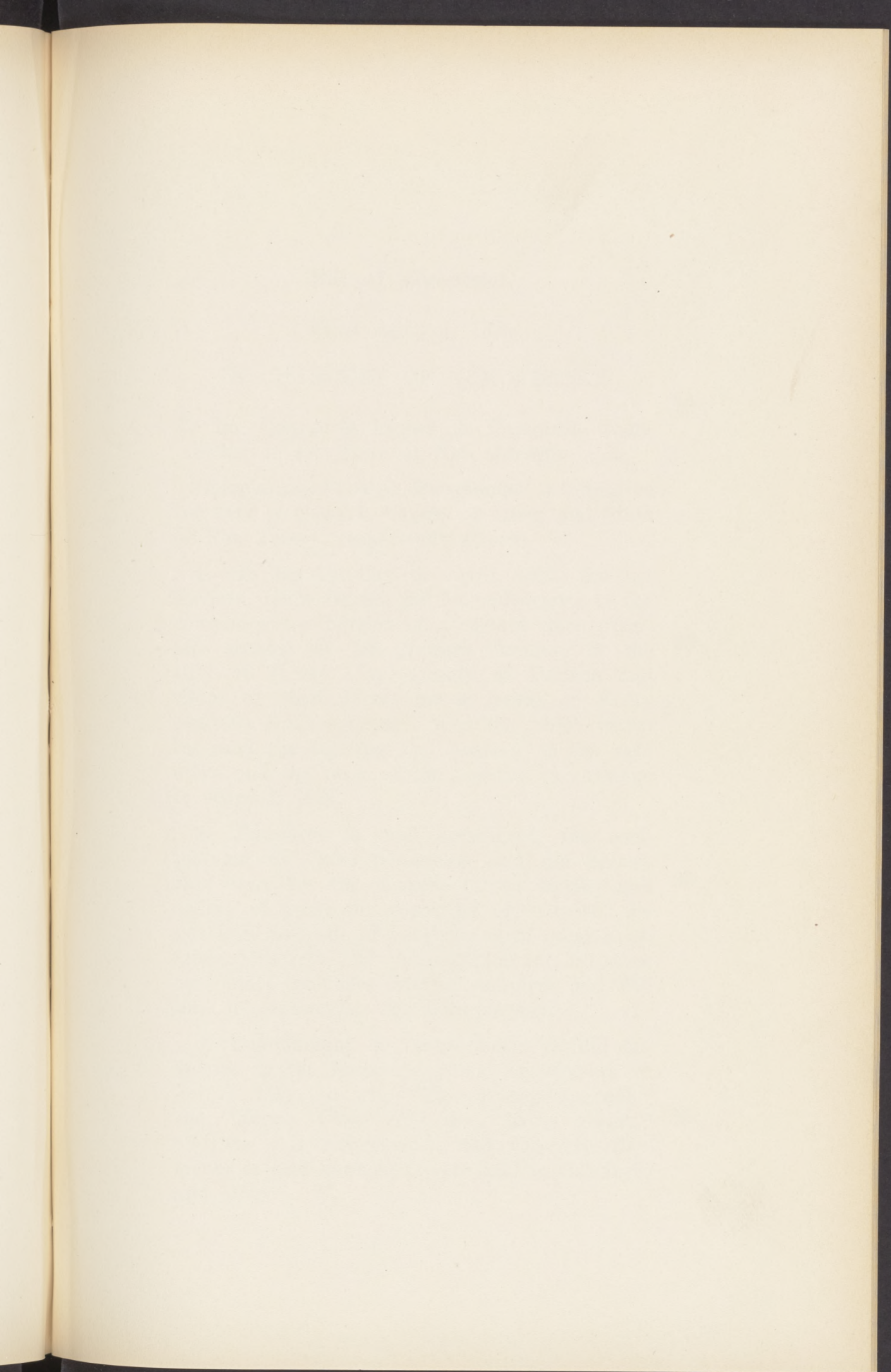
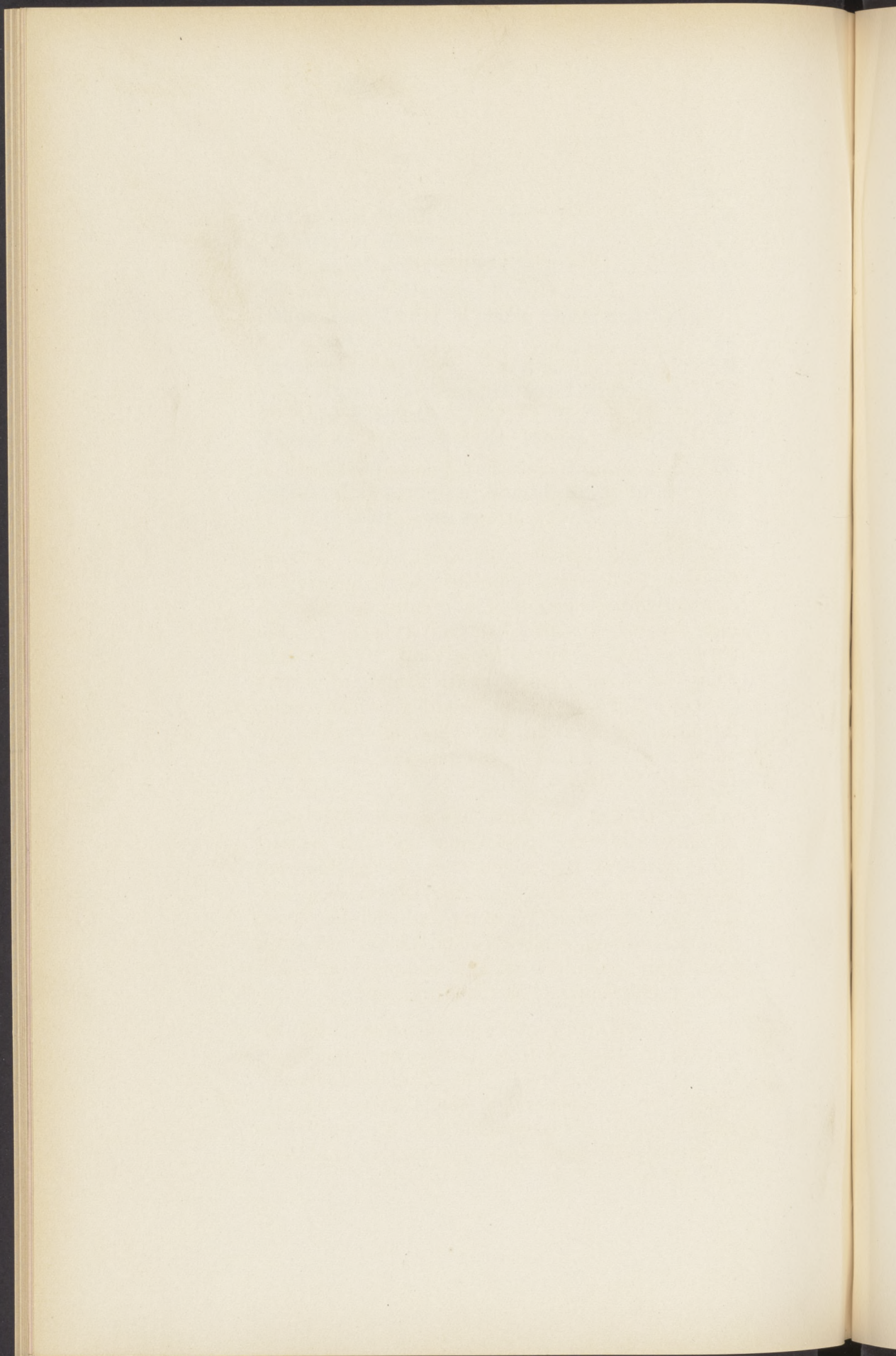


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Bill of Complaint.

Filed April 4, 1934.

IN CHANCERY OF NEW JERSEY

10

To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:

Complainant, Joseph Friedlander, residing in the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. On the 1st day of April, 1933, the defendant, Louis Grand, did let and demise to the complainant a portion of a certain store premises located at 188 Newark Avenue, in the City of Jersey City, County of Hudson and State of New Jersey at a rental of Forty (\$40.00) Dollars payable monthly, which rental included the lighting and heating of the said store and the term of the tenancy to continue to April 1, 1934. 20

2. Pursuant to said agreement, the complainant did take possession and did occupy said store for the purpose of the buying and selling of gold; the repairing of watches; the purchase and sale of jewelry and of other lines, kindred thereto, and said complainant did stock said store premises with a complete and full line of merchandise for said purpose. 30

3. Complainant, to secure business, did advertise in the following public newspapers of Jersey City, to wit, "The Jersey Journal," the "Jersey Observer," the "Nowy Swiat," and the "Il Progresso," and the advertisements in said newspapers are still in full force and effect. 40

Bill of Complaint

10 4. Complainant did hire two employees, one to work in and near the window of said store, and the other to work at the counter of said store, and as a result of the building up of the goodwill by the complainant, the net income derived by the complainant out of said business, averaged from One Hundred Fifty to Two Hundred (\$150.00-\$200.00) Dollars weekly and complainant values said business at said store at Seven Thousand Five Hundred (\$7,500.00) Dollars.

20 5. Defendant, Louis Grand, the lessor of the above store premises, retained to himself the use of the other half or portion of said store for the purpose of estimating and manufacturing slip-covers, and shared the same in common with the complainant, as a tenant in common.

30 6. The said store premises has one entrance door, which is used in common by the complainant and the defendant, and the lock on said door is shared in common by the complainant and the defendant for the purpose of opening and closing the store premises.

7. Prior to the expiration date of the complainant's lease, and on March 5, 1934, defendant agreed to extend the term of the complainant's lease from April 1, 1934, to March 31, 1935, at the same rental and under the same terms and conditions.

40 8. Complainant accepted the same terms and conditions of said defendant and agreed to continue as a tenant of the said defendant from April 1, 1934, to March 31, 1935, and agreed to pay the rental in accordance therewith.

Bill of Complaint

9. Complainant, relying upon said extension of term and renewal of lease, did purchase a more complete stock of merchandise and did outlay the approximate sum of One Thousand Two Hundred (\$1,200.00) Dollars for the same, and in addition thereto, said complainant did insert advertisements in the aforementioned newspapers, in order to continue and increase the complainant's business and to maintain the goodwill of said business. 10

10. On April 2, 1934, complainant was in peaceable possession of said store premises by relying upon the aforesaid agreement of extension and renewal of lease. 20

11. On April 3, 1934, without any notice to the complainant and without knowledge to the complainant, and while the complainant was in rightful possession of said leasehold estate, the defendant, by his duly authorized agents, servants and employees, did remove the complainant's chattels from the said store premises to the top floor of said premises, and did threaten to remove the balance thereof; did commit waste and did threaten to commit further waste in and upon the said leased premises and chattels therein, and did further eject the said complainant from said store premises. 30

12. Complainant did, by reason of the acts of the defendant, sustain, and will sustain, irreparable loss and irremediable injuries to his leasehold tenancy and business, and has and will continue to be jeopardized by the acts and threatened acts of said defendant, without adequate remedy at law. 40

Bill of Complaint

13. Complainant believes that the said defendant will commit other waste, spoil and destruction in and to the said complainant's business and property, unless restrained from so doing by this Court.

10

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

1. That Louis Grand, who is the defendant to this suit, may answer this bill of complaint and each statement therein contained;

2. That a decree may issue restraining said defendant from committing further waste;

20

3. That a Writ of Assistance may issue;

4. That a Writ of Restitution may issue;

5. That the said defendant may be compelled by decree of this Court specifically to perform the said agreement with the complainant;

6. That a Restraint *Pendente Lite* may issue restraining said defendant from continuing the ejection of the complainant;

30

7. That a Writ of Subpoena may issue, commanding said defendant to answer this complaint and to abide by such decree as this Court may make on the premises;

8. That the complainant may have such further relief as may be equitable and just.

JOSEPH FRIEDLANDER,
Complainant.

HARRY KAY,

40

Solicitor for and of Counsel
with Complainant.

Affidavit of Joseph Friedlander.

Filed April 4, 1934.

State of New Jersey,
County of Essex, ss:

Joseph Friedlander, being duly sworn according to law, upon his oath deposes and says: 10

1. On the 1st day of April, 1933, the defendant, Louis Grand, did let and demise to me a portion of a certain store premises located at 188 Newark Avenue, in the City of Jersey City, County of Hudson and State of New Jersey at a rental of Forty (\$40.00) Dollars payable monthly, which rental included the lighting and heating of the said store and the term of the tenancy to continue to April 1, 1934. 20

2. Pursuant to said agreement, I did take possession and did occupy said store for the purpose of the buying and selling of gold; the repairing of watches; the purchase and sale of jewelry and other lines, kindred thereto, and I did stock said store premises with a complete and full line of merchandise for said purpose. 30

3. I, to secure business, did advertise in the following public newspapers of Jersey City, to wit, the "Jersey Journal," the "Jersey Observer," the "Nowy Swiat," and the "Il Progresso," and the advertisements in said newspapers are still in full force and effect.

4. I did hire two employees, one to work in and near the window of said store, and the other to work at the counter of said store, and as a result of the building up of the goodwill by me, the net income derived by me out of said business, averaged from One Hundred 40

Affidavit of Joseph Friedlander

Fifty to Two Hundred (\$150.00-\$200.00) Dollars weekly, and I value said business at said store at Seven Thousand Five Hundred (\$7,500.00) Dollars.

10 5. Defendant, Louis Grand, the lessor of the above store premises, retained to himself the use of the other half or portion of said store for the purpose of estimating and manufacturing slip-covers, and shared the same in common with me, as a tenant in common.

20 6. The said store premises has one entrance door, which is used in common by me and the defendant, and the lock on said door is shared in common by me and the defendant for the purpose of opening and closing the store premises.

7. Prior to the expiration date of my lease, and on March 5, 1934, defendant agreed to extend my term of lease from April 1, 1934, to March 31, 1935, at the same rental and under the same terms and conditions.

30 8. I accepted the same terms and conditions of said defendant from April 1, 1934, to March 31, 1935, and agreed to pay the rental in accordance therewith.

40 9. I, relying upon said extension of term and renewal of lease, did purchase a more complete stock of merchandise and did outlay the approximate sum of One Thousand Two Hundred (\$1,200.00) Dollars for the same, and in addition thereto, I did insert advertisements in the aforementioned newspapers, in order to continue and increase my business and to maintain the goodwill of said business.

Affidavit of Joseph Friedlander

10. On April 2, 1934, I was in peaceable possession of said store premises by relying upon the aforesaid agreement of extension and renewal of lease.

11. On April 3, 1934, without any notice to me and without my knowledge and while I was in rightful possession of said leasehold estate, the defendant, by his duly authorized agents, servants, and employees, did remove my chattels from the said store premises to the top floor of said premises, and did threaten to remove the balance thereof; did commit waste and did threaten to commit further waste in and upon the said leased premises and chattels therein, and did further eject me from said store premises. 10
20

12. I did, by reason of the acts of the defendant, sustain, and will sustain, irreparable loss and irremediable injuries to my leasehold tenancy and business, and have and will continue to be jeopardized by the acts and threatened acts of said defendant, without adequate remedy at law. 30

13. I believe that the said defendant will commit other waste, spoil and destruction in and to my said business and property, unless restrained from so doing by this Court.

JOSEPH FRIEDLANDER.

Sworn and subscribed to
before me, this 3rd day
of April, 1934.

Louis Goldner,

A Notary Public of New Jersey. 40

Affidavit of Sidney Berger.

Filed April 4, 1934.

State of New Jersey,
County of Essex, ss:

10 Sidney Berger, being duly sworn according to law, upon his oath, deposes and says:

Mr. Friedlander and I were just finished having a bite to eat in the restaurant located at 188 Newark Avenue, Jersey City, New Jersey, next door to the store premises leased by Mr. Friedlander. We went back to the store and Mr. Grand started to discuss business, as far as a renewal of the lease was concerned. After talking a few moments, Mr. 20 Grand said, "Don't worry, Joe (Mr. Friedlander). If you care to stay, you can stay for another year or two." This took place on March 5, 1934, about 10 a. m. or a little afterwards. It was said in my presence, at the store premises leased by Mr. Friedlander, located at 188 Newark Avenue, Jersey City, N. J.

SIDNEY BERGER.

30 Sworn and subscribed to before me this 3rd day of April, 1934.

Louis Goldner,
A Notary Public of New Jersey.

Affidavit of William Arnowitz.

Filed April 4, 1934.

State of New York,
County of Bronx, ss:

William Arnowitz, of full age, being duly sworn according to law, upon his oath deposes and says: 10

On Monday the 5th day of March, 1934, I was present about 10 o'clock in the morning when I heard Mr. Louis Grand state to Joseph Friedlander who has subleased a store from him at No. 188 Newark Avenue, Jersey City, the following words, "Joe, it's all right you have my permission to remain in the store another year or two." 20

Mr. Joseph Friedlander stated to Louis Grand in reply, "Well, it's O K. I will remain one year in the Store as your tenant."

This conversation took place at the store located at No. 188 Newark Avenue, Jersey City, N. J., where Mr. Joseph Friedlander and Louis Grand both share said store.

WILLIAM ARNOWITZ.

Sworn and subscribed to before me this 3rd day of April, 1934. 30

Samuel Rothman,
Notary Public.

Bronx Co. Clks. No. 172, Reg. No. 157R35.
Commission expires March 30, 1935.

Affidavit of Saadi Arnowitz.

Filed April 4, 1934.

State of New York,
County of Bronx, ss:

10 Saadi Arnowitz, of full age, being duly sworn according to law upon her oath deposes and says:

On Monday the 5th day of March, 1934, I was present about 10 o'clock in the morning when I heard Mr. Louis Grand of 188 Newark Avenue, Jersey City, N. J., state and say to Joseph Friedlander, who is a tenant of said Louis Grand, "Joe, it's all right, you have my permission to remain in the store for another year or
20 two more."

Mr. Joseph Friedlander answered in reply to Louis Grand, "Well, it's O. K. I will remain one year in the store as your tenant."

This conversation between Louis Grand and Joseph Friedlander took place at the store they occupied at No. 188 Newark Avenue, in the City of Jersey City, and State of New Jersey.

SAADI ARNOWITZ.

30 Sworn and subscribed to before
me this 3rd day of April, 1934.

Samuel Rothman,
A Notary Public
of New York.

Bronx Co. Clks. No. 172. Reg. No. 157R35.
Commission expires March 30, 1935.

Affidavit of Molly Kusnit.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

JOSEPH FRIEDLANDER, Complainant, against LOUIS GRAND, Defendant.	}	Affidavit.
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10

State of New Jersey,
 County of Hudson, ss:

Molly Kusnit, of full age, being duly sworn, according to law, on her oath, deposes and says: 20

On Friday night, March 30, 1934, at 10:30 P. M., Mr. Louis Grand came to my house in Hoboken, New Jersey, for the Jewish Holiday supper. Mr. Grand at that time told me and all others present at my house that the watchmaker, Joe, referring to Joe Friedlander, the jeweler, is an asset to my business and I am going to leave him stay at the same premises known as 188 Newark Avenue, Jersey City, New Jersey, for another year or so. 30

This conversation took place after the special supper that is usually served on such a Holiday, at said time and place.

MOLLY KUSNIT.

Sworn to before me this
 4th day of April, 1934.

Samuel Rothman,
 Notary Public.

40

Bronx Co. Clks. No. 172; Reg. No. 157R35.

Reply Affidavit of Joseph Friedlander.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bills, &c.
Reply
Affidavit.

10

State of New Jersey,
County of Essex, ss:

20

Joseph Friedlander, being duly sworn according to law, upon his oath deposes and says:

I have read the affidavit of Aaron Frankel, and I state that Mr. Frankel is employed by the defendant only one day a week doing piece-work, and that Mr. Frankel's affidavit in all respects, particularly paragraphs 8, 11, 12, 13, 14 and 15, is untrue. I state that Mr. Frankel told me that "I am glad you are staying another year or so with us."

30

I have read the affidavit of Joseph Stone and I deny paragraph 6 thereof. I state that in a conversation with Joseph Stone, he said to me that he was glad that I was permitted to remain another year or so. I told Mr. Stone that since Mr. Grand permitted me to remain another year, I increased my advertisements and purchased more merchandise.

40

I have read the affidavit of David M. Weintraub, and I deny paragraphs 2, 3, 4 and 5 of said affidavit. I wish to state that Mr. Weintraub and I have had litigation between us and

Reply Affidavit of Joseph Friedlander

are not on friendly terms. I further state I have never had any conversation with Mr. Weintraub concerning the lease to the store.

10 I have read the affidavit of Louis Grand and I state that I deny said affidavit. Mr. Grand knows that since he permitted me to remain in said store, I increased my advertising; I purchased other merchandise; I increased my business and good will; I spent considerable money. I wish to state that Mr. Grand has caused me to institute this suit for the purpose of obtaining an increased rental for the portion of the store which I occupy. I may state that the business conducted by Mr. Grand has not
20 been damaged by my occupancy in any way, and as a matter of fact, I am willing to increase the business of Mr. Grand by getting customers for his slip-cover business as a matter of courtesy in order to maintain future good will.

I am willing to have a young man to stay in the store to take care of Mr. Grand's orders and to render every courtesy possible to him. I am willing to answer his phone calls so that
30 any ill will which he has against me will in the future be dissipated. I am willing to pay the rent in advance.

JOSEPH FRIEDLANDER.

Sworn and subscribed to before me,
this 5th day of April, 1934.

Jacob Frisch,

A Notary Public of N. J.

Supplemental Affidavit of Sidney Berger.

Filed April 6, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Supplemental
Affidavit.

10

State of New Jersey,
County of Hudson, ss:

20

Sidney Berger, being duly sworn according to law, upon his oath deposes and says:

I tried to secure a location for Mr. Friedlander prior to March 5, 1934, and I went into several stores located on Newark Avenue for such purpose. The owner of these stores refused to allow the old gold business to be established in their stores, as they have no space. There are no stores available on Newark Avenue except within eight to ten blocks from the vicinity of Newark Avenue, and then the rentals in such stores average from One Hundred Twenty-five (\$125.00) Dollars and up. The store occupied by Mr. Friedlander at present at 188 Newark Avenue is in the heart of Jersey City and is a very valuable one. I know that Mr. Friedlander has created an extensive business and good will in said store since September, 1932.

30

40

SIDNEY BERGER.

Sworn and subscribed to before
me, this 5th day of April, 1934.

Dorethea Epstein,

An Attorney at Law of N. J.

Supplemental Affidavit of William Lighter.

Filed April 6, 1934.

IN CHANCERY OF NEW JERSEY.

10	Between: <p style="margin-left: 40px;">JOSEPH FRIEDLANDER, Complainant, and LOUIS GRAND, Defendant.</p>	}	On Bill, &c. Supplemental Affidavit.
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20 State of New Jersey,
County of Hudson, ss:

William Lighter, being duly sworn according to law, upon his oath deposes and says:

30 I am a watchmaker employed by Joseph Friedlander. On February 6, 7, and 8, 1934, I accompanied Mr. Friedlander along Newark Avenue and in the vicinity of the store now occupied by Mr. Friedlander for the purpose of securing another store in that locality. We endeavored to locate space at the Wonder Store located on Newark Avenue near Barrow Street, but were unable to obtain it, because the store closed evenings at 6 o'clock. We were unable to locate any other store which would give us a portion of its store and window for the old gold business. We could not secure any store that would give window space.

WILLIAM LIGHTER.

40 Sworn and subscribed to before
me, this 5th day of April, 1934.
James W. Hogan,
A Notary Public of N. J.

Supplemental Affidavit of Albert Knapp.

Filed April 6, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

On Bill, Etc.
Supplemental
Affidavit.

State of New Jersey,
County of Hudson, ss:

20

Albert Knapp, of full age, being duly sworn according to law, upon his oath deposes and says:

During February, 1934, Mr. Joseph Friedlander requested me to obtain a store and window space for him in the vicinity of Newark Avenue, Jersey City. I endeavored to obtain a store located next to the Wonder Store on Newark Avenue, which is owned by one of my relatives, but the same could not be had because the Duco Enamel Company had just rented same. I also endeavored to secure a space concession for Mr. Friedlander in the Wonder Store that is located on Newark Avenue, near Barrow Street, Jersey City, N. J., which is also controlled by my relatives but this space was not available for all the Wonder Store Concessions were completely rented.

30

40

ALBERT KNAPP, D. D. S.

Sworn and subscribed before me,
this 5th day of April, 1934.

Herman C. Silverstein,

An Attorney at Law of New Jersey.

Supplemental Affidavit of J. Harmon Ford.

Filed April 6, 1934.

IN CHANCERY OF NEW JERSEY.

10 Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Supplemental
Affidavit.

State of New Jersey,

20 County of Hudson, ss:

J. Harmon Ford, being duly sworn according to law, upon his oath deposes and says:

I am an attorney at law of New Jersey, and Mr. Joseph Friedlander is my client. At his request and upon his behalf, I endeavored to obtain a location for him on Newark Avenue and in the vicinity of his present location. I was almost successful in securing a store
30 around the corner from Mr. Friedlander's store, but a beer tavern leased the store at an exorbitant rental. There are no other vacancies that I know of on Newark Avenue, Jersey City, or in the vicinity suitable for watch repairing, jewelry and old gold buying.

J. HARMON FORD.

Sworn and subscribed to before
me, this 5th day of April, 1934.

40

Morris F. Pearlman,

A Master in Chancery of N. J.

Supplemental Affidavit of Joseph Friedlander.

Filed April 6, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Supplemental
Affidavit.

10

State of New Jersey,
County of Hudson, ss:

20

Joseph Friedlander, being duly sworn according to law, upon his oath deposes and says:

During the month of February, 1934, I spent a considerable period of time looking for other stores located in the vicinity of Newark Avenue, Jersey City, knowing that my lease would be up on April 1, 1934. It was impossible to secure any store in that vicinity which would rent a portion of the store and window space to me. It was also impossible to secure a complete store for that purpose, for the stores on Newark Avenue and its immediate vicinity are rented. There are no vacancies in stores in that vicinity. My business would be seriously damaged, should I be compelled to move out of the vicinity of Newark Avenue, Jersey City. I have hundreds of watches and much jewelry and repairs belonging to customers who know my present location and it will be impossible for me to move, without serious damage to my business. I also have intrusted to me pledges.

30

40

JOSEPH FRIEDLANDER.

Sworn and subscribed to before
me, this 5th day of April, 1934.

Dorethea Epstein.

Order to Show Cause.

Filed April 4, 1934.

IN CHANCERY OF NEW JERSEY.

10	Between: <div style="text-align: center;"> JOSEPH FRIEDLANDER, Complainant, and LOUIS GRAND, Defendant. </div>	} On Bill, &c. } Order to } Show Cause.
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20 Upon reading and filing the duly verified Bill of the complainant, it is on this 4th day of April, 1934, on motion of Harry Kay, solicitor for and of counsel with complainant.

Ordered, that until the further order of this Court, said defendant, his agents, servants and employees, be and they hereby are enjoined and restrained from interfering with the possession of the complainant to the said store premises, and it is further,

30 Ordered, that the defendant be and hereby is directed to appear before the Chancery Court, 1 Exchange Place, Jersey City, New Jersey, on the 9th day of April, 1934, at 10 o'clock in the forenoon, or as soon thereafter as the Court can attend to the same, and show cause why said defendant should not be restrained, pending the suit, from interfering with the possession of the complainant to the said store premises and it is further,

40 Ordered, that a true but uncertified copy of the verified bill and order to show cause, which may be certified to as such by the solicitor for the complainant, shall be served upon said defendant within one day of the date hereof.

Respectfully advised:

LUTHER A. CAMPBELL,
C.

J. O. Bigelow,

V. C.

Answering Affidavit of Louis Grand.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

Between: JOSEPH FRIEDLANDER, Complainant, and LOUIS GRAND, Defendant.	}	On Bill, &c. 10
--	---	--------------------------------

State of New Jersey,
 County of Hudson, ss: 20

Louis Grand, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am the defendant in the above entitled cause.

2. During September, 1932, Joseph Friedlander leased part of the window and some of the premises at 188 Newark Avenue, Jersey City, N. J., from me. At that time said lease was for a period of six months. 30

3. Prior to the expiration of that lease, the said complainant, Joseph Friedlander, did obtain an order to show cause why I should not be restrained from removing him from said premises, alleging in his Bill of Complaint that I had agreed to extend the terms of complainant's lease for a further period of one year and that said agreement had been a verbal one. 40

Answering Affidavit of Louis Grand

10 4. At that time I could not afford the expense of contesting said action and settled said matter prior to the return date thereof by entering into a written lease, dated April 1, 1933, as mentioned in the Bill of Complaint, which said lease was to expire on the 1st day of April, 1934.

5. I have read said Bill of Complaint and the affidavits annexed thereto and absolutely deny that on the 5th day of March, 1934, by any conversation did I agree to extend the terms of the written lease above set forth for the period of one year or at any other time.

20 6. As to paragraph 1 of the Complaint, it is true that I did let and demise to the complainant a portion of said store at a rental of \$40.00 payable monthly, which tenancy was to continue to April 1, 1934.

30 7. As to paragraph 2, it is true that the complainant took possession and did occupy the said store for the purpose of buying and selling gold and repairing watches, but it is not true that he was being permitted to purchase and sell jewelry and all other things kindred thereto.

8. I have no knowledge as to whether the complainant advertised in any of the public newspapers of Jersey City or whether said advertisements are in full force and effect.

40 9. As to paragraph 4, I have no knowledge as to the net income derived by the complainant from said business or the value of said business.

Answering Affidavit of Louis Grand

10. As to paragraph 5, I admit that I retained to myself the use of the other half or portion of said store for the use or purpose of manufacturing slip covers.

11. I admit paragraph 6. 10

12. I absolutely deny paragraph 7 and state that I never entered into any agreement either written or verbal with the said complainant to extend the said complainant's lease from April 1, 1934, to March 31, 1935, but in fact state that at all times it was understood that on the 1st day of April, 1934, the said complainant was to remove from said premises.

13. I further state that on March 5, 1934, I was not present in the store premises at 188 Newark Avenue, Jersey City, N. J., at 10 o'clock or at any time until after three o'clock in the afternoon. 20

14. As to paragraph 9, if the complainant purchased more stock, he did so at his own risk because I never entered into any agreement with him verbal or written to extend said lease beyond April 1, 1934. 30

15. As to paragraph 10, I deny that on the 2nd day of April, 1934, the complainant was in peaceable possession of said store premises, but maintain that he was a trespasser, his lease having expired on the 1st day of April, 1934.

16. As to paragraph 11, I admit that I did remove the complainant's chattels from the first floor of said premises to the top floor of said premises, but deny that any waste was committed and state that I had a right to remove 40

Answering Affidavit of Louis Grand

said goods and chattels of the complainant because he was a trespasser, his lease having expired on April 1, 1934.

10 17. As to paragraph 12, I deny that by reason of my acts the complainant did sustain or will sustain reparable loss or injury to his leasehold tenancy business as his leasehold tenancy had expired and came to an end on the 1st day of April, 1934, and that the said complainant was well aware of the fact that his lease was to end on the said 1st day of April, 1934.

20 18. I have read the affidavits of Joseph Friedlander, Sidney Berger, William Arnowitz and Saadi Arnowitz and state they are untrue and false and I absolutely deny that on the 5th day of March, 1934, at 10 o'clock in the forenoon did state to Joseph Friedlander the following: "Joe, it's all right. You have my permission to remain in the store for another year or two." No such conversation ever took place.

30 19. I was not present in my store on said morning of March 5, 1934, but was in fact in the City of New York all that morning and until three o'clock that afternoon, at which time I returned to said store.

40 20. I never agreed with the said Joseph Friedlander to extend the written lease which I had given him dated April 1, 1933, and which was to expire on April 1, 1934, and that from the past experience had with the said Joseph Friedlander, if I intended to renew said lease with him, I would have done so by a formal written document.

Answering Affidavit of Louis Grand

21. The said Joseph Friedlander, the complainant, has stated to me many times that I would not be able to get him out, that he had trimmed me once, and that he would do it again and that he would work the same trick as many times as he saw fit and that if I tried to get him out by court, it would take at least a year to do so, which would be as good as a year's lease. 10

22. It is very necessary that I have possession of the space which was formerly occupied by Joseph Friedlander as my business has increased and I have been looking forward to the expansion of my business and the occupation of that portion of the premises now and formerly occupied by Joseph Friedlander. 20

23. I will be damaged if I am unable to obtain possession because of the increase of my business and that the conducting of the said Friedlander's business is in a great measure interfering in the conduct of my business.

24. I know of my own knowledge that Sidney Berger, one of the affiants, has not been in the vicinity of my store from Christmas week, 1933, until after St. Patrick's Day, 1934. 30

25. I also know that William Arnowitz, one of the affiants, is related to the said Joseph Friedlander, being a brother-in-law to him, and that the said Saadi Arnowitz is a sister of the said complainant.

LOUIS GRAND. 40

Sworn to and subscribed before
me this 4th day of April, 1934.

Saul Nemser,
Master in Chancery of N. J.

Answering Affidavit of Aaron Frankel

7. My employer is very seldom in the store.

8. My attention has been directed to the affidavits made by Sidney Berger, William Arnowitz, Saadi Arnowitz and Joseph Friedlander, in which it is set forth that a conversation took place on March 5, 1934, in which it is alleged that Louis Grand, my employer said, "Joe, it's all right. You have my permission to remain in the store another year or two." 10

9. I never heard him say any such thing.

10. I know as a matter of fact that he never did.

11. Especially is it untrue that such a conversation took place on the morning of Monday, March 5th, 1934, because Louis Grand was not in the store that day until after three o'clock, nor did I see Saadi Arnowitz in that store on that day. 20

12. During the month of March, 1934, at various times, I did hear Joseph Friedlander boast to various people including myself that no one was going to put him out, that he intended to stay there even though his lease ended April 1, 1934, that the spot was a good one and that the rent was dirt cheap and that he would use every means possible to stay there. 30

13. That the said Joseph Friedlander during the month of March, also wanted to bet me \$100.00 to my \$5.00 that Louis Grand would not be able to get him out when his lease expired. 40

14. I have read the affidavit of Sidney Ber-

Answering Affidavit of Aaron Frankel

ger he sets forth that he was present at the store at 188 Newark Avenue on March 5, 1934, at 10 o'clock.

15. This is absolutely untrue because I did
10 not see Sidney Berger in said store between Christmas week, 1933, and St. Patrick's Day, March 17th, 1934, and I was present in said store every day.

AARON FRANKEL.

Sworn to and subscribed before me
this 4th day of April, 1934.

Joseph Moritz,

20 Master in Chancery of N. J.

30

40

Answering Affidavit of Joseph Stone.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

On Bill, &c.
Affidavit.

State of New Jersey,

County of Hudson, ss:

20

Joseph Stone, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am employed as an operator by the defendant Louis Grand.

2. I also know the complainant in the above entitled cause, Joseph Friedlander.

3. The defendant occupies store known as 188 Newark Avenue, Jersey City, the window of which is used by the complainant and part of said store is also used by him. 30

4. He has been in said premises to my knowledge since last May.

5. During said time I have been very friendly with him and he has been friendly with me.

6. Sometime during the latter part of March, 1934, I heard the complainant Joseph Friedlander boasting to a Mr. Leighter and Max Ostrov, who are two employees of the said 40

Answering Affidavit of Joseph Stone

10 Joseph Friedlander, that he was not going to leave the store premises involved herein at the expiration of his lease or vacate same. That the same was a gold mine, that the rent was dirt cheap and that even if Louie tried to get him out, he would tie Louie up so that it would be just as good as a lease for a year anyway.

JOSEPH STONE.

Sworn to and subscribed before
me this 4th day of April, 1934.

Saul Nemser,
Master in Chancery of N. J.

20

30

40

Answering Affidavit of David M. Weintraub.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

On Bill, &c.
Affidavit.

State of New Jersey,
County of Hudson, ss:

20

David M. Weintraub, of full age, being duly sworn, according to law, deposes and says:

1. I know both the complainant and the defendant in the above entitled matter.

2. Sometime around the middle of February, 1934, I had a conversation with the complainant, Joseph Friedlander, in reference to his lease expiring at 188 Newark Avenue, Jersey City, N. J.

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3. This conversation took place in the restaurant located right next door to the place of business conducted by both parties herein.

4. During the course of this conversation I mentioned to Mr. Friedlander that I had heard that he had to vacate the premises which he occupies at 188 Newark Avenue, Jersey City, N. J., by April 1, 1934.

40

5. He laughed and said: "I will never get out. I will get out when I want to get out."

DAVID M. WEINTRAUB.

Sworn to and subscribed before
me this 4th day of April, 1934.

Joseph Moritz,
Master in Chancery of N. J.

Supplemental Affidavit of Louis Grand

that I did not desire to have him continue as a tenant in my store premises. That I desired to have him vacate the same at the expiration of the lease. That the reason why I wanted him to leave was because I needed the space for the purpose of conducting my own business, which business was being run at a great loss because of the business of the complainant. People coming into my store could not make negotiations with me because of the presence of other customers of the complainant who usually crowded my store. 10

3—I desire to call at this time to the Court's attention, that there are quite a number of empty stores along Newark Avenue in the City of Jersey City, adjacent or in close proximity to the store premises now occupied by the complainant, which the complainant, if he so desires, could lease and rent, either at a similar, cheaper or slightly increased rental. 20

4—I desire to call to the Court's attention that the store premises in question is an unusually small store, being approximately nine feet wide and approximately twenty-three feet long. It is impossible for such store to be used for the purpose of conducting both the business of the complainant and myself. 30

5—This I became aware of for the first time in September, 1932, when I first subleased the premises to the complainant herein, and ever since because of this it was my intention and I desire to have the complainant vacate the premises which I subleased to him. 40

6—The reason why he would never vacate

Supplemental Affidavit of Louis Grand

10 said premises was because he would tie me up in a court proceeding, always charging and alleging that I had orally promised this and that I had orally promised that, and because of my financial inability to retain counsel, I was compelled against my wishes to compromise the situation by entering into a lease which was to terminate April 1st, 1934, the understanding being by that time the complainant was to vacate the premises which he occupied.

LOUIS GRAND.

Sworn and subscribed to before me this
5th day of April, 1934.

20 Joseph Moritz,
Master in Chancery of N. J.

30

40

Answering Affidavit of Philip Shevins.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

On Bill, &c.
Affidavit.

State of New Jersey,
County of Hudson, ss:

20

Philip Shevins, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1—I know the complainant and the defendant in the above entitled matter. I have known the complainant for about one year and a half. I know the defendant, Louis Grand, for a period of about twelve years.

30

2—The complainant occupies a portion of certain store premises located at 188 Newark Avenue, in the City of Jersey City, County of Hudson and State of New Jersey, for the purpose of buying and selling of gold, repairing watches; the defendant occupies the same premises for the purpose of conducting a slip cover and upholstery business. The defendant, Louis Grand, is the lessee of the store premises at 188 Newark Avenue in Jersey City, and the complainant, Joseph Friedlander, is the sub-lessee having subleased said premises from the defendant, Louis Grand.

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Answering Affidavit of Philip Shevins

3—The subleasing of the portion occupied by the complainant took place sometime in April, 1933, as more particularly evidenced by a lease dated April 22nd, 1933, between the respective parties herein. This lease was entered into
10 between complainant and defendant through my negotiations. I recall that sometime during the early part of 1933, a suit in the Court of Chancery was instituted by the complainant against the defendant of a similar kind and nature as the one filed herein. I was aware at that time that Mr. Grand could not afford the expense of contesting said action and suggested a settlement be made of the same. Through my
20 negotiations, a settlement was made, being the entry into a lease between the respective parties for a period of one year to commence the first day of April, 1933, and to terminate the first day of April, 1934, the understanding being then that upon the expiration of this lease, the said complainant, Joseph Friedlander, was to move and vacate the said premises in a peaceful way.

30 4—My attention has been called to the affidavits annexed to the complaint in the above entitled matter. I have read the affidavits of Joseph Friedlander, Sidney Berger, William Aronowitz and Sadie Aronowitz, and note that all of these affiants state that they were present at the store premises, 188 Newark Avenue, in the City of Jersey City, New Jersey, on March
40 5th, 1934, at ten o'clock and overheard a conversation between Joseph Friedlander and Louis Grand, whereby it is alleged that the said Louis Grand said, "Joe, it is all right, you have my

Answering Affidavit of Philip Shevins

permission to remain in the store for another year or two more." This conversation, I know of my own knowledge, never took place. The reason why this conversation never took place was because on March 5th, 1934, during the entire morning, Louis Grand and myself were in New York at the store of one by the name of Benjamin Fishman, 70-72 Bowery Street, New York City, where we were engaged in some business transaction with the said Benjamin Fishman. I distinctly recall this day because of the fact that our transaction with Mr. Fishman did not terminate until about two-thirty in the afternoon. I cannot understand how Mr. Friedlander could say that Mr. Grand had said it was O K for him to remain a year in the store as his tenant in view of the fact that Mr. Grand had indicated for the last seventeen months that he did not desire to have Mr. Friedlander continue as a tenant. He likewise had indicated that the reason why he did not desire to have Mr. Friedlander as a tenant was because he needed the space for his own business. That the business conducted by Mr. Friedlander was interfering with his own business causing him to lose customers, sales, and profits, and that the business of Mr. Friedlander was such that it was swallowing the business conducted by Mr. Grand. In spite of all these indications and in spite of the acts and conduct on the part of Mr. Grand informing Mr. Friedlander that it would be necessary for him to leave and vacate the premises which he occupied at the expiration of his lease, Mr. Friedlander always replied and boasted that he would not get out un-

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Answering Affidavit of Philip Shevins

10 less he wanted to get out, and that if any attempt was ever made by Mr. Grand to get him out of the premises against his own wishes that he would apply to the Court of Chancery in a manner in which he had applied before, and tie him up with a court proceeding which would take at least a year and would, therefore, be equivalent and as good as a lease for another year, at the same time causing Mr. Grand to expend quite a sum of money for lawyers and costs of court. He likewise indicated that by doing so, that which happened in 1933 would likewise happen in 1934.

PHILIP SHEVINS.

20 Sworn and subscribed to before me this
5th day of April, 1934.
Joseph Moritz,
Master in Chancery of N. J.

30

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Answering Affidavit of Benjamin Fishman.

Filed April 5, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Affidavit.

10

State of New York,
County of New York, ss:

20

Benjamin Fishman, of full age, being duly sworn, according to law, on his oath, deposes and says:

1—I am engaged in business at 70-72 Bowery Street, New York City, New York. I know the defendant, Louis Grand.

2—On March 5th, 1934, I recall that the defendant, Louis Grand, and a Mr. Philip Shevins, were in my store premises for the purpose of negotiating some business transaction that was pending between us at that particular time. I distinctly recall this particular day because of the unusual length of time that was used up for the purpose of completing our transaction. I recall that the defendant, Louis Grand, and Philip Shevins, came to my office on the morning of March 5th, 1934, at about nine o'clock, and that they remained at my store until close to two-thirty in the afternoon when our nego-

30

40

Answering Affidavit of Benjamin Fishman

tiations were finally completed and our transaction closed.

BENJAMIN FISHMAN.

- 10 Sworn and subscribed to before me this
5th day of April, 1934.
Louis J. Tommaculo,
Notary Public.
Louis J. Tommaculo,
Notary Public,
Kings County.
Kings County Clerk's No. 239.
Kings County Register's No. 5080.
New York County Clerk's No. 169.
- 20 New York County Register's No. 5T98.
Term expires Mar. 30, 1935.

30

40

Answering Affidavit of Ida Kusnit

3—This conversation which my daughter swears took place is untrue. A discussion of business never took place on March 30th, 1934, at my home. Such a discussion between my daughter and my son-in-law, Louis Grand, never
10 took place because of the fact that Louis Grand has not been on speaking terms with my daughter, Molly Kusnit, for over a year, and in view of the Jewish Holiday, business of that nature is never discussed in my home.

IDA KUSNIT.

Sworn and subscribed to before me this
5th day of April, 1934.
20 Joseph Moritz,
Master in Chancery of N. J.

30

40

Opinion of V. C. Bigelow.

Filed April 5, 1934.

COURT OF CHANCERY OF NEW JERSEY

One Exchange Place

Jersey City

10

April 5, 1934.

JOHN O. BIGELOW
Vice ChancellorHarry Kay, Esq.
31 Clinton Street
Newark, N. J.Daniel D. Loeb, Esq.
75 Montgomery Street
Jersey City, N. J.

20

Friedlander v. Grand

Gentlemen:

The legal remedy of complainant, in case he is wrongfully evicted by his landlord, is an action for damages or ejection. *Miller v. Kutschinski*, 92 N. J. L. 97, 105 A. 20; 36 C. J. 70. But he may have an injunction against interference of his possession by the landlord if the circumstances of the case disclose that the relief at law is inadequate and that the injury will be irreparable. *McGann v. La-Brecque* 90 N. J. Eq. 526, 107 A. 175; 91 N. J. Eq. 307, 109 A. 501.

30

Complainant occupies part of a small store in Jersey City and it is the possession of this store which he desires protected. He does not show that there are no other stores in the neighborhood available or that he cannot move his business to another store without serious loss. The order to show cause will therefore be discharged with costs.

40

Yours very truly,

J. O. BIGELOW.

JOB:HC

Order Dissolving Restraint.

Filed April 9, 1934.

IN CHANCERY OF NEW JERSEY.

10 Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

}

On Bill, &c.
Order Dis-
missing Or-
der to Show
Cause and
Dissolving
Restraint.

20 This matter being opened to the Court by Daniel D. Loeb, solicitor of the defendant, Louis Grand, and in the presence of Harry Kay, solicitor of complainant, and the Court having considered the affidavits on behalf of said defendant, Louis Grand, and the affidavits on behalf of said complainant, Joseph Friedlander, and having heard and considered the arguments of counsel and having considered the matter, and being of the opinion that the Order to Show Cause issued by this Court on April 4th, 30 1934, and restraint imposed therein upon said defendant, Louis Grand, should be dissolved,

It is on this 9th day of April, 1934,

40 Ordered and Adjudged: That the Order to Show Cause issued by this Court on April 4th, 1934, and the restraint therein imposed upon said defendant, Louis Grand, be and the same is hereby dismissed and dissolved with costs to be taxed in favor of defendant, Louis Grand.

LUTHER A. CAMPBELL,
C.

Respectfully advised,
JOHN O. BIGELOW,
V. C.

Notice of Appeal.

Filed April 9, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and
LOUIS GRAND,
Defendant.

On Bill, &c.
Notice of
Appeal

10

Take notice, that the complainant, Joseph Friedlander, hereby appeals from the interlocutory decree or order made in the above cause on April 9th, 1934, dismissing the order to show cause granted April 4, 1934, and vacating the restraint therein contained, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20

Dated, April 9th, 1934.

HARRY KAY,
Solicitor for and of Counsel
with Complainant.

30

I conceive there is a good cause for appeal in the above stated cause.

HARRY KAY,
Of Counsel with Joseph Friedlander.

40

Affidavit of Service.

Filed April 12, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Affidavit.

10

State of New Jersey,

Essex County, ss:

20

Harry Kay, being duly sworn according to
law, upon his oath deposes and says:

On April 9, 1934, I did serve upon Miss Edna
Murphy, Secretary in the office of Daniel Loeb
at 75 Montgomery Street, Jersey City, at 11
A. M., a true copy of a notice of appeal and
petition of appeal in this cause, by handing the
same to her, reading it to her and requesting
her to give it to her employer in said office,
Daniel Loeb, the solicitor of the defendant.

30

HARRY KAY.

Sworn and subscribed to before me this
11th day of April, 1934.

Samuel S. Ferster,

A Master in Chancery of N. J.

40

Petition of Appeal.

Filed April 9, 1934.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

 JOSEPH FRIEDLANDER,
Complainant-Appellant,

vs.

 LOUIS GRAND,
Defendant-Appellee.

 On Appeal
From the
Court of
Chancery.
Petition
of Appeal.

20

To the Honorable the Court of Errors and
Appeals in the Last Resort in All Causes:

The petition of Joseph Friedlander, the ap-
pellant in the above entitled cause, respectfully
shows that:

30

1. Petitioner finds himself aggrieved by an
interlocutory decree or order made in the Court
of Chancery by his Honor, Luther A. Camp-
bell, Chancellor of the State of New Jersey,
bearing date April 9th, 1934, in a certain cause
in said Court of Chancery wherein the said
Joseph Friedlander was complainant and the
said Louis Grand was the defendant, in this
respect, to wit, that the said interlocutory de-
cree or order adjudges that the order to show
cause issued by this Court on April 4, 1934,
and the restraint therein imposed upon said
defendant, Louis Grand, be and the same is
hereby dismissed and dissolved with costs to be
taxed in favor of the defendant, Louis Grand.

40

Petition of Appeal

2. The petitioner appeals from the said decree or order of the Chancellor, which decrees, as aforesaid, upon the ground that the dismissal of the restraint is erroneous in that:

(a) The complainant-appellant sustained and will sustain an irreparable injury; 10

(b) That the complainant-appellant has no adequate remedy in a court of law;

(c) That the circumstances of the case disclose that the relief at law is inadequate and the injuries are and will be irreparable;

(d) That the preliminary injunction should have continued in order to maintain the *status quo* of the property during the pendency of this suit; 20

(e) That the proof disclosed that the complainant-appellant's rights were and have been irreparably jeopardized;

(f) That the injunction should have continued to prevent a multiplicity of suits at law;

(g) That the court of equity should have continued the injunction to protect and enforce the complainant-appellant's legal rights in the property; 30

(h) That the dismissal of the injunction acted as a forfeiture of the complainant-appellant's property, and equity ought not to favor forfeitures;

(i) That the injunction should have continued to enjoin the defendant-appellee, the landlord, from interfering with the complainant-appel- 40

Petition of Appeal

lant's possession of the property pending the hearing of the cause;

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

JOSEPH FRIEDLANDER,
Petitioner.

20 HARRY KAY,
Solicitor for and of Counsel
with Complainant-Appellant.

30

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Petition of Appeal.

Filed April 26, 1934.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

JOSEPH FRIEDLANDER, Complainant-Appellant, vs. LOUIS GRAND, Defendant-Appellee.	}	On Appeal From the Court of Chancery Petition of Appeal.	10
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To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes: 20

The petition of Joseph Friedlander, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by an interlocutory decree or order made in the Court of Chancery by his Honor, Luther A. Campbell, Chancellor of the State of New Jersey, bearing date April 9th, 1934, in a certain cause in said Court of Chancery wherein the said Joseph Friedlander was complainant and the said Louis Grand was the defendant, in this respect, to wit, that the said interlocutory decree or order adjudges that the order to show cause issued by this Court on April 4, 1934, and the restraint therein imposed upon said defendant, Louis Grand, be and the same is hereby dismissed and dissolved with costs to be taxed in favor of the defendant, Louis Grand. 30 40

Petition of Appeal

2. The petitioner appeals from the said decree or order of the Chancellor, which decrees, as aforesaid, upon the ground that the dismissal of the restraint is erroneous in that:

- 10 (a) The complainant-appellant sustained and will sustain an irreparable injury;
- (b) That the complainant-appellant has no adequate remedy in a court of law;
- (c) That the circumstances of the case disclose that the relief at law is inadequate and the injuries are and will be irreparable;
- 20 (d) That the preliminary injunction should have continued in order to maintain the status quo of the property during the pendency of this suit;
- (e) That the proof disclosed that the complainant-appellant's rights were and have been irreparably jeopardized;
- (f) That the injunction should have continued to prevent a multiplicity of suits at law;
- 30 (g) That the court of equity should have continued the injunction to protect and enforce the complainant-appellant's legal rights in the property;
- (h) That the dismissal of the injunction acted as a forfeiture of the complainant-appellant's property, and equity ought not to favor forfeitures;
- 40 (i) That the injunction should have continued

Petition of Appeal

to enjoin the defendant-appellee, the landlord, from interfering with the complainant-appellant's possession of the property pending the hearing of the cause;

Petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper. 10

JOSEPH FRIEDLANDER,
Petitioner.

HARRY KAY,
Solicitor for and of Counsel
with Complainant-Appellant. 20

30

40

Affidavit of Service.

Filed April 12, 1934.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

 JOSEPH FRIEDLANDER,
Complainant-Appellant,

vs.

 LOUIS GRAND,
Defendant-Appellee.

 On Appeal
From Court
of Chancery.
Affidavit.

20

 State of New Jersey,
Essex County, ss:

Harry Kay, being duly sworn according to law, upon his oath deposes and says:

30

On April 9, 1934, I did serve upon Miss Edna Murphy, Secretary in the office of Daniel Loeb at his office 75 Montgomery Street, Jersey City, N. J., at 11 A. M., a true copy of a notice of appeal and petition of appeal in this cause, by handing the same to her, reading it to her and requesting her to give it to her employer in said office, Daniel Loeb, the solicitor of defendant.

HARRY KAY.

Sworn and subscribed to before me this
11th day of April, 1934.

Samuel S. Ferster,
A Master in Chancery of N. J.

40

Petition to Secure Restraint.

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

} On Petition.

To the Honorable Luther A. Campbell, Chan-
cellor of the State of New Jersey:

20

The petition of Joseph Friedlander of the
City of Newark and County of Essex and State
of New Jersey, respectfully shows:

1. Petitioner is the complainant in the above-
entitled cause.

2. On April 9th, 1934, an interlocutory decree
or order was made in this cause dissolving a
preliminary restraint heretofore ordered, from
which decree or order petitioner has appealed
to the Court of Errors and Appeals.

30

3. If the restraint is not continued in force
until the final hearing of this cause by this
Court, it will be impossible to restore petitioner
to his former position, in case that he is suc-
cessful in his appeal, for the following reasons:

(a) Petitioner is a tenant of the defendant,
Louis Grand, having possession of a portion of
a store premises located at 188 Newark Avenue,
Jersey City, New Jersey, which tenancy com-

40

Petition to Secure Restraint

menced during September, 1932, and which tenancy is a yearly one, to terminate March 31, 1935;

10 (b) On April 3, 1934, the defendant did forcibly eject your petitioner from the said store premises and did forcibly remove the petitioner's assets;

20 (c) By reason of the aforesaid, your petitioner, who conducted the business of buying and selling of gold, repairing of watches and purchase and sale of jewelry, has been unable to secure another location in said vicinity; has lost the good will of said business and has been irreparably damaged, more particularly referred to in the complaint and affidavits filed, upon behalf of the petitioner in this cause;

(d) The bill of complaint filed by your petitioner prays for specific performance of the lease between the petitioner and the defendant and for an injunction preventing the ousting of your petitioner from said store premises;

30 (e) Petitioner is unable to move his business to any other location in that vicinity and will be irreparably injured by the dissolution of the restraint.

Wherefore, petitioner prays that this Court may order the restraint to continue until the final hearing of the cause, or until the disposition of the petitioner's appeal by the Court of Errors and Appeals.

40

JOSEPH FRIEDLANDER,
Petitioner.

HARRY KAY,
with Complainant & Petitioner.
Solicitor for and of Counsel

Affidavit of Complainant on Petition.

Filed April 10, 1934.

State of New Jersey,
County of Essex, ss:

Joseph Friedlander, being duly sworn, according to law, upon his oath, deposes and says: 10

1. I am the complainant in the above-entitled cause.

2. On April 9th, 1934, an interlocutory decree or order was made in this cause dissolving a preliminary restraint heretofore ordered, from which decree or order I have appealed to the Court of Errors and Appeals. 20

3. If the restraint is not continued in force until the final hearing of this cause by this Court, it will be impossible to restore me to my former position. In case that I am successful in my appeal, for the following reasons:

(a) I am a tenant of the defendant, Louis Grand, having possession of a portion of a store premises located at 188 Newark Avenue, Jersey City, New Jersey, which tenancy commenced during September, 1932, and which tenancy is a yearly one, to terminate March 31, 1935; 30

(b) On April 3, 1934, the defendant did forcibly eject me from the said store premises and did forcibly remove my assets;

(c) By reason of the aforesaid, I, who conducted the business of buying and selling of gold, repairing of watches and purchase and sale of jewelry, have been unable to secure another location in said vicinity; have lost the good will of said business and have been ir- 40

Affidavit of Complainant on Petition

reparably damaged, more particularly referred to in the complaint and affidavits filed upon my behalf in this cause;

10 (d) The bill of complaint filed by me prays for specific performance of the lease between me and the defendant and for an injunction preventing the ousting of me from said store premises;

(e) I am unable to move my business to any other location in that vicinity and will be irreparably injured by the dissolution of the restraint.

JOSEPH FRIEDLANDER.

20

Sworn and subscribed to before me
this 9th day of April, 1934.

Jacob Kasten,
An Attorney at Law of N. J.

30

40

Affidavit of Albert Knapp.

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

On Bill, etc.,
Affidavit.

State of New Jersey,

County of Hudson, ss:

20

Albert Knapp, of full age, being duly sworn according to law, upon his oath deposes and says:

During February, 1934, Mr. Joseph Friedlander requested me to obtain a store and window space for him in the vicinity of Newark Avenue, Jersey City. I endeavored to obtain a store located next to the Wonder Store on Newark Avenue, which is owned by one of my relatives, but the same could not be had because the Duco Enamel Company had just rented same. I also endeavored to secure a space concession for Mr. Friedlander in the Wonder Store that is located on Newark Avenue, near Barrow Street, Jersey City, N. J., which is also controlled by my relatives, but this space was not available for all the Wonder Store Concessions were completely rented.

30

40

ALBERT KNAPP, D. D. S.

Sworn and subscribed to before me
this 9th day of April, 1934.

James L. Hogan,

A Notary Public of N. J.

Affidavit of William Lighter.

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

10 Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Affidavit.

20 State of New Jersey,
County of Hudson, ss:

William Lighter, being duly sworn according to law, upon his oath deposes and says:

30 I am a watchmaker employed by Joseph Friedlander. On February 6, 7 and 8, 1934, I accompanied Mr. Friedlander along Newark Avenue and in the vicinity of the store now occupied by Mr. Friedlander for the purpose of securing another store in that locality. We endeavored to locate space at the Wonder Store located on Newark Avenue near Barrow Street, but were unable to obtain it, because the store closed evenings at 6 o'clock. We were unable to locate any other store which would give us a portion of its store and window for the old gold business. We could not secure any store that would give window space.

WILLIAM LIGHTER.

40 Sworn and subscribed to before me, this
5th day of April, 1934.

James W. Hogan,
A Notary Public of N. J.

Affidavit of Sidney Berger.

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Affidavit.

10

State of New Jersey,
County of Hudson, ss:

20

Sidney Berger, being duly sworn according to law, upon his oath deposes and says:

I tried to secure a location for Mr. Friedlander prior to March 5, 1934, and I went into several stores, located on Newark Avenue for such purpose. The owner of these stores refused to allow the old gold business to be established in their stores, as they have no space. There are no stores available on Newark Avenue except within eight to ten blocks from the vicinity of Newark Avenue, and then the rentals in such stores average from One Hundred Twenty-five (\$125.00) Dollars and up. The store occupied by Mr. Friedlander at present at 188 Newark Avenue is in the heart of Jersey City and is a very valuable one. I know that Mr. Friedlander has created an extensive business and good will in said store since September, 1932.

30

40

SIDNEY BERGER.

Sworn and subscribed to before me
this 9th day of April, 1934.

Alfred Casen,

An Attorney at Law of N. J.

Affidavit of Joseph Friedlander.

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

10 Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

}

On Bill, &c.
Affidavit.

20 State of New Jersey,
County of Hudson, ss:

Joseph Friedlander, being duly sworn according to law, upon his oath deposes and says:

30 During the month of February, 1934, I spent a considerable period of time looking for other stores located in the vicinity of Newark Avenue, Jersey City, knowing that my lease would be up on April 1, 1934. It was impossible to secure any store in that vicinity which would

40 rent a portion of the store and window space to me. It was also impossible to secure a complete store for that purpose, for the stores on Newark Avenue and its immediate vicinity are rented. There are no vacancies in stores in that vicinity. My business would be seriously damaged, should I be compelled to move out of the vicinity of Newark Avenue, Jersey City. I have hundreds of watches and much jewelry and repairs belonging to customers who know my present location and it will be impossible for me to move, without serious damage to my business. I also have intrusted to me pledges.

JOSEPH FRIEDLANDER.

Sworn and subscribed to before me, this
5th day of April, 1934.

Bernard Pearlman,
An Attorney at Law of N. J.

Affidavit of J. Harmon Ford.

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

On Bill, &c.
Affidavit.

10

State of New Jersey,
County of Hudson, ss:

20

J. Harmon Ford, being duly sworn according to law, upon his oath deposes and says:

I am an attorney at law of New Jersey, and Mr. Joseph Friedlander is my client. At his request and upon his behalf, I endeavored to obtain a location for him on Newark Avenue and in the vicinity of his present location. I was almost successful in securing a store around the corner from Mr. Friedlander's store, but a beer tavern leased the store at an exorbitant rental. There are no other vacancies that I know of on Newark Avenue, Jersey City, or in the vicinity suitable for watch repairing, jewelry and old gold buying.

30

J. HARMON FORD.

Sworn and subscribed to before me, this
9th day of April, 1934.

40

Bernard Pearlman,
An Attorney at Law of N. J.

**Chancellor's Order to Show Cause and Re-
straint.**

Filed April 10, 1934.

IN CHANCERY OF NEW JERSEY.

10

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

}

On Petition.
Order to
Show Cause.

20

A petition having been filed herein by the complainant, Joseph Friedlander, alleging that he has appealed to the Court of Errors and Appeals from an interlocutory decree or order in this cause on April 9th, 1934, and that unless the restraint is continued in force, it will be impossible to restore him to his former position, in case he is successful in his appeal, it is on this 10th day of April, 1934, on motion of Harry Kay, solicitor for and of counsel with complainant,

30

Ordered, that the defendant, Louis Grand, show cause before the Honorable John H. Backes, one of the Vice-Chancellors, on the 24th day of April, 1934, at 10:30 o'clock in the forenoon or as soon thereafter as counsel may be heard, at the Chancery Chambers, State House, Trenton, New Jersey, why the restraint should not continue in force pending the determination of said appeal by the Court of Errors and Appeals, and it is further

40

Chancellor's Order to Show Cause and Restraint

Ordered, that until the further order of this court, said defendant, his agents, servants and employees, be and they hereby are enjoined and restrained from interfering with the possession of the said store premises by the said complainant, and it is further

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Ordered, that a true but uncertified copy of the petition, affidavits and order, which may be certified to as such by the solicitor for the complainant, be served upon said defendant within 5 days of the date hereof.

LUTHER A. CAMPBELL,
C.

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Chancellor's Letter.

Filed April 10, 1934.

COURT OF CHANCERY OF NEW JERSEY

LUTHER A. CAMPBELL

Chancellor

10

Chambers
1 Exchange Place
Jersey City

April,
Tenth,
Nineteen Thirty-four.

Harry Kay, Esq.,
31 Clinton Street
Newark, N. J.

Joseph Friedlander vs. Louis Grand.

20

My dear Sir:

Today, at Trenton, I signed for you an order to show cause in the above matter returnable before Vice Chancellor Backes on the twenty-fourth of this month. After further considering the matter I concluded that it was improper to have made such an order and I have, therefore, revoked it.

30 As this matter was heard by Vice Chancellor Bigelow the proper practice is for you to make application to him for the stay that you desire. If he should refuse to grant your application then you should make application to the Court of Errors and Appeals.

I have directed Mr. Murphy, my secretary at my Jersey City chambers, to bring this to your attention by telephone. Whether he has been able to reach you or not I do not know and for that
40 reason I am writing you in this manner.

Under any circumstances you will not pursue nor act under the order which I signed today.

Very truly yours,

LUTHER A. CAMPBELL.

**V. C. Bigelow's Restraint Permitting Sign of
Removal.**

Filed April 11, 1934.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH FRIEDLANDER,
Complainant,
and

LOUIS GRAND,
Defendant.

10

On Petition
Order

It appearing to the Court that the complainant, Joseph Friedlander, has appealed to the Court of Errors and Appeals from an interlocutory decree or order in this cause bearing date of April 9, 1934, and that unless the restraint is continued in force, it will be impossible to restore him to his former position, in case he is successful in his appeal, it is on this 11th day of April, 1934, on motion of Harry Kay, solicitor for and of counsel with complainant,

20

Ordered, that the defendant, his agents, servants, and employees be and they hereby are enjoined and restrained for two months from interfering with a sign or notice, not more than one foot square, announcing complainant's removal, which complainant may put in the window of the store premises. This restraint shall not prejudice any application for a stay addressed to the Court of Errors and Appeals.

30

Ordered that a true but uncertified copy of this order, which may be certified to as such by the solicitor for the complainant, be served upon said defendant, or his solicitor, Daniel Loeb, within three (3) days of the date hereof.

40

LUTHER A. CAMPBELL,
C.

Respectfully advised:

J. O. BIGELOW,

V. C.

Notice of Argument on Motion for Restraint.

Filed April 21, 1934.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10	JOSEPH FRIEDLANDER, Complainant-Appellant, vs. LOUIS GRAND, Defendant-Appellee.	On Appeal From Court of Chancery on Motion. Notice of Argument. Sat below: Campbell, C. Bigelow, V. C.
20		

To Louis Grand, Defendant-Appellee, or
Daniel Loeb, his Solicitor:

Take Notice That the complainant-appellant will apply to the Court of Errors and Appeals at the State House, at Trenton, New Jersey, on May 3, 1934, at the hour of eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order to continue in force the *ad interim* restraint or injunction until the disposition of the appellant's appeal by the Court of Errors and Appeals upon the ground that the same is necessary and essential for the protection and the preservation of the subject-matter of the appeal and the exigencies of the situation and cause make it vitally necessary. Otherwise the subject-matter will be destroyed and impaired.

Take Further Notice That the argument for the granting of such order and restraint shall be based upon the pleadings and affidavits hereto annexed and made a part hereof and upon the brief herewith submitted and oral argument to be made before said court on the date of hearing.

Respectfully,

HARRY KAY,
Solicitor for and of Counsel
with Complainant-Appellant.

Notice of Hearing on Appeal From Interlocutory Decree.

Filed April 21, 1934.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

<p style="text-align: center;">JOSEPH FRIEDLANDER, Complainant-Appellant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">LOUIS GRAND, Defendant-Appellee.</p>	}	<p>On Appeal From Court of Chancery. Notice of Hearing.</p>
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To Louis Grand, Defendant-Appellee, or
Daniel Loeb, Solicitor for the
Defendant-Appellee:

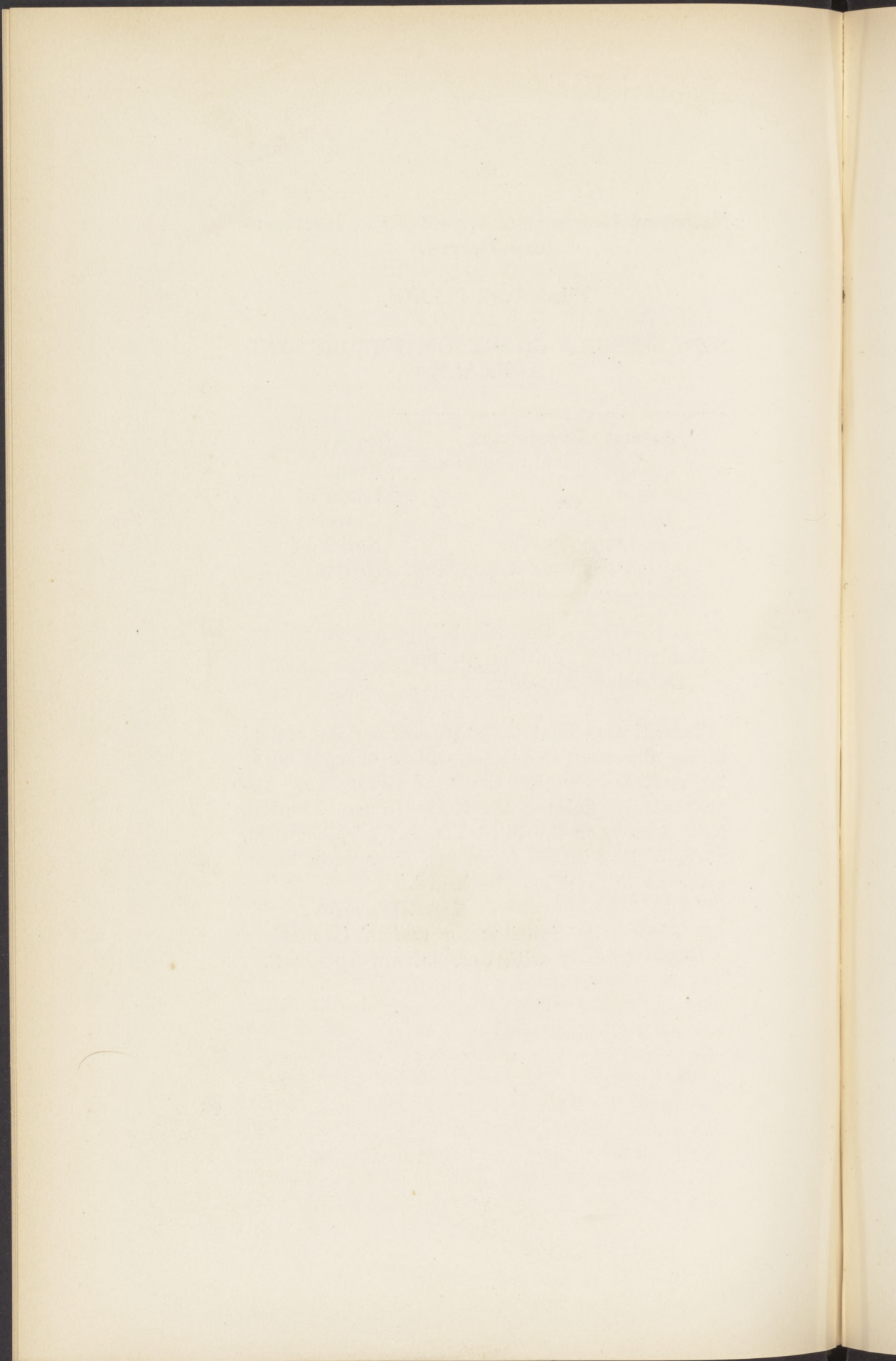
20

Take Notice That the argument for the appeal in the above entitled cause will be brought on at the next term of the Court of Errors and Appeals, to be held at the State House, Trenton, New Jersey, on the third Tuesday of May, 1934, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

30

HARRY KAY,
Solicitor for and of Counsel
with Complainant-Appellant.

40



112MAY.T.1934

New Jersey Court of Errors and Appeals

Between:	} On Bill, &c. } Appeal } From } Interlocu- } tory Decree } in Chan- } cery, on } Motion } on Appeal.
JOSEPH FRIEDLANDER, Complainant-Appellant,	
and	
LOUIS GRAND, Defendant-Appellee.	

APPELLANT'S AMENDED BRIEF.

Statement of the Case:

I.

1. Complainant-appellant filed a bill in the Court of Chancery seeking the specific performance of an oral lease for the term of one year; the restoration of the complainant's property and a restraint against the possessory acts of the defendant-appellee.

2. During the month of September, 1932, the appellee demised to the appellant a certain portion of store premises located at 188 Newark Avenue, Jersey City, New Jersey, which tenancy was to terminate on April 1, 1933.

3. On April 1, 1933, the appellee demised the same portion of store premises to the appellant for an additional term of one year, to terminate April 1, 1934.

4. On March 5, 1934, the appellee demised to the appellant the said premises for another additional term of one year, the rental being Forty (\$40.00) Dollars per month and the terms and conditions being the same as the prior terms and conditions, of the prior two rentals.

5. The bill sets forth the above and recites that the appellant, in conformity to the letting, paid the rental and is not in default.

6. The appellant occupied the said portion of the store premises for the main purpose of buying and selling of gold and the purchase and sale of jewelry.

7. Appellant spent considerable sums of monies in advertisements and in divers ways gained a large following and maintained a business which necessitated the employment of several employees and brought a net income per week of Two Hundred (\$200.00) Dollars or more from said business.

8. The business of buying and selling of old gold established by the appellant in said portion of store premises since September, 1932, has steadily grown, and the appellant's location at 188 Newark Avenue, Jersey City, New Jersey, is now known as the "old gold center of said city" and appellant has a great amount of transient trade and a large following of permanent trade. Appellant is unable to estimate in dollars and cents the value of the goodwill of said business, which goodwill has been accomplished by the appellant's manner of honest dealing in said business.

9. The appellee occupies the other portion of

the same store premises and both parties have the use of the one entrance and exit.

10. On April 2, 1934, appellant was in peaceable possession and engaged in business without any interference.

11. On April 3, 1934, the appellee forcibly removed the fixtures and chattels of the appellant to the top floor of said premises and threatened to, and did attempt to eject the appellant from his portion of store premises.

12. By reason of the appellee's acts and the appellant's irreparable loss and irremediable injuries to his leasehold tenancy and business, and by virtue of the threatened acts of the appellee, the appellant, being in jeopardy of losing his established business and goodwill, and being without adequate remedy in a law court, immediately filed the above bill in the Court of Chancery, praying for the specific performance of the lease agreement; a restraint; a writ of assistance; a writ of restitution; and a restraint *pendente lite*.

13. The bill was properly verified by the appellant and by the following disinterested witnesses: Sidney Berger, William Arnowitz, Saadi Arnowitz, Molly Kusnit, Ida Kuraner, and by leave of the Court, the following affidavits were permitted to be filed as part of said bill, to wit, the reply affidavit of the appellant, and the supplemental affidavits of Sidney Berger, William Lighter, Albert Knapp, J. Harmon Ford and Joseph Friedlander.

14. On April 4, 1934, the Honorable Vice Chancellor Bigelow issued an order for an *ad interim* restraint, enjoining the appellee from

interfering with the complainant's possession to the said store premises, which restraint was returnable on April 9, 1934.

15. On April 4, 1934, upon the service of the aforesaid order, Mr. Daniel Loeb, solicitor for the defendant, spoke to the Honorable Vice Chancellor Bigelow, who set the return date for April 5, 1934.

16. On April 5, 1934, argument was had upon the aforesaid order, and the Honorable Vice Chancellor Bigelow filed an opinion in letter form, all of which is stated in the state of case, in which the Honorable Vice Chancellor says:

“Complainant occupies part of a small store in Jersey City, and it is the possession of this store which he desires protected. He does not show that there are no other stores in the neighborhood available, or that he cannot move his business to another store without serious loss.”

16a. On April 6, 1934, by leave of Vice Chancellor Bigelow first obtained, the supplemental affidavits of Sidney Berger, William Lighter, Albert Knapp, J. Harmon Ford and Joseph Friedlander were filed for the purpose of being considered with the bill of complaint, upon which the order to show cause issued. Said affidavits were filed prior to the order complained of.

17. On April 9, 1934, the Honorable Vice Chancellor Bigelow issued an order dissolving the restraint.

18. On April 9, 1934, the appellant, being aggrieved, filed a notice of appeal in the Court of Chancery, appealing from the aforesaid inter-

locutory order of decree, to the Court of Errors and Appeals.

19. On April 9, 1934, the appellant filed a petition of appeal in the Court of Errors and Appeals, setting forth that the appellant is aggrieved by the dissolution of the restraint in that by virtue of the dissolution, the appellant has sustained and will sustain an irreparable injury; that the appellant has no adequate remedy at law; that the *ad interim* restraint should have continued to maintain and protect the *status quo* of the property during the pendency of the suit; that the *ad interim* restraint should have continued to prevent a multiplicity of law actions; and that the dismissal of the restraint acted as a forfeiture of the appellant's property.

20. On April 10, 1934, by virtue of Section 113 of the Chancery Act, 1 C. S. 452, which recites that:

“No appeal taken from an order or decree dissolving an injunction shall have the effect to continue in force the injunction unless the Chancellor or the Court of Errors and Appeals, for a good cause, shall direct such continuance in whole or in part, and prescribed the terms thereof,”

the appellant presented a duly verified petition supported by proper affidavits, to the Chancellor, for an order in accordance with Section 113, continuing the restraint until the appeal could be properly determined by the Court of Errors and Appeals. The necessity of such application is self-evident, for should the appellant be successful on the appeal from the interlocutory

decree, his term of tenancy of one year will have run; he will have been out of possession during the entire period of said term, and any decision made by the Court will prove to be merely academic and will avail the appellant nothing. The appellant offered to the Chancellor a deposit of one year's rent in advance; the payment of all counsel fees and costs, as a condition of the granting of said relief.

21. On April 10, 1934, the Honorable Luther A. Campbell, Chancellor, issued an order restraining the appellee from interfering with the possession of the appellant's store premises and made the same returnable before the Honorable John H. Backes, Vice Chancellor, on April 24, 1934.

22. On April 10, 1934, the solicitor of the appellee, Mr. Daniel Loeb, informed counsel for the appellant that he had telephoned the Honorable Chancellor, and that the Honorable Chancellor had orally rescinded said order.

23. On April 10, 1934, counsel for the appellant communicated with the Chancellor at his home and was informed that a letter dated April 10, 1934, had been sent to counsel, suggesting that application be made to Vice Chancellor Bigelow for the continued restraint. The Chancellor further informed counsel that his Honor did not wish to be in the position of overriding his Vice Chancellor and that application should be made to the Court of Errors and Appeals for the restraint and application should be made to the Vice Chancellor for a temporary restraint pending the argument before the Court of Errors and Appeals.

24. On April 11, 1934, appellant applied to the Vice Chancellor for a partial restraint pending appellant's application to the Court of Errors and Appeals for a continued restraint. On April 11, 1934, the Honorable Vice Chancellor Bigelow issued an order to the effect that the appellee be restrained for two months from interfering with a sign or notice, not more than one foot square, announcing appellant's removal, which appellant may put in the window of the store premises, and that this restraint should not prejudice the appellant's application to the Court of Errors and Appeals.

25. Appellant is still out of possession of the said store premises and his damages are irreparable, unestimable, and his injuries are irremediable.

Argument.

II.

1. Upon the filing of the verified bill and on the new return date, the Honorable Vice Chancellor Bigelow said in effect to the appellant:

“Why don't you move to another location?”

“Why can't you get other stores in that vicinity?”

“Why will your good will be injured?”

2. The Honorable Vice Chancellor was informed that no other store or portion of store could be obtained in said vicinity; that the old gold business was a business dealing in a present commodity; and the injuries to the good will

thereof could not be estimated in money damages; that the bill was filed for specific performance and for restraint enjoining the appellee from interfering with the appellant's possession. The appellant came into a court of equity for the purpose of having equity done, and the Honorable Vice Chancellor entered an order suggesting a removal.

3. The application to the Chancellor was made because of the vital necessity for an immediate restraint, and by reason of the failure of the Vice Chancellor to exercise discretion in granting a restraint. The Chancellor granted a restraint, as heretofore stated, and orally rescinded the same, being under the opinion that the application in the first instance, by virtue of Section 113, should have been made to the Vice Chancellor hearing the cause, as the arm of the Court of Chancery. This was the very harm that the Legislature sought to prevent. This is the exact situation which the Legislature sought to alleviate. This is the reason for Section 113 of the Chancery Act. It is absurd to make an application to a court for a partial restraint upon a dissolution by the self-same court of a restraint under the same facts and circumstances. For that reason, the Legislature enacted that in such case, the aggrieved appellant may apply either to the Chancellor or to the Court of Errors and Appeals, for immediate relief pending an appeal.

4. The appellant makes the same offer to the Court of Errors and Appeals as he made to the Court of Chancery, for he is willing to deposit into this Court sufficient security as

a basis of obtaining the restraint pending the appeal or pending the final hearing on this bill.

5. Should the Court of Chancery decide in the final hearing that the appellant sustained his proof of the facts, the final decree of the Court of Chancery will be academic and of no avail to the appellant, for by the time the same is rendered, the appellant's term will have expired and the appellant will have suffered an irreparable loss which a court of law could not adequately compensate.

6. It is stated to the Court of Errors and Appeals that the Chancellor's order is made without prejudice; that the Vice Chancellor's order is made without prejudice. If there ever was a case entitled to a restraint, this is that case.

7. Appellant requests leave to argue this application orally before this Court and assigns the above as his reasons therefor.

Authorities:**III.****POINT I.**

The preliminary injunction should have continued in order to maintain the *status quo* of the property during the pendency of the suit.

“The object of a preliminary injunction is to prevent some threatened, irreparable injury pending a full and deliberate investigation of the case upon the merits.”

Thompson v. Paterson, 9 N. J. E. 624.

It is thus readily seen that the granting of an *ad interim* restraint is not an adjudication upon the merits and is made solely to maintain the *status quo* of the property. The Court undoubtedly acted unwisely in failing to exercise its discretion in granting a preliminary restraint and the failure to so exercise its discretion was due to a mistaken conception of the facts of the case. In the analysis whether to grant an interlocutory injunction or not, it should be remembered that:

“The sole object is to preserve the subject in controversy in its then condition.”

High on Injunctions, Section 4.

The Court does not undertake to determine in advance the final disposition of the meritorious contest. The purpose of the writ, as distinguished from a perpetual injunction, is that it shall preserve the *status quo* pending final hearing.

POINT II.

The proof disclosed that the appellant's rights were irreparably jeopardized.

“Irreparable damage does not mean that the complainant must show that all his financial transactions will be ruined unless the relief sought is granted. It means that, with reference to the particular right or property referred to in the bill of complaint, the complainant will be irreparably deprived of it unless the relief sought is granted.” *Oliphant v. Richman*, 59 Atl. Rep. 241, 67 N. J. E. 280.

In the above named case, the defendant's counsel advanced the argument that the complainant could get his ice somewhere else on the pond than in the neighborhood of the defendant's icehouse. The Court of Chancery decided that the owner is not called upon to submit to losing a portion of his property because he can conveniently or profitably use other portions.

The argument of the Vice Chancellor in the appellant's cause in which the Vice Chancellor stated to the appellant:

“Why can't you obtain another location in the vicinity?”

comes within the category advanced by the defendant's counsel in the above stated case. The proposition is, if the appellant has an absolute right to enjoy his store premises, a Court of Equity ought to abide by its own rule of doing equity and insist that such right be enjoyed and not declare to such suitor:

“Get another store elsewhere”; “Go elsewhere”;

or words to that effect.

Vice Chancellor Grey in the *Oliphant* case decided that the complainant in that case, to get any remedy at all, would be compelled to bring many damage suits, and to avoid vexatious and repeated suits, the whole dispute should be settled in one litigation and a restraint issued.

POINT III.

The circumstances in this case disclose that the relief at law is inadequate and the injuries are and will be irreparable.

It is self-evident that the ejection of the appellant from his portion of the store premises and the destruction of his business has caused an irreparable injury to the appellant's business. *In re: Scherman v. Stern*, 117 Atl. Rep. 631, 93 N. J. E. 626, it was held that:

“An injury is irreparable when it cannot be adequately compensated in damages or when there exists no certain pecuniary standard for the measurement of the damages. Inadequacy of damages as a compensation may be due to the nature of the injury itself or the nature of the right or property injured. Acts destroying a complainant's business, custom, and profits do an irreparable injury and authorize the issuance of a preliminary injunction.”

The Vice Chancellor asked of the appellant:

“How will your good will be injured?”

It may be stated that the item of good will is an intangible one. Its value cannot be estimated. Its injury cannot be compensated. Every business has a good will, more or less, and the destruction of the business, destroys such good will; it destroys the earnings of the business; present profits and future profits, which cannot readily be estimated. How can any court of law estimate the future profits of a business in order to compensate for injuries to the good will thereof? For that reason, the remedy at law is entirely inadequate and by the same token, the Court of Errors and Appeals should do equity and grant the restraint, particularly when the appellant is willing to deposit sufficient security and more particularly when the granting of such restraint will not be of any inconvenience to the appellee.

POINT IV.

The injunction should have continued to prevent a multiplicity of suits at law.

By reason of the denial of the restraint, the appellant has been put to the expense and inconvenience of instituting the following suits at law:

- (a) An action of forcible entry and detainer;
- (b) An action in ejectment in the Supreme Court;
- (c) An action in trespass in the Supreme Court;

(d) An action based upon a conspiracy of the appellee and several other individuals to undermine and destroy the appellant's business.

Most of these actions will not be determined for a period of one to two years hence by reason of the congested calendars of the law courts, and should the appellant be successful, the appellant will not be adequately compensated for the destruction to his business.

A Court of Equity should have issued a restraint and continued such restraint until the final hearing of the bill, to avoid such a multiplicity of suits.

“Notwithstanding the denial in the answer of the facts upon which the equity of the bill rests, the court should have retained the injunction until the final hearing.” *Snyder v. Seeman*, 41 N. J. E. 405.

POINT V.

The injunction should have continued to enjoin the appellee from interfering with the appellant's possession of the property pending the hearing of the cause.

It is a general rule that when the material facts relied upon in support of the complainant's claim for relief are denied under oath, a preliminary restraint ordinarily will be denied, but exceptions exist to the general rule. The Honorable Vice Chancellor Leaming, *in re: Caplan v. Palace Realty Co.*, 110 Atl. Rep. 584 (no equity citation), wherein the complainant, in his

bill sought a restraint against a threatened ejectment proceedings by a landlord, stated that:

“In my judgment, this case falls within the exceptions. For, unless the restraint is awarded, the objects of the bill will wholly be defeated. Complainant will in that event be ejected from possession, and her business destroyed. In such circumstances, the complainant’s possession should be protected until final hearing on terms of security against possible loss of the landlord.”

The Honorable Vice Chancellor in said cause caused the complainant to enter into a bond as security.

The appellant in this cause offered to deposit any amount as security, which offer the Court should have accepted and granted the restraint. Whatever decree may be made at final hearing, the appellee will be adequately protected; while on the other hand, should the appellant succeed, the final decree will be just an empty gesture.

POINT VI.

The appellant has no adequate remedy in a court of law.

The appellant’s case is peculiarly proper for the preventative remedy by injunction. In considering the question of what is an adequate remedy at law, the courts take into consideration, not only the multiplicity of suits, but the pecuniary responsibility of the defendant, for it is better to prevent his injury than to give

damages for its infliction. The policy of the law should be to prevent a man from breaking his contract, rather than to leave the injured party to his damages at law. The object of the appellant's bill is for specific performance of a contract. The suits brought by the appellant show that the legal remedies at law are inadequate and cannot meet the ends of justice. The Court of Equity can give more substantial relief than can be obtained in the numerous actions at law, more fully stated by Prof. Pomeroy in his Treatise on Equity, Secs. 243-245. In the class of cases of nuisance, waste, continued trespass and the like, it follows as a necessary consequence that equity should give relief in order to avoid the obligation of bringing in a number of actions against the same wrongdoer all growing out of the one wrongful act and involving similar questions of fact and law (*Feigenspan v. Nizolek*, 65 Atl. Rep. 703, 71 N. J. E. 382).

POINT VII.

The dismissal of the injunction acted as a forfeiture of the appellant's property.

The above ground of appeal requires no citation. The facts and circumstances of the case speak for themselves. As heretofore stated, should the appellant be successful in the final hearing of the cause, the Court of Chancery will have to perform a vain thing and as a rule, equity never does a vain thing, for it will have to grant the decree giving the appellant a writ of restitution and reinvesting said appellant with

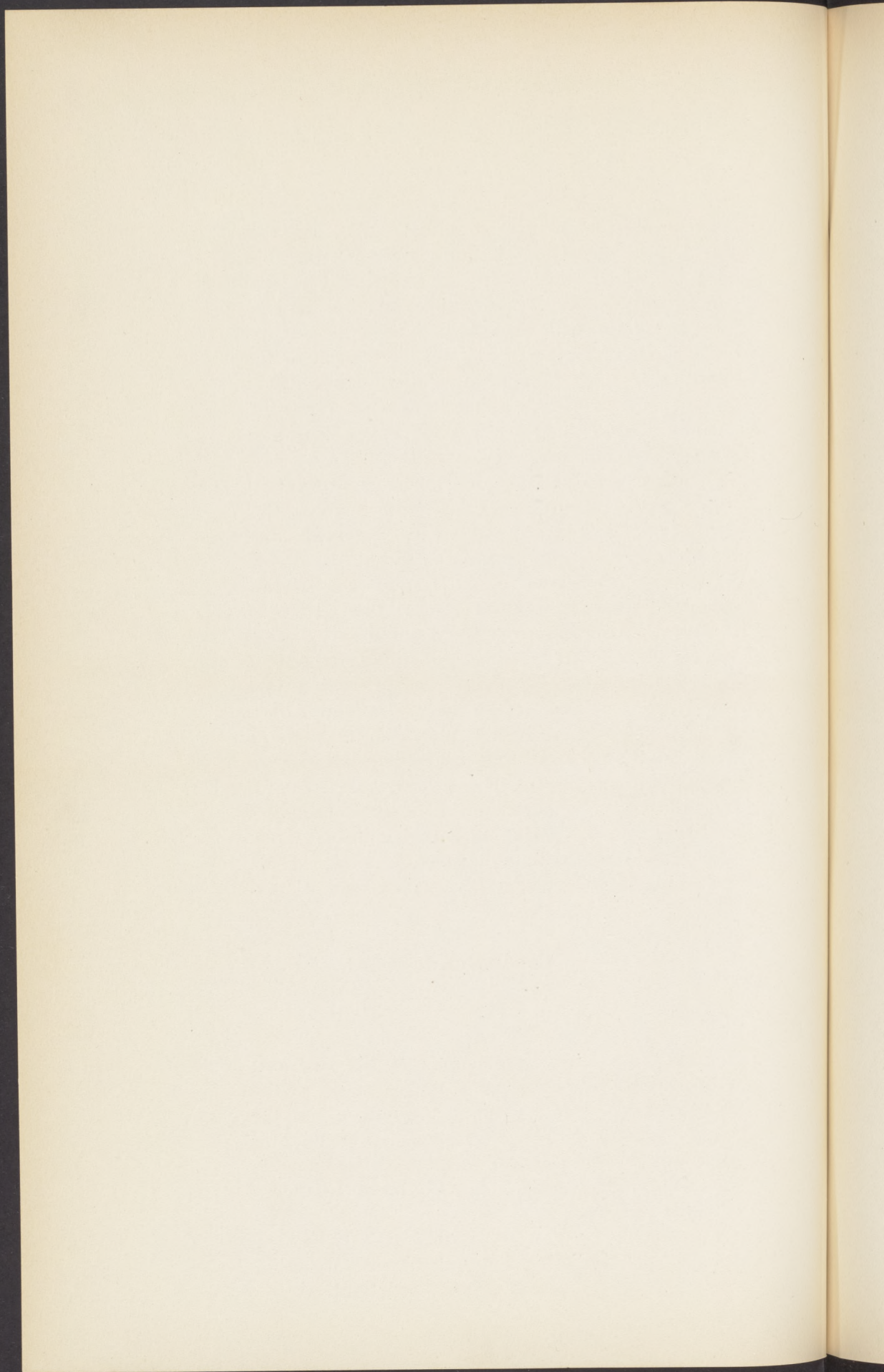
the possession of said premises. The unfortunate part of this is that the final hearing will not be heard until after the appellant's term and tenancy have terminated. In the interim, the appellant will have been out of possession and will not have enjoyed the possession of his premises, so that under any circumstances, the Court of Chancery, in dissolving the restraint, actually said to the appellant: "We are now forfeiting your property even though as a rule of practice and equity, we inform suitors that our Court of Equity does not favor forfeitures." This rule has been repeatedly asserted, and particularly in *re: Sparks v. Lorentowicz*, 146 Atl. Rep. 667, 105 N. J. E. 18, and in a similar case between lessor and lessee, the Court of Chancery said that it will "assume jurisdiction where there is a remedy at law, if the remedy at law be inadequate," in order to prevent unjust forfeitures. Furthermore, in *re McGann v. La-Grecque Co., Inc.*, 107 Atl. Rep. 175, 90 N. J. E. 526, the Court of Chancery interfered to prevent the dispossession of a tenant, notwithstanding that the landlord had already obtained a judgment of possession in a district court upon the ground that although there be a remedy in an action in trespass, at law, such remedy would be wholly inadequate.

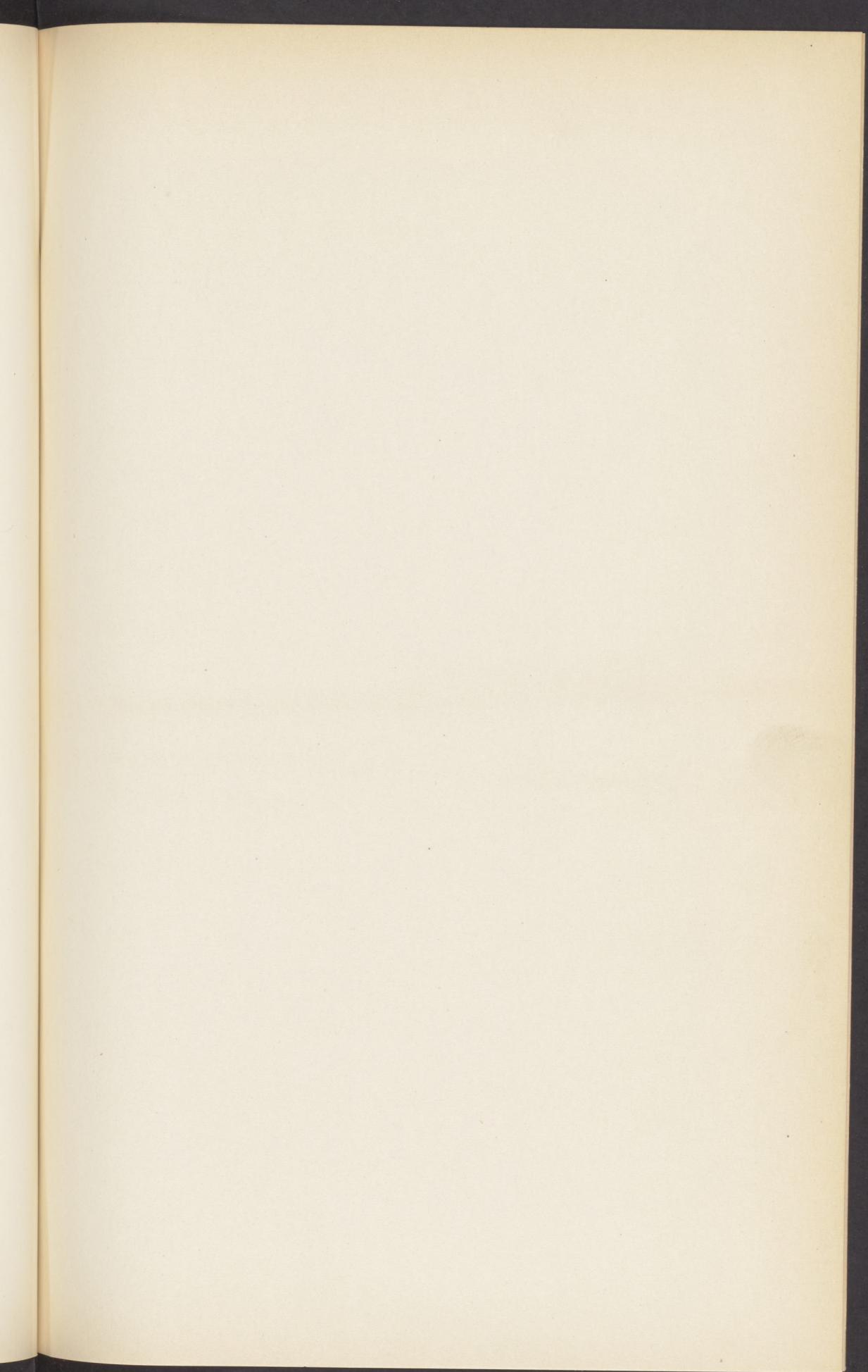
Conclusion:

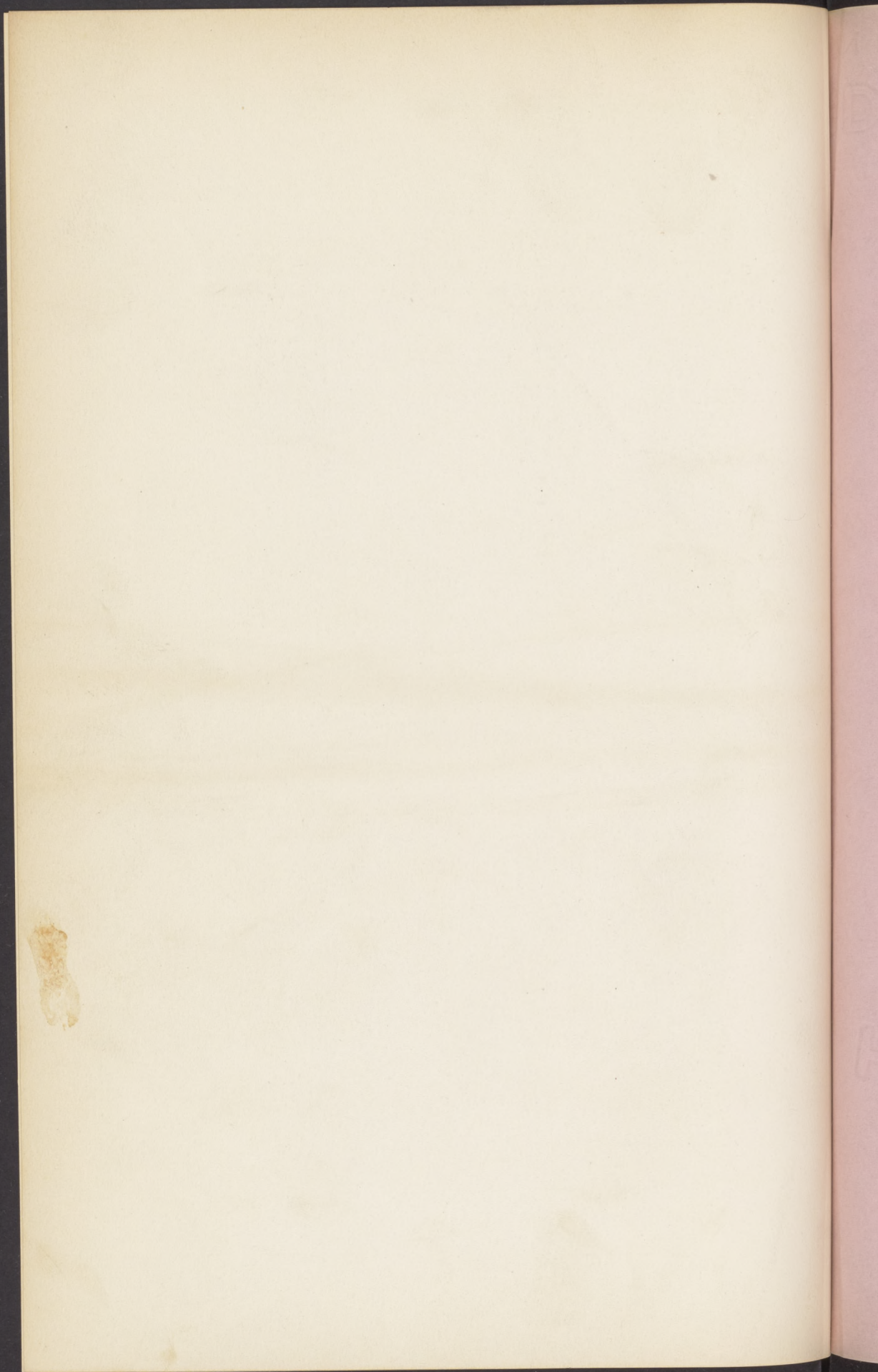
IV.

It is respectfully concluded that the restraint is essential, vital and necessary to preserve the appellant's property pending the outcome of the equity action, and it is respectfully urged that this Court continue the restraint and that the interlocutory decree of the Court of Chancery should be set aside.

HARRY KAY,
Solicitor for and of counsel with
the complainant-appellant.







100%
BOND

MADE IN U.S.A.

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MILWAUKEE, WIS.