The Essex Press, Printers, Newark, New Jersey

New Jersey Court of Errors and Appeals

Between GIOVANNA DE ROGATIS, *Complainant-Respondent,* *and* MICHAEL A. MEGARO, *et als.*, *Defendants-Appellants.*	*On Appeal from Chancery.*

Brief of Wm. Greenfield of Counsel for Complainant-Respondent.

History of Litigation Between the Parties.

In order to understand the entire proceedings, counsel believes that it would not be amiss at this time, to give a brief history of the troubles between the respective parties in this cause.

In February, 1911, the complainant-respondent, Giovanna De Rogatis, was the owner of certain land and premises known as No. 53 Garside street, Newark, New Jersey, on which there were two certain mortgages, one held by the Howard Savings Institution for $3,000, and a second mortgage held by Milton Bierman for the sum of $1,000. The complainant-respondent was at that time dangerously ill and confined to her bed, and by reason of her illness there was default made in the payment of the interest on the second mortgage held by Milton Bierman. Foreclosure proceedings were instituted on the same, and decree was entered, in fact, the property was advertised for sale by the Sheriff, under said decree. Through friends, the complainant-respondent obtained a loan of $5,000 on the property to pay off the

mortgage of the Howard Savings Institution and the Milton Bierman second mortgage. Just then, Michael A. Megaro and his wife appeared and offered to purchase the property, and entered into an agreement to purchase the same for $6,600. The agreement was entered into upon the express condition and with the express provision, that Michael A. Megaro should pay off the Milton Bierman mortgage which was then being foreclosed, and the complainant-respondent was to accept a second mortgage secured by bond, of the said Michael A. Megaro and wife, on the said property, for $1,400, as part of the purchase price. Shortly after the agreement was entered into, the said Michael A. Megaro and Mary Megaro, his wife, came to the house of the complainant-respondent, to pass title, she still being confined to her bed, she then not being represented by counsel. At that time, the direct question was put by the respondent, to Michael A. Megaro and Mary Megaro, his wife, whether or not they had paid off the Milton Bierman mortgage, otherwise she would not convey the property and would not accept the second mortgage by reason of the fact that if the property was sold in the foreclosure proceedings instituted on the Milton Bierman mortgage, her security would be no good.

There was evidence in the trial of the cause in the Essex County Circuit Court, that there was an absolute assurance and positive statement made by the defendants, Michael A. Megaro and Mary Megaro, his wife, that the Milton Bierman mortgage was paid and cleared, and on that condition, the property was conveyed by the complainant-respondent, and she accepted a second mortgage for $1,400 and a promissory note for $175 as part of the purchase price.

Thereafter, when the interest became due on her said mortgage, and she demanded payment, the Megaros informed the complainant-respondent that her mortgage was no good; that the property was sold on the Milton Bierman mortgage and thereby her mortgage was void. Suit for fraud was instituted in the Essex County Circuit Court by the complainant-respondent, by reason of misrepresentations and deceit; two trials were had thereon, the first verdict having been set aside, and the second trial again resulted in a verdict in favor of the complainant-respondent and against the defendants, Michael A. Megaro and Mary Megaro, his wife, for the sum of $1,986.84 and costs.

That at the time of the sale of the said property by the sheriff, in the foreclosure proceedings instituted on the Milton Bierman mortgage, the property was purchased by the Megaros in the name of Vincenzo Ianneci, a cousin of the Megaros, the appellant in this cause (the Megaros not appealing from the decree of the Vice-Chancellor).

Vincenzo Ianneci,, the appellant in this cause, being a cousin of the Megaros, testified before the Vice-Chancellor that he did not know whether he owned the property or not, when an attack was made that the property was held by said Ianneci in trust for the said Michael A. Megaro and wife. (See testimony of Ianneci at page 60 of the printed state of the case.)

The appellant contends that he has advanced certain sums of money, anywhere from $300 to $700 to Michael A. Megaro, but he is not sure which sum it was.

After hearing all the testimony, the Vice-Chancellor decided that the complainant-re-

spondent was entitled to relief and a decree was accordingly entered, declaring the judgments held by the complainant-respondent against the defendants, Michael A. Megaro and Mary Megaro, his wife, as liens on the property prior and paramount to the lien or claim, if any, of the said Vincenzo Ianneci (see decree entered in the Chancery Court on December 27, 1917, at page 76 of the printed state of the case).

Point One.

The first question is, is Vincenzo Ianneci entitled to a lien paramount to the complainant, for any of his moneys which he claims to have advanced, as the appellant at this time, contends on the appeal (but not contended at the time of the trial of this cause). At the time of the trial, and in his answer filed to the bill of complaint, he claimed title to the property by virtue of the sheriff's sale made to him.

That at the time of the sale of the property held by the sheriff of Essex county, Michael A. Megaro purchased the property, goes beyond saying, but he had to use a "dummy" and the dummy is Vincenzo Ianneci, the appellant in this cause, as is shown by his testimony at page 31 of the printed state of the case.

> "Q Now, Mr. Megaro, was there any judgment against you at that time? A Yes, about $35."

Counsel also desires to call the Court's attention to his testimony at page 41 of the printed state of the case.

> "Q When was that verbal lease entered into? A Ever since Ianneci has taken possession.

Q For what period? A Indefinite period, I suppose, as long as I can stay here.

Q Now, is it not a fact, that this property really belongs to you? A It will belong to me when I pay Ianneci his claim.

Q How much? A Amounting to *about* seven hundred dollars and interest.

Q You borrowed that money, did you? A Yes, sir.

(*By the Court.*) Q What do you mean by that? I do not quite understand that. You say it will belong to you when you have paid Ianneci's claim. A Yes.

(*By the Court.*) Q What do you mean by that? A Your Honor, Ianneci has loaned me.

(*By the Court.*) Q Explain what you mean by that? A He has loaned me money time and again; he has given me money when I had to take an agreement from Schechner, when Bierman foreclosed the first time, and he had given me $300, just about that time, about six years ago, and $200 for the agreement and he has given me about $200 since to help pay part of the alterations that were made in the house; so it amounts to $700 and interest, which I have never paid him any interest on it since the time he has given me this money."

And if the property belongs to Ianneci, as he claims in his answer and contends in his testimony at the trial before the Vice-Chancellor, how can the Court reconcile that with the testimony of Michael A. Megaro, as appears on page 42 of the printed state of the case.

"Q You put in the alterations there, did you not? A I did.

Q At your expense? A Yes, sir; I had to make it presentable to live there."

If Ianneci was the owner of the property, why did Megaro expend the sum of $1,500 for the alterations? That is not explained either by Ianneci or by Megaro.

See testimony of Samuel Schechner, pages 27 and 28 inclusive, of the printed state of the case.

After the delivery of the deed by Giovanna De Rogatis to Michael Megaro and Mary Megaro, and after the Megaros executed the bond and mortgage, he was advised by an expert, that if he would let the sale in the foreclosure proceedings then pending on the Bierman mortgage, go through, why the De Rogatis mortgage would become worthless. Megaro, himself, testified to that. See page 43 of the printed state of case.

On cross examination at page 44, he testifies:

"Q Who was the so-called expert from which you took your advice, Mr. Megaro? A I don't know.

Q When did you receive such advice? A Mr. Schechner gave me the information."

That being exactly the contention of the complainant-respondent, that the Megaros deceived Mrs. De Rogatis about having paid the Bierman mortgage, and entered into a scheme with someone to defraud the complainant out of her money, namely, the $1,400 bond and mortgage and the note amounting to the further sum of $175, by having the sheriff proceed with the sale and thereby cutting off the complainant's mortgage.

That Ianneci was a party to the scheme goes beyond saying, by reason of the fact that the property was taken in his name, and he came into court and filed an answer claiming owner-

ship, but not a lien for his alleged moneys advanced to Megaro in the purchase of the property. Hence if the Court was satisfied beyond a doubt, as is shown by the opinion of the learned Vice-Chancellor (see opinion on page 75 of the printed state of the case), that the complainant was entitled to relief and that there was connivance entered into by Megaro, Ianneci and some other person, to defraud the complainant-respondent. And if Ianneci, is a party to the crime in the attempt to deceive and defraud the complainant-respondent, then, assuming for the sake of the argument, that he did advance some money to the said Megaros, can he be heard or can he get relief in the Court of Equity?

The contention of counsel for the complainant-respondent, is that he can not, as is well expressed by Chief Justice Green, in the case of *Wooden* v. *Shotwell,* 23 N. J. L., page 465, wherein he says at page 473:

> "The general maxim is undisputed, in *pari delicto, potior est conditio possidentis.* And the maxim is an effectual bar to the claim of a party who comes into a court of justice to enforce an illegal contract, or who asks the aid of a Court to sustain a claim growing out of an illegal transaction."

In other words, the party who is *participes criminis* cannot get relief in the Court of Equity. But counsel for the appellant, cites the case of *Demarest* v. *Terhune,* 18 N. J. Eq., page 532. Here, counsel for the respondent, desires to call the Court's attention to the opinion of Chief Justice Beasley, in that case, where he says at page 540:

> "A deed, fraudulent in fact, is absolutely void, and is not permitted to stand as a

security for any purpose of reimbursement or indemnity."

If Ianneci entered into a scheme, and there can be no doubt that he did (as he testified that he does not know whether he owns the property or not), with the said Megaro and some other person, can he now claim relief in this court, after admitting that he is not the owner of the property, but that he loaned and advanced money to the said Megaro, so that if he cannot get title to the property, can he get relief by attempting to establish a prior lien to the claim of the complainant-respondent in this cause? It seems to me that would be against all equity and good conscience to let such a fraudulent scheme prevail.

Point Two.

The next question is, is the evidence conclusive and of such character that the Court can permit the said Ianneci to have a lien on the said property, prior to the liens of the complainant-respondent, for his alleged moneys advanced?

The $300 alleged to have been advanced, as testified to by the said Megaro, for the purchase of the property, was found to have been given, as the Vice-Chancellor found in his opinion (see page 75 of the printed state of the case), where he says:

> "The only tangible evidence that he produced is a check for $300, which bears date nearly a year and a half before the property was acquired from Schechner."

If Megaro is mistaken, or in plain language, if he perjured himself in his testimony by

stating that he took this money for the purpose of buying this property, then I say that the learned Vice-Chancellor was correct in his findings, that there can be no reasonable doubt, that Ianneci holds the property in trust for Megaro and that Ianneci is not entitled to any lien on the property, prior to the judgment liens of the said complainant-respondent.

Ianneci attempted to claim title to the property and defeat the judgments of the said complainant entirely. (See testimony of Samuel Schechner at page 22 of the printed state of the case), where he says:

> "Q Who did you give the money to, to make up the arrears (at that time they were in arrears with the payments to the Building and Loan Association and Schechner came to their assistance). A I gave it to Mr. Megaro.
>
> Q Did you have any dealings with Mr. Ianneci? A No.

At page 23, he further testifies:

> "Q Who did you help out with this money? A Mr. Michael Megaro.
>
> Q Did you ever notify, or have any business transactions relative to the collection of interest with Ianneci? A No, sir.
>
> Q Do you know where Ianneci lives? A No, sir."

At page 24:

Counsel asked the witness whether Megaro gave any reason for taking title in Ianneci's name, and his answer was:

> "A He gave some reason why, but the property was sold to Megaro. I don't know, maybe Mr. Megaro claimed he had a judgment or something like it."

Ianneci took so much interest in the property, that at no time did he appear at the trials of the different causes unless he was subpoenaed. (See testimony of Michael A. Megaro at page 33 of the printed state of the case).

The property could not be taken in the name of Michael A. Megaro or his wife, Mary Megaro, because the complainant-respondent had recovered a judgment against the Megaros, on the note given by them as part of the purchase money of the said property, as admitted by the said Michael Megaro, at page 32, bottom, of the printed state of the case. He also admitted that he had other judgments and notes outstanding; that there was a judgment outstanding against him to the extent of $800 recovered by M. A. Mullen, which was paid off in installments, and that there was a judgment recovered by De Rogatis against him for $175 before the title was taken in Ianneci's name. All these facts go to show beyond any doubt, that Ianneci is merely the "dummy" and not the owner of the property; that Ianneci never advanced any money to Megaro to buy this property, and if he did, it was long before the purchase was ever thought of, in fact, as is shown by the record of the check for $300, it was three and one-half years before the property was purchased. (See testimony of Antonio Caprio, at page 73 to 75 inclusive, of the printed state of the case.)

Counsel for the appellant, depends upon the case of *Holmes* v. *Stout et al.*, 4 N. J. Eq., page 492 in his contention that Ianneci should be entitled to a lien for his moneys alleged to have been advanced, paramount and prior to the judgment liens of the complainant-respondent.

On this, I desire to call the Court's attention to the fact, that nowheres in the entire testimony

does it appear, that Ianneci was ever in possession or that he ever had anything to do with the property, but on the contrary, it is shown that he continued to live, as heretofore, in a stable when he was the holder of a valuable piece of property worth from $8,500 to $9,500, but still he continues to sleep in the stable where the horses of Megaro were kept.

See testimony of Vincenzo Ianneci at pages 51 and 52 inclusive, of the printed state of the case.

In the case of *Holmes* v. *Stout, supra,* the Chancellor says, at page 494:

> "If Lane, then, were a *bona fide* purchaser *without notice,* the sale to the defendants by the administrators may be good, even though the defendants had knowledge and notice of all the circumstances of the case. For it is well settled, as a general rule, *that the grantee of a bona fide purchaser without notice,* is not to be charged with the incumbrances or fraud, although directly known to him before he acquired his title; otherwise the loss must be visited upon the *bona fide* purchaser, as he would thereby be obliged to keep the property, or to sell it at such price as would enable his purchaser to discharge the incumbrance or purge the fraud."

Is Vincenzo Ianneci a *bona fide* purchaser without notice, to this fraudulent scheme? The contention of counsel is that Ianneci is a party to the fraud; that he did not advance any money for the purchase of this particular property, and that the title was taken in his name by reason of the fact that Mary Megaro was on the bond, and that both Michael and Mary Megaro signed the note to the complainant, on which

judgment was recovered; that there were other judgments open of record against the Megaros, and therefore he did not dare to take the property in his name. Hence the husband and wife sought to defeat the obligation to the respondent, and took title to the property in their cousin's name, and after the attempt to establish absolute title has failed, he takes another turn by claiming that Ianneci advanced the money to buy the property and therefore has a prior claim on the said property, to the claim of the complainant-respondent. In that, I submit, they have utterly failed.

Counsel considers that Ianneci is a party to the fraud, and therefore his testimony should not be considered at all, as is well established in the case of *Atwood* v. *Impson,* 20 N. J. Eq., page 150. At page 156, Chancellor Zabriskie, in his opinion says:

> "Both are parties to the alleged fraud. The complainant has both interest and reputation at stake, impelling him to deny it. Impson, by testifying to it, fixes himself with infamy, and impairs his credit as a witness. It would be dangerous to allow a solemn written instrument to be overthrown for fraud, by the unsupported evidence of a participator in that fraud. Criminal courts seldom permit a defendant to be convicted by the unsupported evidence of a participator in the crime."

Hence, if Ianneci is a participator to the fraud, and there can be no doubt as to that, it seems to me that he has no standing in court and his claim should be denied.

It is true that in the case of the *Merchants National Bank of Newton* v. *Northrup,* 22 N. J. Eq., page 60, the Chancellor says:

> "It is not sufficient for the purpose of setting aside a conveyance like this, that the object of the grantor was fraudulent; *it must be shown that the grantee participated in that intent, or had knowledge of the object of the grantor, or of such facts as should have put him upon inquiry as to that object.*"

Can this Court say that Ianneci did not know it, that he did not participate in the fraud with Megaro, when he did not invest any money; did not attend to the sale; did not attend to any business transactions at Mr. Hood's office, nor with Mr. Schechner. All the transactions and dealings, moneys paid to Hood and moneys loaned by Mr. Schechner, were with Megaro, and Ianneci only coming to the office merely to execute a fraudulent scheme, engineered, planned and carried out by Michael and Mary Megaro and some other person unknown to the complainant-respondent in this cause, but some advice given by some person to defraud and cut out the complainant's claim, as testified to by Mr. Megaro himself, at page 43 of the printed state of the case, folio 30.

In the case of *Hagerman* v. *Buchanan,* 45 N. J. Eq., page 292, at page 299, Justice Reed says:

> "A conclusive presumption against a voluntary conveyance should be raised in respect to those debts which it may be presumed were incurred upon the faith of the ownership of the property conveyed."

In this particular instance a debt was incurred by the Megaros, to Giovanna De Rogatis, the

complainant, in the transaction of the property in question; the conveyance by the complainant of the property in question; the execution of the bond and mortgage by the defendants to the complainant; the execution of the note by the defendants to the complainant, as part of the purchase money of the property in question. And on the extraordinary advice of someone, the defendants permitted the property to be sold under the Bierman mortgage, to wipe out the claims of the complainant-respondent.

Again I ask the Court, does the testimony or conduct of Ianneci justify the Court to believe that he is the owner of the property? See his testimony at page 60 of the printed state of the case.

Ianneci cannot take advantage of his own fraudulent schemes, connived with and participated in with the Megaros, they having been defeated in their attempt to establish absolute ownership of the said property, they make a last attempt to establish a prior and paramount lien on the said property, to the lien of the complainant. This has been decided in the Court of Errors and Appeals in the case of *Lund* v. *Equitable Life Assurance Society,* 31 N. J. Eq., page 335, on the advisory opinion of the Hon. Amzi Dodd, special master, who says at page 356:

> "The question in this case is the single one, whether the deed from the sheriff is valid against the complainants. I think that the sale under which the deed was given was a fraudulent scheme for getting control of the mortgaged premises, without the knowledge of the complainants and other creditors, and to their prejudice."

Precisely the same situation as in the case at bar, where there was also a sheriff's sale, but the sale was had by reason of the scheme entered into on the advice of an expert, as testified to by Megaro himself (see pages 43 to 44 inclusive of the printed state of the case).

It seems to me that it would be imposing upon this Court to take up any further time and go into any further facts and authorities, as it is shown conclusively, that Ianneci is merely the tool of Megaro, and that Megaro's attempt ought not prevail, to defeat an honest claim established in the Court of Law as well as in the Court of Equity, by using Ianneci as an instrument to his fraudulent schemes.

It is, therefore, respectfully submitted that the appeal should be dismissed and costs allowed to the respondent.

WM. GREENFIELD,
Solicitor for and of Counsel
with Complainant-Respondent.

INDEX

WITNESSES

Complainant's:

EXHIBITS

New Jersey Court of Errors and Appeals

Amended Bill of Complaint

(Filed June 4, 1917)

IN CHANCERY OF NEW JERSEY

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

Complaining shows unto your Honor, that your Oratrix Giovanna De Rogatis, of the City of Newark, County of Essex and State of New Jersey, on or before the First day of March Nineteen Hundred and Eleven, and to the day and date of the filing of this bill, Michael Megaro and Mary Megaro, were seized and possessed of in fee simple, of certain tracts and parcels of land and premises hereinafter mentioned and described, lying and being in the City of Newark, County of Essex and State of New Jersey, that is to say:

BEGINNING on the Easterly side of Garside Street at a point distant one hundred feet Southerly from the Southeasterly corner of said Garside Street and Sixth Avenue; thence running Southerly along said Garside Street twenty-five feet; thence Easterly and parallel with Sixth Avenue one hundred feet to the rear line of Lot No. 254 on Map hereinafter mentioned; thence

Northerly along side rear line of Lot No. 254 and parallel to Garside Street twenty-five feet to the rear line of Lot Number 249 on said Map; thence Westerly along said rear line of said lot and other lots fronting on Sixth Avenue one hundred feet to the place of BEGINNING.

2. And your oratrix further shows unto your Honor, that the said land and premises herein described was conveyed by your oratrix unto Mary Megaro and Michael Megaro for a valuable consideration therefore, subject to a mortgage of Three Thousand Dollars held by the Howard Savings Institution, and which said land and premises were then subject to a second mortgage of One Thousand Dollars originally held by Milton Bierman, which at the time of the conveyance by your oratrix unto the said Mary Megaro and Michael A. Megaro, the said Milton Bierman mortgage was then in the process of foreclosure, and the said Mary Megaro and Michael A. Megaro agreed to pay the said mortgage and release the said land and premises of the decree of foreclosure and the lien of the said mortgage; and to secure part of the purchase money on the foregoing land and premises, amounting to Fourteen Hundred Dollars, the said Mary Megaro and Michael A. Megaro were to and did execute a mortgage on the foregoing land and premises secured by bond of Mary Megaro in the penal sum of Twenty-eight Hundred Dollars unto your oratrix, payable within one year from the day and date thereof, with interest at the rate of five per cent per annum, payable semi-annually, and also a promissory note in the sum of One Hun-

dred Seventy-five Dollars on which note judgment was recovered in the East Orange District Court, of the County of Essex in and for the State of New Jersey, and of which judgment your oratrix is the holder of to the day and date hereof and remains unsatisfied. 10

3. And your oratrix further shows unto your Honor, that your oratrix relying upon the said representations and statements that the said Milton Bierman mortgage was paid and satisfied, which statements and representations were false and fraudulent, conveyed the foregoing land and premises, unto the said Mary Megaro and your oratrix accepted the said Fourteen Hundred Dollar mortgage, but your oratrix avers that for the purpose of cheating and defrauding your 20 oratrix, the said Milton Bierman was permitted to proceed and did foreclose the said mortgage, and the property sold, thereby your oratrix lost her lien of her mortgage on the foregoing land and premises, in the sum of Fourteen Hundred Dollars and that the said property was then and there purchased and now held by one, Vincenzo Ianneci, who is a cousin of the said Mary Megaro and Michael A. Megaro, and which said property is now held by Vincenzo Ianneci in trust and for 30 the use and benefit of the said Mary Megaro and Michael A. Megaro.

4. Your oratrix further shows unto your Honor, that when your oratrix became aware that her lien on the foregoing land and premises was lost, by reason of the sale under the foreclosure, your oratrix instituted suit in the Essex County Circuit Court for the recovery of the said sum of 40

Fourteen Hundred Dollars with interest, being then due and owing unto your oratrix as part of the consideration for the conveyance of the foregoing land and premises unto the said Mary Megaro, and that on the 15th day of May, 1917, your oratrix recovered a judgment in the sum of Nineteen Hundred and Eighty-six Dollars and eighty-four cents as damages against the said Mary Megaro and Michael A. Megaro, in an action of fraud and deceit, and thereby caused to be issued out of the Circuit Court, of the County of Essex, in and for the State of New Jersey, for the purpose of obtaining satisfaction of said judgment, writ of *fieri facias de bonis et terris,* tested on the 18th day of May, 1917 and which writ having been first duly recorded and delivered to the Sheriff of the County of Essex, to whom it was directed, and thereby he was commanded that of the goods and chattels of the said Mary Megaro and Michael A. Megaro, he should cause to be made the said sums of moneys so as aforesaid adjudged to your oratrix and that if sufficient goods and chattels of the said Mary Megaro and Michael A. Megaro, in his County he could not find, to make said moneys, he should cause the whole or the residue, as the case may be, of the said money to be made of the lands, hereditaments, tenements and real estate whereof the said Mary Megaro and Michael A. Megaro were seized on or about the date aforesaid or any time afterwards, in whose hands whatsoever the same might be; and that the said Sheriff should have those moneys before our said Circuit Court of the County of Essex in and for the State of New Jersey, to render unto your oratrix in satisfaction of the

said judgment and that he should have, then and there said writ.

5. And your oratrix further shows unto your Honor, that on or about the 11th day of April, 1912, a judgment for the sum of One Hundred and Seventy-five Dollars besides costs, was recovered in the East Orange District Court against the said Mary Megaro and Michael A. Megaro, on the note given by the said Mary Megaro and Michael A. Megaro, unto your oratrix, to secure part of the purchase money on the foregoing land and premises, which judgment the said defendants have not paid, to the day and date hereof, and which judgment was docketed in the Court of Common Pleas of the County of Essex in and for the State of New Jersey; and that your oratrix caused to be issued thereon out of the Essex County Court of Common Pleas, writ of *fieri facias de bonis et terris* tested on or about the 12th day of April, 1912, and which writ having been first duly recorded was delivered to the Sheriff of the County of Essex to whom it was directed, and thereby he was commanded that of the goods and chattels of the said Mary Megaro and Michael A. Megaro, he should cause to be made the said sums of moneys so as aforesaid adjudged to your oratrix and that if sufficient goods and chattels of the said Mary Megaro and Michael A. Megaro, in his County he could not find, to make said moneys, he should cause the whole or the residue, as the case may be, of the said money to be made of the lands, hereditaments, tenements and real estate whereof the said Mary Megaro and Michael A. Megaro were

seized on or about the date aforesaid or any time afterwards, in whose hands whatsoever the same might be and that the said Sheriff should have those moneys before our said Court of Common Pleas of the County of Essex, on the said judgment recovered in the East Orange District Court, and docketed in the Essex County Court of Common Pleas to render unto your oratrix in satisfaction of the said judgment and that he should have then and there said writ.

6. And your oratrix further shows unto your Honor, that Ralph B. Schmidt, Sheriff of the County of Essex, to whom the said writs of Executions first and secondary above mentioned were directed and delivered, being unable to find any goods and chattels of the said Mary Megaro and Michael A. Megaro, whereon to levy and make the said judgment, levied upon the lands and premises hereinbefore described, as the property of the said Mary Megaro and Michael A. Megaro as by the said writs of Executions or the records thereof, in the office of the Court of Common Pleas and the Circuit Court of the County of Essex aforesaid, reference being thereunto had, will more fully and at large appear.

7. And your oratrix further shows, that the said Mary Megaro and Michael A. Megaro, being so possessed of the said land and premises which are the value of about Twelve Thousand Dollars and upwards, afterwards, at or about the Sixth day of November, 1911, and the Thirtieth day of December, 1913, by the connivance, confederacy and conspiracy, on the part of the said Mary Megaro, Michael A. Megaro and Vincenzo

Ianneci, in order to secure the said property for their own use and benefit and to protect it from the debts and claims of your oratrix and divers other creditors from collecting their said debts, combining and confederating with the said Vincenzo Ianneci, and with persons whose names are at present unknown to your oratrix, but whose names when discovered, she prays, may be inserted herein, with proper words to charge them as defendants hereto, and contriving to defraud your oratrix and divers other creditors, under a pretended foreclosure, sold the said premises through John F. Monahan, Sheriff of the County of Essex, to one, Vincenzo Ianneci, by deed dated December 30, 1913 and recorded in the Register's Office of Essex County on May 22, 1914, in Book L 54 of Deeds for said County on page 221, and by deed from Samuel Schechner to the said Vincenzo Ianneci, bearing date November 6, 1911 and recorded in the Register's Office of Essex County on November 16, 1911, in Book Q 50 of Deeds for said County on page 23, which said sales or pretended sales to the said Vincenzo Ianneci, the pretended purchaser, was done for the purpose of and with intent to cheat and defraud your oratrix and divers other creditors, and with a fraudulent design on the part of the defendants herein named, all of which conveyances were made without any consideration whatever from the said Vincenzo Ianneci.

8. And your oratrix further shows unto your Honor, that the said land and premises above described is now standing in the name of Vincenzo Ianneci, but your oratrix expressly charges, that no consideration whatever was paid for any

of the conveyances or pretended conveyances as aforesaid, by Vincenzo Ianneci, and that the said Mary Megaro and Michael A. Megaro have always, occupied, held, possessed, enjoyed and received rents, issues and profits of the said land
10 and premises to all intents and purposes as before the foreclosures and purchases on the part of the said Mary Megaro and Michael A. Megaro, and your oratrix expressly charges that the said Vincenzo Ianneci holds said property in trust, for the use and benefit of the said Michael A. Megaro and Mary Megaro, his wife.

9. And your oratrix further shows that she has frequently and in a friendly manner applied to the said Mary Megaro and Michael A. Megaro to
20 pay the said judgments and to the said Vincenzo Ianneci to cancel the said fraudulent conveyances or pretended purchases by the said Vincenzo Ianneci, or to reconvey or cause to be reconveyed the said premises to the said Mary Megaro and Michael A. Megaro, so that it may be sold under the said executions, for the satisfaction of the said judgments, and a good and clear title given therefore to the purchaser thereof, as in equity and good conscience, they ought to have done,
30 and as your oratrix well hoped they would have done, but which they have wholly refused to do, and your oratrix expressly charges, that the said Vincenzo Ianneci is not the true *bona fide* holder of the said land and premises, but holds the same in trust and for the use and benefit of the said Mary Megaro and Michael A. Megaro, her husband.

In consideration whereof, and for as much as
40 your oratrix is remediless in the premises at the

common law, and cannot have adequate relief except by the aid of the Honorable Court:

To the end therefore, your oratrix prays that the said Michael A. Megaro and Mary Megaro, his wife and Vincenzo Ianneci, and their confederates when discovered, may, without oath (oath is hereby expressly waived) full, true and perfect answer make to all and singular the premises according to their knowledge, information, remembrances, and belief, and that they set forth and discover the real estate belonging to the said Mary Megaro and Michael A. Megaro, her husband, and fraudulently held by the said Vincenzo Ianneci, in fraud, do receive your oratrix and divers other creditors of the said Mary Megaro and Michael A. Megaro, as hereinbefore mentioned and specified, and what dispositions has been made of, or incumbrances put upon the same, fully and particularly and in whose possession the same real estate has been since the date aforesaid, and whether the same is encumbered, and if so, in what manner, in whose favor, by whom, and to what amount, and whether the said conveyances as before mentioned were made of the said real estate, when and by whom, the same was paid, and who has possessed and occupied the said premises, since the alleged or pretended sales and conveyances to the said Vincenzo Ianneci, and that the said defendants or some of them, may be decreed to pay to your oratrix the full amount due and owing to her upon the said judgments with interest, costs and execution fees accrued thereon, and that the said fraudulent conveyances and all other fraudulent conveyances and encumbrances made suffered or

created between the said defendants and affecting the said lands, may be set aside and declared null and void, and that the said lands may be sold free and clear and discharge of and from the said fraudulent deeds and other fraudulent deeds of
10 conveyances and encumbrances under the said Writs of Executions or otherwise, and the proceeds thereof, or such part of the same as may be necessary may be applied to the payment of your oratrix said judgments, and that your oratrix may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises consid-
20 ered to grant to your oratrix the State's writ of Subpoena, issuing out of and under the seal of this Honorable Court, directed to the said Mary Megaro, Michael A. Megaro, her husband, and Vincenzo Ianneci, therein and thereby commanding them and each of them at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide by and per-
30 form such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your oratrix will ever pray, etc.

WILLIAM GREENFIELD,
Solicitor for and of Counsel with Complainant.

Answer Of Michael A. Megaro And Mary Megaro

(Filed May 7, 1915)

The joint answer of the defendants, Michael A. Megaro and Mary Megaro, his wife. 10

1. Paragraphs 1 to 4 inclusive are admitted.

2. Paragraphs 6, 7 and 8 inclusive are denied.

3. It is admitted that an agreement in writing was entered into by Michael A. Megaro for the purchase of the land and premises mentioned in the bill, and that the statements of paragraph 5 are substantially true except that part relating to the foreclosure costs; these defendants say that the subject of a mortgage foreclosure was 20 not contained in the said agreement of sale and they insist that the complainant should not have the benefit of the provisions of said agreement, without proving the same, because it would be unjust at this time, after a lapse of four years, to permit the complainant to assert any rights thereunder; defendant maintain that they are also prejudiced by the loss of the agreement but deny that they ever had the complainant's copy of the same. 30

4. It is admitted that these defendants Quit Claimed to Samuel Scheckner the said land and premises.

5. They deny that the said land and premises were conveyed to the other defendant, Vincenzo Ianneci in trust. Wherefore defendants pray to be hence dismissed with costs. By way of cross bill 40

against the complainant, the said defendants say:

1. On May 19, 1902, Luigi De Rogatis, complainant's husband, purchased the said land and premises from Ursula Brogert, widow; on September 11, 1909, the same were mortgaged in the sum of $1,000 to Milton Bierman, the principal to be paid within three years. The mortgage contains the usual interest, tax and insurance default clauses and a stipulation that the mortgagor his heirs, executors, administrators and assigns will pay, on account of the principal the sum of $166.66 on March 11, 1910 and a similar amount on the 11th day of each and every September and March thereafter until the full principal sum of $1,000 is paid; and the mortgagor Luigi De Rogatis having failed to pay the first installment due on March 11, 1910, the said Bierman did on August 2, 1910, file his Bill of Complaint in this Honorable Court alleging such default and that by reason thereof, the whole amount of the principal sum of $1,000 became due and payable; that thereupon a subpoena with proper tickets was issued and duly served on all the necessary parties to the suit; on October 15, 1910, the said bill was taken as confessed; on January 14, 1911, Michael Sugrue, one of the Masters of this Honorable Court, filed his report in said cause which, among other things, shows that there was due to the said complainant Milton Bierman, for principal and interest on said mortgage the sum of $1,047.50; said report was in all things confirmed and a final decree made in the cause ordering the sale of the mortgaged premises; on January 28, 1911, an execution was issued

in said cause directing the Sheriff of the County of Essex to make the amount due to the said Milton Bierman, out of the said mortgaged lands and premises, with directions that the surplus money, if any, be paid in the court; and it was also ordered in said final decree that the defendants therein, including the complainant Giovanna De Rogatis, stand debarred and foreclosed forever from all rights and equity of redemption to the said mortgaged premises, when sold as aforesaid by virtue of the said decree; that on March 21, 1911, the said Sheriff sold the mortgaged premises to the said Milton Bierman for the sum of $1216.24, being an amount sufficient to cover the principal and interest on the Bierman mortgage with the costs and Sheriff's fees; that on April 6, 1911, an order confirming the said sale was made, and on April 25, 1911, the said Bierman having assigned his bid to one Samuel Scheckner, the said Sheriff did execute and deliver to the said Scheckner, a deed for the said premises, pursuant to the Statute and the directions contained in the said execution.

2. During the pendency of the said foreclosure proceedings, and prior to the delivery of the deed from the complainant Giovanna De Rogatis to the defendant, Mary Megaro, the said Luigi De Rogatis and his wife did by a certain deed of conveyance, dated July 20, 1910, sell the said land and premises to one Antonio Avallone, and said Avallone together with Filomena, his wife conveyed the same premises to Mary Megaro by deed dated March 1, 1911, recorded in Book K. 48 of deeds for Essex County on pages 403-405.

3. The defendants were not aware that the said

foreclosure proceedings had been instituted by the said Milton Bierman; that on the contrary the defendant Michael A. Megaro was assured by the complainant Giovanna De Rogatis, and her agents, that the interest on the said Bierman mortgage had been regularly paid; and more particularly the said complainant claimed that she had on November 26, 1910, paid the sum of $30 being interest on the principal sum of $1,000 for 6 months, but that at the time of passing title (March 6, 1911) the complainant did not have the receipt in her possession and pretended that the same had been mislaid, but could surely be found among her papers and documents; that on April 20, 1911, the defendant Michael A. Megaro discovered that there had been a Sheriff's sale and that immediately a *lis pendens* was filed in the Register's Office and a petition presented to this Honorable Court praying for an order making Mary Megaro a party deendant to the said foreclosure proceedings and asking for a re-opening of the said final decree and also for a re-sale of the said mortgaged premises; that immediately, notice of the filing of the said petition was given to the complainant Giovanna De Rogatis; that an order to show cause was issued by the Chancellor and served on the said Bierman and notice thereof given to the complainant and after several continuances, the said Bierman satisfied this Honorable Court that in as much as the party vitally interested in the matter, the complainant Giovanna De Rogatis did not appear to be interested in the matter, and these defendants were under the terms of the other agreement for the re-sale of the said property made by defendant Michael A. Megaro with the said Scheckner, and

referred to in the Bill of Complaint in this present cause the said order to show cause was accordingly, for the above reasons, discharged.

These defendants therefore pray:

(a) That the said complainant may answer this cross bill and each statement herein made without oath. 10

(b) That the bond and the mortgage to secure the payment of $1400 dated March 6, 1911, given by the defendant Mary Megaro to the complainant, may be decreed to have been unduly obtained and now fraudulently withheld and therefore, void and inoperative.

(c) That the judgment recovered in the District Court of East Orange for $180.23, being the principal and interest on the said note for $173.23, drawn by the defendants Michael A. Megaro and Mary Megaro, his wife to the order of the complainant, in part payment of the said lands and premises, and docketed in the Court of Common Pleas of the County of Essex, be also decreed to have been fraudulently and unduly obtained and therefore void and inoperative as against the defendants Michael A. Megaro and Mary Megaro, his wife. 20

(d) That the bond and mortgage be delivered up for cancellation. 30

(e) That the complainant pay back and that a decree be made herein for the return to defendant Mary Megaro of the sum of $800 being the amount of money received by the complainant Giovanna De Rogatis from the defendants, in part payment of the said lands and premises, with interest thereon from March 6, 1911.

And these defendants will ever pray, etc.

ANTHONY R. FINELLI,
Solicitor of Defendants. 40

Answer of Vincenzo Ianneci

(Filed May 7, 1915)

The answer of Vincenzo Ianneci.

1. That it is not true that the transfer of the tract of land and premises in said bill mentioned and described was made to him by collusion and in order to cheat, hinder, delay and defraud the complainant.

2. And this defendant further answering says that it is not true that he holds the legal title to the aforesaid lands and premises for the benefit of, or in trust for the other defendants Michael A. Megaro and Mary Megaro, his wife, but that he, this defendant bought the said property in settlement of a claim, and that he is holding, occupying, possessing, enjoying and receiving the rents and profits of the same and has always since the time he, this defendant, bought the said land and premises held, occupied, possessed, enjoyed and received the rents and profits of the same for his own absolute and exclusive use and benefit; and that the said Michael A. Megaro and Mary Megaro, his wife, have not any legal or equitable right, title or interest in the same or any part thereof.

ANTHONY R. FINELLI,
Solicitor of Defendants.

Testimony

IN CHANCERY OF NEW JERSEY

Between
GIOVANNA DEROGOTIS
Complainant,
and
MICHAEL A. MEGARO, *et als.*
Defendants.

10

BEFORE HIS HONOR VICE CHANCELLOR STEVENS.

Mr. William J. Greenfield, for complainant.
Mr. Anthony R. Finelli, for defendant.

20

TRANSCRIPT of shorthand report of the evidence given upon the trial of the above stated cause, on Tuesday, November 20, 1917, at Chancery Chambers, Newark, New Jersey.

SAMUEL SCHECHNER, sworn:

Direct-examination by Mr. Greenfield:

The Court: It is agreed by the counsel on both sides that all matters in controversy between the parties prior to the conveyance of the real estate mentioned in the bill on November 6, 1911, by Schechner to Ianneci have been settled by the prior adjudication of this Court and of the Circuit Court, and that the question now to be tried is the question whether or not when Schechner conveyed to Ianneci, Ianneci acquired an absolute title or only a title which he held in trust

30

40

for Mary and Michael Megaro, and that the issue now to be tried involves the question whether or not there is not a resulting trust of Mary Megaro and her husband by reason of the fact that when Schechner conveyed to Ianneci the consideration
10 money came from them or one of them.

Mr. Greenfield: On December 30, 1913, there was a second foreclosure of a mortgage, and the property was sold by the sheriff of Essex County on that date, by deed dated December 30, 1913, to James Ianneci, for $6,125.

The Court: That was sold under what?

Mr. Greenfield: Under a building and loan mortgage.

The Court: Put upon the property by whom?

20 Mr. Greenfield: By Mr. Schechner, for $5,000, to the Guarantee Building & Loan Association, and the record title is now in James Ianneci, and the question now is whether the title is held in trust for Michael and Mary Megaro.

Mr. Finelli: I have no statement of fact to make but I want to make an objection. I want to know whether Mr. Greenfield says the trust was the result of the arrangement of November 6, 1911, or the result of the transaction of Decem-
30 ber 30, 1913?

The Court: That is to say, whether the money furnished, or said to have been furnished by Mary Megaro and her husband was so furnished when Schechner conveyed to Ianneci or was so furnished when the sheriff conveyed to Ianneci. Is that the question you want to put to Mr. Greenfield?

Mr. Finelli: Yes.

40 Mr. Greenfield: I say it is a resulting trust

right from the time Schechner commenced to convey to Ianneci up to the present time.

Q. What is your business? A. Real estate and insurance.

Q. You have been in the real estate for how long? A. About fourteen or fifteen years. 10

Q. Do you know Mr. Michael Megaro? A. Yes, sir.

Q. You have had some business dealings with him? A. Yes.

Q. What business did you have with him? A. Dealings in reference to the property on Garside Street.

Q. What property is that, can you describe it? A. Yes; it is on Garside Street, 53 Garside Street. 20

Q. What business did you have with him relative to that property? A. I sold him that property.

Q. What do you mean, you sold him that property? A. Well, at the time when that foreclosure was, that time, the first time the property was foreclosed. When I bought the property from Bierman I called to the house to take possession, and I was told then that Megaro was the owner. 30

Q. By whom? A. By the tenants.

Q. Don't say anything about the tenants yet.

The Court: In consequence of what you were told by the tenants what did you do? A. I went to Megaro, I said "Mike, what are you doing with this property?" He said "I bought it." I showed him I bought it from Bierman. After this Mr. Megaro made arrangements and bought it from me, and I gave him a—no, Mr. Megaro bought 40

this property but he brought me a man named Mr. Ianneci, and that is the man he gave the deed to.

Q. Did he say why he wanted to give it to Ianneci? A. I really don't remember so far back.

10 Q. Give us the entire conversation. A. I dealt all the time with Mr. Megaro; he is the man purchased that property by me.

Q. (By the Court:) That is Michael Megaro? A. Michael A. Megaro.

Q. Did he say why he wanted to put that property in the name of Ianneci? A. I must have asked at the time and I suppose I don't remember, it is so many years back.

Q. Try to remember it. You were subpoenaed

20 here? A. Yes.

Q. You were told to produce a bond and mortgage? A. Yes.

Q. Try to remember just what that conversation was, why he wanted to put it in Ianneci's name, that property? A. Well, I sold the property to Mr. Megaro. I never met Ianneci before until the time when the property was supposed to be conveyed the last time.

Q. Who paid you the money? A. Mr. Megaro;

30 I never dealt with Ianneci.

Q. (By the Court:) How much did he pay you? A. Well, this mortgage here, which is dated December 3, 1913, and I received interest.

Q. Who paid you the interest on it? A. I received $210.

Q. (By the Court:) $210 what? A. Interest.

Q. (By the Court) But the question I asked you was what principal money was paid at the time when you sold the property, as you say, to

40 Mr. Megaro? A. Well, Mr. Megaro paid me.

Q. (By the Court) How much did he pay you? A. I really don't remember, it is back so far, it is about seven years.

Q. (By the Court) Do you remember how much you sold the property for? A. Well, I really don't remember; I think there is an agreement outstanding which is recorded; I can't say exactly. 10

Q. (By the Court) Well, the consideration mentioned in the deed made on the sixth of November, 1911, is only one dollar. A. Yes.

Q. (By the Court) Now, he paid you more than one dollar, did he not? A. Oh, yes, hundreds of dollars.

Q. (By the Court) What mortgage did he give you on the property? A. Well, the first time I had a mortgage only for about six hundred and some odd dollars, but this property was foreclosed again by the building and loan. 20

Q. (By the Court) No, we are talking about the first purchase, the purchase made on the sixth of November, 1911, when you first conveyed to James Ianneci? A. Oh, the first one, I think it was six hundred and some odd dollars, six hundred and sixty or six hundred and seventy, I think it was over six hundred dollars. 30

Q. (By the Court) That was the mortgage? A. Yes.

Q. (By the Court) How much cash did he pay you in addition? A. Well, he must have paid several hundred dollars at least, I don't remember exactly.

By the Court: Q. You do not remember how much? A. No, it is away back and I never kept track of it. 40

Q. (By the Court) You have in your hands what? A. I have in my hands a bond and mortgage of $1,000, dated December 3, 1913; the property was foreclosed for nonpayment of building and loan and I gave him the difference to make up
10 the arrears; so he owes me $1,000.

Q. Who did you give the money to to make up the arrears? A. I gave it to Mr. Megaro.

Q. Did you have any dealings with Ianneci? A. No.

Q. Now, you said you had an agreement—I thought we could possibly agree, Mr. Finelli—

Mr. Finelli: $5,500.

Mr. Greenfield: Agreement, dated May, 1911, made by Samuel Schechner to
20 Michael A. Megaro, and recorded in book C-49 in the Register's office of Essex County of Deeds, page 597, consideration $5,500, dated May 1, 1911, acknowledged June 23, 1911, recorded June 24, 1911.

Mr. Finelli: Yes.

The Court: Where is the agreement?

Mr. Greenfield: We haven't got it. I have got the record of it here, a synopsis of it. It says here "Party of the first part
30 to sell to party of Second part 53 Garside Street, Newark, New Jersey, warranty deed, free and clear of encumbrances, for $5,500 as follows: $200 on signing the agreement, receipt acknowledged; $5,300 in cash the day of settlement and delivery of deed; delivery of deed July 1, 1911."

Q. (By the Court) Was that agreement carried out in that way? A. No, it had to be changed be-
40 cause Mr. Megaro was short money and I had to

pay him out, I had to pay bonus; the building and loan that time charged three per cent, and he didn't have it and I helped him out and took a second mortgage.

Q. Who did you help out with this money? A. Mr. Michael Megaro.

Q. Now, Mr. Schechner, the interest you have noted on the bond, who paid that? A. Mr. Megaro.

Q. Was it by cash or check? A. It was in most cases checks.

Q. Whose check was it? A. Mr. Megaro's.

Q. (By the Court) What business is he engaged in? A. Mr. Megaro is in the undertaking business.

Q. Did you ever notify, or have any business transaction relative to the collection of interest with Ianneci? A. No, sir.

Q. Do you know where Ianneci lives? A. No, sir.

Q. Did he ever call at your office, Mr. Ianneci? A. No, sir, never, only the time when the mortgage was signed.

Q. That is all he was there? A. That is all.

Q. Who done the talking, the entire transaction?

The Court: Well, he said the entire transaction was with Mr. Megaro.

Q. Do you know what Mr. Ianneci's business is? A. No, sir.

Q. Now, I will ask you again, what reason, if any, did Mr. Megaro give you at the time he brought Ianneci and asked you to make the deed in his name? A. Well, he must have given some reason but I cannot exactly state; I know I was

surprised to see Ianneci because I dealt with Mr. Megaro, and he must have given some reason.

Q. What did he give, not what he must have? A. Well, I don't know.

The Court: Well, if the witness does not remember.

10

A. He gave some reason why, but the property was sold to Mr. Megaro. I don't know, maybe Mr. Megaro claimed he had a judgment, or something like it.

Q. Did he claim it? A. He must have claimed something, because otherwise he couldn't give a man a property; I never dealt with Mr. Ianneci, I dealt with Mr. Megaro.

Q. (By the Court) Do you remember whether anything was said about a judgment at the time of the transaction? A. I can't say positively; must have said something there.

20

Q. (By the Court) We are trying to test your recollection. If you remember it, why say so, if you cannot remember it say that you cannot remember. A. Well, something must have been said, otherwise he could not bring a man in to me and say put the property to him; he had to give some explanation.

30

Q. No, what was said, we cannot go on must have, we have got to get the facts. A. You know, seven years ago.

Q. No, it is not seven years ago. 1913.

Mr. Finelli: I object to counsel arguing.

The Court: If the witness can remember he can state, but if he cannot you have pressed him sufficiently.

Q. Where does Mr. Megaro live now? A. At the premises, 53 Garside Street.

40

Q. (By the Court) Is that where he carries on his business? A. Yes.

Q. (By the Court) He carries on the undertaking business on the premises, 53 Garside Street, and lives there with his family? A. Yes, with his family.

10

CROSS-EXAMINATION by Mr. Finelli:

Q. The first transaction with Ianneci was conducted in Mr. Roessler's office? A. I know the second one it was, because I seen Mr. Roessler's signature on the bond and mortgage; I think it must have been both.

Q. You gave a mortgage of $5,000 to the Guarantee Building & Loan? A. Yes.

Q. And you conveyed the property subject to that mortgage? A. Yes, sir.

20

Q. You took a second mortgage for $600? A. Yes.

Q. The price was $5,500? A. Yes, sir.

Q. Therefore you must have used part of the deposit of $200 in order to get the loans through? A. Yes, sir.

Q. (By the Court) What was the building and loan mortgage? A. $5,000.

The Court: And he took a mortgage of how much?

30

Mr. Finelli: $648. The price was $5,500. That was $148 over, and that $148, as I understand it, went for expenses, search fees, premiums.

A. And back shares; the bonus alone was $150 to the building and loan.

Q. (By the Court) Then no cash was paid at the time? A. Practically nothing, very little cash passed; I helped him along, but very little.

40

Mr. Greenfield: Back shares.

Q. In the second transaction when the property was reconveyed by the sheriff to Ianneci directly and you took a mortgage of $1,000, did any cash pass? A. I put up cash.

10 Q. You put it up yourself? A. Every dollar.

Q. Did Megaro put up any cash? A. I don't think so. Of course Mr. Hood might know more about it than I do. I know I loaned him; he was away back in the building and loan, and taxes, and in order to straighten that up I had to put up the money. Mr. Charles Hood has the statement.

Q. Now, Mr. Schechner, was Mr. Nugent your attorney? A. Well, Mr. Nugent and Mr. Roes-
20 sler; Mr. Nugent represented Mr. Bierman and Mr. Roessler represented me.

Q. I show you this paper and ask you if it is signed by you; it is an affidavit? A. Yes, sir, that is my signature.

The Court: What do you want that affidavit for?

Mr. Finelli: I want to put it in evidence afterwards; it is merely a preliminary question.

30 The Court: On what ground do you want to put it in? Any fact which Mr. Schechner knows he must prove on the witness stand; you cannot prove it by this affidavit. You can take the affidavit and let him use it to refresh his recollection, or something of that sort.

Q. Did you buy this property in April, 1911, from Milton Bierman? A. Well, if it says there
40 I suppose it was then, that time, well, I suppose

it must have been so, around that time; I know I purchased it.

Mr. Finelli: I would like to have that paper marked for identification.

The Court: It is not evidence.

Mr. Finelli: It may be evidence afterwards; some other witness might identify the paper. 10

The Court: That does not make any difference. The statements made in the affidavit are hearsay. Now this witness is on the stand and he can testify to anything which he now remembers, and I presume that he can refresh his recollection by the affidavit; there is no objection to that; or if he now states anything which is contrary to what he stated in his affidavit he can be contradicted by his affidavit. For those purposes the affidavit can be used, but it is not evidence and cannot be offered in evidence, it is not independent evidence. 20

RE-DIRECT-EXAMINATION by Mr. Greenfield:

Q. Have you been lately to the property there, saw the property lately? A. Yes, I have been there about three months ago. 30

Q. In what condition is the property to-day with reference to the condition at the time you sold it? A. The property is improved about $1,500 more than at that time, or more than that.

Q. There is downstairs the store with an office? A. Yes; he spent quite some money remodeling it for his own purpose, and it is easily worth $1,500 more than the time he paid for it. 40

Q. How do you know that he remodeled it? A. Well, I went there and I spoke to him, and know.

Q. Did he tell you that? A. Yes, sir.

Q. Did he tell you that he spent that money to remodel that property?

10

Mr. Finelli: I object.

The Court: Well, the witness has said so; what is the use of pressing him.

JAMES De ROGATIS, sworn:

Direct-examination by Mr. Greenfield:

20

Q. Where do you live? A. 174 Garside Street.

Q. Do you know Michael A. Megaro and Mary Megaro, his wife? A. Yes.

Q. Do you know where they live? A. Fifty-three Garside Street.

By the Court: Q. What is your business? A. I am a conductor.

By the Court: Q. Conductor where? A. Railway, Public service.

Q. And who lives in that house fifty-three Garside Street? A. The only ones I know lives there is Mr. Megaro.

30

Q. With his family? A. Yes, with his family, and he has an office downstairs.

Q. How many floors does he occupy, do you know? A. As much as I know, the first and second.

Q. What business does he carry on on the first floor? A. Undertaker.

40

Q. Do you know Mr. Ianneci? A. Yes, sir.

Q. Do you know if he is any relation to Megaro? A. Only what I have heard that he is.

Q. From whom did you hear it? A. I heard it from Ianneci himself.

Q. What relation is he? A. Cousin.

Q. Now Mr. DeRogatis, you were in court when this case was first called here before his Honor in this court, were you not? A. Yes, sir. 10

Q. Now after we left was there anything said by Mr. Megaro concerning the property fifty- three Garside Street? A. I can't remember.

Q. Were you in the court room in the Circuit Court when we tried the case against Megaro? A. Yes, sir.

Q. Was there anything said by Mr. Megaro, either to you or to your father and mother, when we left the court room? 20

The Court: In your hearing.

Q. Yes, in your hearing. A. He passed a remark to me.

Q. What did he say? A. He said "You got the judgment" he said "and you can keep it, and I got the house and you can't do anything to me," and then furthermore, he called me a liar.

Q. Never mind that. A. Well, that was the question put up to me. 30

Q. Now do you know where Ianneci lives? A. No, sir.

Q. Do you know his business? A. Yes, sir.

Q. What is it? A. Teamster, driver.

Q. Coal driver? A. Well, coal, coaches.

Q. Do you know where his rooming place is? A. I can't tell that.

Q. Did you ever see him? A. I went down where he was one time. 40

Q. Where? A. Then on High Street.

Q. Well, what kind of a place? A. A livery stable.

Q. Is that where he was sleeping, or what was he doing there. A. He was sleeping at the time I went there, in a stable.

Q. Well, livery stable; whose livery stable? A. I don't know whose it is.

Q. Was it Mr. Megaro's? A. I don't know, I don't know who is the owner of it.

Q. Has Megaro any livery stable? A. I couldn't tell.

Q. How often are you around fifty-three Garside Street? A. Very seldom.

Q. At the time that you were around did you ever see Ianneci around the house there? A. I did see him sitting in front of the house.

Q. Some alterations were made in that building, were they? A. Yes, sir.

Q. Did you see the work being done? A. Seen him fixing the porch, putting up a new porch, seen him painting, seen him making an office downstairs.

Q. Who?

The Court: How does the witness know anything about that unless he had conversation with Megaro at the time.

Q. At the time the work was done did you see Ianneci around there? A. No, sir.

Q. Did you see Megaro around there? A. I did, now and then, times on and off.

Not cross-examined.

MICHAEL A. MEGARO, sworn:

Direct-examination by Mr. Greenfield:

Q. Mr. Megaro, where do you live? A. Fifty-three Garside Street.

Q. Is that the property formerly owned by Giovanna DeRogatis? A. Yes sir. 10

Q. With whom do you live there? A. My family.

Q. How many floors do you occupy? A. First and second.

Q. What business do you conduct on the first floor? A. Undertaking.

Q. How long have you been living there at fifty-three Garside Street? A. About six years.

Q. Some alterations made there? A. Yes, sir. 20

Q. Now Mr. Megaro was there any judgment against you in 1911? A. There were, and they were paid.

Q. Who held the judgments? A. Joseph Hart and M. A. Mullin.

Q. Any judgment from Jersey City, the Dietz Printing Company? A. Yes, about thirty-five dollars I guess.

Q. Was that ever paid? A. I think so.

Q. Are you sure? A. If it is not it has been your fault, counsel. 30

Q. For not collecting it? A. For being too sly about it.

Q. Lenient? A. Lenient?

Q. When was this Hart judgment paid? A. Hart owes me money to-day.

Q. When was that Hart judgment paid? A. I don't recollect.

Q. How long ago, about? A. I haven't any idea. 40

Q. A year ago? A. Oh, longer than that.

Q. Two years? A. Fve years ago I guess, six maybe.

Q. And who else? A. M. A. Mullin.

Q. When was that how much was that judg-
10 ment? A. $800.

Q. And when was that paid? A. That has been paid about seven years ago.

Q. You are quite sure it was paid seven years ago? A. My best recollection, yes; it was paid by note, three months note, payable every three months.

Q. By notes? A. Yes.

Q. When was the last note paid? A. I can't remember.

20 Q. How long ago? About a year? A. I can't remember.

Q. Two years? A. I can't remember when I don't know; I told you about my best recollection.

Q. How much were the notes? A. The note I paid Mullin, $200 in cash and a note for $600; the notes were discounted, $50, $75 and $100 and $25.

Q. Every time it came due? A. Yes.

Q. How often did a note come due? A. Every
30 three months.

Q. When was that note given? A. I don't remember just when.

Q. Five years? A. Oh, about seven years or more I think.

Q. Any other judgments? A. Not that I know of.

Q. Eh? A. Not that I can remember of.

Q. Are you sure? A. Yes.

Q. Was there a judgment recovered against
40 you on a note by DeRogatis? A. Yes.

Q. Was that ever paid? A. No, sir.

Q. That is still open, it has never been paid? A. It has not been paid, no, sir,

Q. Who is James Ianneci? A. A cousin of mine.

Q. Where does he live? A. Cutler Street. 10

Q. Can you state the number? A. I don't know; he lives with his uncle.

Q. What is his uncle's name? A. Dominico Fungeralo.

Q. Where does he live? A. Cutler Street.

Q. What number, if you please? A. I don't remember.

Q. How often do you see Mr. Ianneci? A. Quite often, once, two or three times a week, sometimes every other day. 20

Q. What is his business? A. Teamster.

Q. Driving a coal wagon, is it not? A. I guess so.

Q. He is not here in court today, is he? A. I don't see him.

Q. When did you see him last? A. Some day last week.

Q. Did you speak about his case coming on today? A. I did not.

Q. Didn't mention it to him? A. No, sir. 30

Q. Or he to you? A. No, sir.

Q. You knew about it of course? A. Your honor, I didn't mention anything concerning the case to Ianneci.

Q. You knew about it? A. I knew, yes, sir.

Q. Did he mention anything to you about it? A. I answered that before; no, sir.

Q. This property there is a building and loan mortgage on? A. Yes, sir. 40

Q. What building and loan? A. Guarantee.

Q. What is the pay night of that building and loan? A. I think it is the second Thursday of the month.

Q. You pay the building and loan, do you not? A. Some times.

Q. By your checks? A. Checks and cash.

Q. You have got the pass book of that building and loan?

The Court: This evidence is only useful in so far as it throws light upon the original transaction, and for that purpose it is undoubtedly competent.

Q. (Question read) A. I have.

Q. Keep it in your possession? A. Yes, it is in my place.

Q. You know Mr. Schechner? A. I do.

Q. Do you know he holds a mortgage on that property? A. I do.

Q. You were present when it was executed? A. I was.

Q. You had full charge of the transaction and the purchase of this property? A. I acted for Ianneci, yes, sir.

Q. Who pays the interest on the Schechner mortgage? A. I pay it for Ianneci.

Q. Whose check? A. My check.

Q. Ianneci, so far as you know, never paid any interest direct to Mr. Schechner? A. That I cannot remember.

Q. Eh? A. I don't remember whether he has or not.

Q. Well, now, don't you know? A. I might have sent or Ianneci might have brought interest to Schechner, that I couldn't positively say.

By the Court: Q. Well, as far as you know he has not? A. As far as I know he has not, your honor.

Q. And your check pays the interest to Schechner? A. Yes, sir.

Q. And your checks, most of them, pay the building and loan? A. Yes, sir. 10

Q. Ianneci does not live in that house? A. No, sir.

Q. What tenants are there? A. There are two tenants on the top floor.

Q. Their names, if you please? A. Rymo and Corbo.

Q. Who collects the rents of them? A. Why they take it down to me every now and then.

Q. You collect it, do you not? A. Some times, for Ianneci, yes, sir. 20

Q. I didn't ask you for whom. You collect the rent, do you not? A. I collect them for Ianneci.

Q. Every month? A. Most of the times.

Q. You pay your rent? A. I do.

Q. To whom? A. To the building and loan.

Q. Ever pay it to Ianneci? A. Sometimes he gets it and pays it to the building and loan himself.

Q. Did you ever pay to Ianneci any rent? A. I stated that at times he gets it from me and he pays it to the building and loan. 30

Q. That is, when it comes to pay the building and loan he goes down and pays the building and loan? A. Yes, some times.

Q. Comes to you and gets the money? A. Yes, sir.

Q. How much does he pay to the building and loan? A. Fifty dollars. 40

Q. Now did you ever pay the rent on the first of the month? A. I don't know whether I pay the first or fifth or what.

Q. Did you ever pay him rent? A. I never remember paying rent the first of the month.

10 Q. At any time, outside of when you give him the money to pay the building and loan? A. When building and loan time is due he comes around when he has the time and he goes and pays it himself; somtimes I go and pay him.

Q. When you pay it to him to whom do you make the check? A. Sometimes to Ianneci and other times directly to the Guarantee.

Q. Have you got those checks? A. No, sir.

Q. You have none of those checks? A. I have

20 them at the office, yes.

Q. Will you be kind enough to bring them this afternoon? A. Yes.

Q. Checks made to Ianneci for rent or for the building and loan. You understand me? A. Yes, sir.

Q. Now how much do you pay him? A. Fifty dollars.

Q. Is that your rent? A. That comprises my rent, yes, sir, my share.

30 Q. Ever pay him any more? A. The balance that is collected from the other tenants, eighteen dollars.

Q. Ever pay him any less? A. No, sir.

The Court: The clerk has brought here a copy of the judgment. Is there any objection to putting it in evidence?

Mr. Finelli: No, your honor.

Mr. Greenfield: Well, this is a certified

40 copy and it can be left here.

The Court: Then may that paper go in; you have no objection to it?

Mr. Finelli: No.

Marked Exhibit C-1.

The Court: Now then, you offer all these papers in evidence, do you, the record and judgment?

Mr. Greenfield: Yes.

The Court: You offer the record of the complaint, answers and other pleadings, and the judgment thereon.

Q. Have you ever paid any less than fifty dollars? A. No, sir.

Q. Has your wife ever paid any rent? A. Sometimes she pays it.

Q. See if I can remind you by reading the testimony given in the Essex Circuit Court in the trial of Giovanna De Rogatis vs. Mary Megaro, *et al.*, "Q. Did you lease it? A. No. Q. Pay any rent? A. Yes. Q. How much? A. Forty dollars." Do you remember that? A. I do not.

Q. Was that true? A. I don't know, I don't remember saying it.

Q. Now how often does Mr. Ianneci call at your place? A. I told you he comes there very often.

Q. When was the last you saw him? A. Last week.

Q. Did he collect this month's rent? A. The rent was paid to the building and loan.

Q. Did he collect this month's rent? A. It was paid to the building and loan.

Q. How much? A. Fifty dollars.

Q. Is that all of the rent that is collected in that house? A. Eighteen dollars per month more.

Q. Was that paid? A. That was paid to Ianneci.

Q. By whom? A. By myself.

Q. How? A. Money.

Q. You have a check account? A. I do.

10 Q. You didn't give him any checks? A. I did not.

The Court: What did he do with the money?

Q. Do you know what he did with the money?

The Court: I understood the witness to say that when he got this rent he paid it to the building and loan. If I am wrong about that I want to be corrected.

A. Fifty dollars was paid to the building and 20 loan, and the eighteen dollars was paid to Ianneci; what he done with it I don't know; he had some water liens to pay; I don't know whether he has paid them or not.

Q. Did Mr. Ianneci ever collect any rent from the other tenants ? A. Some times.

Q. When? A. I don't remember that.

Q. Did he collect last month? A. No, sir.

Q. Did he collect this month? A. No, sir.

Q. Did he collect for September? A. I don't 30 remember.

Q. Did he collect for August? A. I said he collects sometimes, but I can't give you any definite month.

Q. Who gives the receipts to the tenants? A. There are no receipts given.

Q. What rent does the other tenant pay? A. Eighteen dollars.

Q. Each? A. No, sir; ten dollars and eight.

40 Q. Do you know or can you give us any time

when Mr. Ianneci called to collect rents in that house? A. I don't remember what time, the early part of the month.

Q. Can you tell us what months he came there to collect any part of the rent in that house? A. I can't.

Q. Within the last six or eight months? A. He has collected two or three payments in the last six or eight months.

Q. When was it? A. I don't remember just what months.

Q. Who pays the taxes on the property? A. I don't know; I haven't paid them.

Q. Did you pay it? A. No, sir.

Q. Did you pay last year? A. No, sir.

Q. The year previous? A. No, sir.

Q. Do you know whether the taxes were paid? A. I don't know.

Q. Did you ever give a check for taxes? A. I did not.

Q. Since you are there? A. I never paid taxes that I know of.

Q. Or did you ever give to any person your check for the payment of taxes? A. I said no, sir.

Q. Water bills? A. Yes, they have been paid.

Q. Who paid that? A. I some times paid them.

Q. When was the last time you paid? A. I don't remember whether it was three or six months ago.

Q. How much? A. I don't know just how much.

Q. Where did you get the money? A. What was the question?

Q. Where did you get the money? A. From the tenants.

Q. And did you at that time give any money to Ianneci? A. No, sir; I think I paid it with my own personal check.

10 Q. Did you give any money to Ianneci that time at the time when you paid the water? A. I said that I paid the water with my own check.

Q. How much was it? A. I don't remember the amount.

Q. Ten dollars? A. I don't remember.

Q. Twenty-five? A. I don't know.

Q. How long ago was it? A. Your Honor, I can't remember them things; I will produce the check and show you. There is no use question-
20 ing me on those things.

Q. Now you live there with your family, do you not? A. I do.

Q. And you have been living there ever since De Rogatis parted with the property? A. I did not.

Q. After it was altered? A. After it was altered, yes.

Q. How soon after that was the alteration commenced? A. Six or seven months I think.

30 Q. You had charge of the alterations? A. I did.

By the Court: Q. What did they consist of? A. Breaking in the store, your honor, and papering and painting the rooms.

Q. Bath rooms put in? A. There was a bath room.

Q. Steam heat? A. Yes, sir.

Q. Any alterations in the store there where you put in marble floors or tiles, whatever it was?
40 A. Marble floors?

Q. Yes? A. No.

Q. No marble work in there? A. No, sir.

Q. None at all? A. No marble that I know of.

Q. Well, you do know; you live there, don't you? A. Well, I say that there is no marble; I can tell the difference between marble and tile. 10

Q. You put in electric lights? A. I did, yes.

Q. Was there electric lights before? A. No, sir, I put them in myself.

Q. You put electric lights in on the first and second floor? A. Yes, sir.

Q. Have you a lease on the property? A. Verbal lease.

Q. When was that verbal lease entered into? A. Ever since Ianneci has taken possession. 20

Q. For what period? A. Indefinite period I suppose, as long as I can stay here.

Q. Now, is it not a fact that this property really belongs to you? A. It will belong to me when I pay Ianneci his claim.

Q. How much? A. Amounting to about seven hundred dollars and interest.

Q. You borrowed that money, did you? A. Yes, sir.

By the Court: Q. What do you mean by that? I do not quite understand that. You say it will belong to you when you have paid Ianneci's claim? A. Yes. 30

By the Court: Q. What do you mean by that? A. Your honor, Ianneci has loaned me.

By the Court: Q. Explain what you mean by that? A. Has loaned me money time and again; he has given me money when I had to take an agreement from Schechner, when Bierman fore- 40

closed the first time, and he had given me $300 just about that time, about six years ago, and $200 for the agreement, and he has given me about $200 since to help pay part of the alterations that were made in the house; so it amounts to $700 and interest, which I have never paid him any interest on it since the time he has given me this money.

Q. Then, Mr. Megaro, see whether we understand each other. The property really belongs to you and your wife, is that right? A. When I pay Ianneci.

Q. Just answer my question. A. I say when Ianneci's claim is paid, the property I can redeem it, I have the privilege.

Q. In other words, you owe Mr. Ianneci some money? A. Yes.

Q. And to secure him that money you bought the property in his name? A. It was bought with Ianneci's money at the time.

Q. But it was a loan to you, was it not? A. The previous loan had been, yes, sir, that $300, $200 was borrowed to procure the property with.

Q. As a loan to you? A. No, sir.

Q. Is it not a fact when you pay him back this $200 and the previous loan the property is yours? A. If I have the money to pay for it, yes, I can redeem it.

Q. And you put in the alterations in there? A. I will give it to you if you want it.

Q. Answer my question. You put in the alterations there, did you not? A. I did.

Q. At your expense? A. Yes, sir; I had to make it presentable to live there.

Q. Then as a matter of fact, Mr. Megaro, you

are not paying any rent, but you are paying the building and loan; is that right?

The Court: Well, that is what he says, he says he pays fifty dollars to the building and loan.

Q. And the reason you have taken it in Mr. Ianneci's name, was because you feared this bond and mortgage? A. I did not. 10

Q. And is it not a fact, Mr. Megaro, that you were advised by an expert to let the foreclosure go through so as to cut him off? A. I did not.

Q. Didn't you so testify before Judge Cutler? A. I didn't remember testifying to such.

Q. Didn't you turn to Judge Cutler and say these words: "Judge, I will tell you the truth, some expert advised me to let the property go to foreclosure and then I will have free and clear"? 20 A. It wasn't meant that way and I didn't say it that way.

Q. Did you say it that way? A. No, sir, not that I remember.

Q. What did you say? A. I was told, as I can recollect, that all previous foreclosure, DeRogatis holding the third mortgage on the property and didn't redeem it, he didn't put an answer in the first foreclosure from Bierman, that his bond and mortgage wasn't good. 30

Q. That is what you were advised by an expert? A. I wasn't advised.

Q. Didn't you so testify? A. I don't remember testifying.

Q. And isn't that one of the reasons that you have taken in Ianneci's name, to wipe out the bond and mortgage of De Rogatis? A. No, sir.

Q. Now Mr. Megaro, have you got any record 40

to show that you borrowed the money from Ianneci? A. Yes, sir, part of it.

Q. Where? A. There is a three hundred dollar check from Ianneci's former boss to me.

Q. Direct to you? A. Yes, sir.

10 Q. Is it $300 or $200? A. $300.

Q. Who is the boss? A. Antonio Capero.

Q. Have you got the check? A. I think my counsel has, I don't know.

Q. When was it you got the $300? A. Some time in 1910.

Q. That check is made direct to you, is it not? A. Yes, sir.

Q. Ianneci's edorsement does not appear anywheres, does it? A. I don't see it.

20

CROSS-EXAMINATION by Mr. Finelli:

Mr. Finelli: I ask that the check be marked.

Marked Exhibit D-1.

Q. Who was the so-called expert from which you took your advice, Mr. Megaro? A. I don't know.

Q. When did you receive such advice? A. Mr. Schechner gave me the information. When I entered upon an agreement with him he said that 30 DeRogatis had no claim on the property and he didn't put in an answer when the proper time was, when the foreclosure had started from Bierman, and made no claim to it, and they were wiped out as far as they were concerned.

Q. Mr. Megaro, immediately after the receipt of the deed in March, 1911 what happened? Did you enjoy the possession of the property? A. I did not—for two weeks I think.

40 Q. Who interfered? A. Mr. Schechner.

Q. Had you seen Mr. Schechner about this property before Mr. Schechner came up there and asserted his rights as owner? A. I never knew the gentleman before until that time.

The Court: This was when?

Mr. Finelli: This was in April, 1911.

The Court: That was after Mr. Megaro had his deed from DeRogatis?

Mr. Finelli: Yes, a month after.

By the Court: Q. After you got your deed from DeRogatis did you move into the property? A. I did not, sir.

By the Court: Q. When Mr. Schechner came up there were you in possession? A. Well, that was my first month, your Honor, that I was supposed to collect rents from that place.

By the Court: Q. When did you move into the property after you got your first deed? A. After we got the first deed?

By the Court: Q. Yes. A. We got the first deed—it was after Ianneci got the second deed that we moved in.

By the Court: Q. No, I am talking about the first deed. You bought this property from DeRogatis? A. Yes, sir.

By the Court: Q. That was in March? A. Yes.

By the Court: Q. 1911? A. Yes.

By the Court: Q. Now how soon after March, 1911 did you move into the property? A. I think it was some time in September, your Honor.

By the Court: Q. Not until September? A. Yes, sir, September.

By the Court: Q. Who lived in the property in the meantime? A. To my best recollection,

your Honor, the property was vacant most of the times, because there was no owner at the time, and Schechner claimed the ownership and the tenants were afraid to stay there, it needed a lot of repairs, and there was only one tenant that went out of there with about ten months' rent due that I know of; I never collected any rents, never got one dollar's worth of benefit from March until September until I moved there myself.

By the Court: Q. Did you make your alterations before you moved there or after you moved there? A. Well, I started them, but I was there at the time when the alterations were under progress.

By the Court: Q. When did you start your alterations? A. I think some time in August, that is my best recollection.

By the Court: Q. And the alterations consisted in converting the lower part of a dwelling house into a store? A. Yes, into a store, and cleaning up and papering and painting the upper floors.

Q. When was it that Mr. Schechner came up and first asserted his rights in the property? A. About two weeks after, or about March 20th I think.

Q. What did you do then? A. I directly went to my counsel to see whether it was truth or not.

Q. And then what happened; did anything happen in this court? A. Yes, sir.

Q. Did we come here? A. We came here, yes, sir.

Q. Did Schechner come here? A. Yes.

Q. With his lawyer? A. Yes.

The Court: Well, the proceedings show that an application was made to set aside the sale on the ground that the price was inadequate, and that that application was refused.

Mr. Finelli: And surprise also. 10

The Court: It is not worth while to go into that; the record is the best evidence of what took place, and the record is here; it does not seem to be very material one way or another. There is no doubt at all but that Mr. Schechner acquired under that foreclosure proceeding.

Q. How much money did you have following closing of the title between Mrs. Megaro and De-Rogatis? 20

Mr. Greenfield: I object to that as immaterial.

The Court: It is not worth while to go into that. That is a matter which is alleged in the bill, but it seems to me to be wholly irrelevant to the issue as we have now admitted it to be.

Q. Did you put any money out when Ianneci got the deed from Schechner? A. $200.

Q. Whose money was it? A. Money that Ianneci had given me. 30

Q. It was Ianneci's money? A. Yes, sir.

Q. Did you put in any money at the time that Ianneci got the deed? A. Not that I remember.

Q. Did you put any money out, or did Mrs. Megaro at any time put any money out when Ianneci got the other deed from the Guarantee Building and Loan? A. No, sir.

40

Mr. Greenfield: Now, if your Honor please, it seems to me it is useless to take up the Court's time; on his own testimony I think we have established that fact.

The Court: Well, I think you ought to put in all the evidence you can.

10

MARY PATETTA, sworn:

Direct-examination by Mr. Greenfield:

Q. You are a daughter of Giovanna DeRogatis? A. Yes, sir.

Q. And where do you live? A. 119 Bloomfield Avenue.

20

Q. Did you ever live at fifty-three Garside Street? A. Yes, sir.

Q. Did you ever live at fifty-three Garside Street after your mother sold the property? A. Yes, sir.

Q. To whom did you pay the rent? A. Mr. Megaro.

Q. Did you ever know anyone by the name of James Ianneci while you were living there? A. No, sir.

30

Q. When did you live there? A. A month after my mother sold the house.

By the Court: Q. That was in March, 1911? A. The first month I paid to Mr. Megaro.

The Court: Mr. Ianneci did not get title until November, 1911. Now did the witness live in this house after Ianneci got title in November, 1911?

40

Q. How long did you live there after your

mother got away from there? A. About two months.

Q. Did you remember when she sold the property? A. Yes, sir.

Q. And were you present? A. Yes, sir.

Q. How long do you say you lived there after that? A. Two months. 10

The Court: Well, that would bring her down to May, and it is not worth while to go into that.

Q. Were you present at the Circuit Court in the court house here in Newark? A. Yes, sir.

Q. At the time of the trial of your mother's suit against Mary Megaro? A. Yes, sir.

Q. Was there anything said by Mr. Megaro concerning this property? A. We were outside in the hallway and we were waiting for you, and we were all there standing, he came to my brother's shoulder and hit him on the back, he said "That is all right, you got a judgment, but" he said "I got the house and you are not going to get a penny out of that house" he said. 20

Q. Did he ever say anything to you, or to other persons in your presence and your hearing, that Ianneci was the owner, the real owner of that property? A. No, sir. 30

Not cross-examined.

LUIGI DEROGATIS, sworn:

Direct-examination by Mr. Greenfield:

Q. Where do you live, Mr. DeRogatis? A. 174 Garside Street. 40

Q. How long have you been living at 174 Garside Street? A. A year the first of January.

Q. A year it will be next January? A. Yes, sir.

Q. Do you know Michael Megaro? A. Yes.

10 Q. You had some business transactions with him? A. Yes.

Q. The property sale? A. Yes.

Q. And you were in court up in the court house when the trial was on? A. Yes.

Q. Did Mr. Megaro say anything to you about the property, up in the court house? A. Yes.

Q. What did he say? A. He said "You win the case, but I have the house and you can't have the house." He told me just the same now, he said

20 "If you were on the street now I would punch your eye." That is what he said.

Q. What did he say?

The Court: Well, he has already said what was said, and it is down on the record.

CROSS-EXAMINATION by Mr. Finelli:

Q. When was that said? A. Before; after I win the case, you know, and we go out, and he

30 talk in Italian to me.

Q. What did he say to you outside here? A. He said outside, he said, "If you were down below I would knock—"

Q. No, I don't care anything about the fight. A. That is what he said.

Q. No, about the house. A. He said, "You never put the money in your pocket," he said, "You win the case, but you never put the money in your pocket."

40 Recess.

VINCENZO IANNECI, sworn:

Direct-examination by Mr. Greenfield:

Q. Where do you live? A. I live 64½ High Street now.

Q. With whom? A. By myself. 10

Q. Are you married? A. No, sir.

Q. Have you a room there? A. Yes, sir.

Q. Of whom do you hire the room? A. I got it off of Mr. Megaro.

Q. You hire the room from Mr. Megaro? A. Yes, sir.

Q. What number? A. 64½ High Street, it is on top of a barn there.

Q. On top of a barn? A. Yes.

Q. Over a stable, you mean? A. Top of a 20 barn.

Q. Is that Megaro's stables? A. No, he only hires it.

Q. Is that where he keeps his horses and carriages? A. Well, there are a lot of horses and coaches there, yes.

Q. Have you ever been to a sheriff sale of property? A. Once, yes.

Q. Where? A. Up here in Newark.

Q. Where? A. In Newark. 30

Q. I know, Newark; Newark is quite a large city; tell us whereabouts in Newark, whereabouts in Newark? A. Well, in Newark; got sold by the sheriff sale, that's all I know about it.

Q. Where did you go to the sheriff sale, in Mr. Schechner's office? Do you know this gentleman here? A. Yes.

Q. Is that where you were to attend to the sheriff sale? A. I went there once. 40

Q. Is that the only time? A. That's all I know about it.

Q. In the Union Building; is that right? A. That is where I signed it, where I bought it.

Q. That is the place you bought it? A. Yes.

10 Q. That is where the sheriff came and sold the property there; is that right? Look at me and never mind Megaro. A. Oh, I don't look at anybody.

Q. Is that where the sheriff sold the property and you bought it, in Mr. Schechner's office; is that right? What is the matter? A. Nothing the matter.

Q. Cannot you answer, cannot you answer? A. I don't know.

20 Q. You only were there once, is that right? You only were there once to buy the property, is that right? A. Yes, I was there once, yes, I was.

Q. Only once? A. Yes.

Q. What did you do there that once? A. Signed the deed.

Q. You signed the deed? A. Yes, sir.

Q. You signed your name? A. Yes.

Q. When you bought the property? A. Yes.

Q. And that was in Schechner's office? A. No,
30 not in Schechner's, it was in the Union Building or Essex, wherever it was, up there on Clinton Street.

Q. Who else was there? A. A lot of people. What do I know? I don't know them.

Q. What other people were there? A. There were a lot of other people in the office there, I don't know who they were.

Q. How long have you lived in Newark? A.
40 Me? Twenty-five years.

Q. You are pretty well acquainted in Newark, aren't you, you know the streets? A. I know the streets, yes, I know well the streets but I don't know the people.

Q. What are you doing? A. Driving trucks.

Q. You are a relation to Mr. Megaro, aren't you? A. Yes, sir. 10

Q. What relation? A. Cousin, first cousins, too.

Q. You know Mr. James DeRogatis, do you not? A. I do, yes.

Q. He met you once in that stable, didn't he, served you with a paper? A. Yes, served me with a paper.

Q. Something about the case? A. Something about the case, yes. 20

Q. Did you tell him then— A. Told him it wasn't—

Q. Wait a minute.

The Court: Well, tell it in your own way. A. I told him it wasn't the time to sell, because he wanted me that next morning, I said I wasn't prepared with no clothes to go down to court, I said, "The law never sent you on a Sunday to bring me that paper," but he came down there and wanted me to come down there the following 30 day; I told him I had no time the following day, because the Court generally gives a man a chance to go down.

By the Court: Q. Tell us what happened, as far as you can recollect, in reference to the sale of this property, just tell us all that you recollect about it? A. Well, Judge, I sold it because I couldn't very well write, all I can do is to write my name, and if I can write it will take me some- 40

time to do it, and sometimes I don't write at all, and on account of that, and running after me, and doing such things as that, and I am a very hard working man, and of course I generally let cousin do all my business just as much as he can, 10 because he is more popular in the city and he has more time than I have, because I am a hard working man.

By the Court: Q. But you say you went to this office on one occasion to purchase some property. Now cannot you recollect just what happened, how you came to buy it, and all about it? A. Well, I came to buy it because my cousin he was owing me quite a little money, and I told him to let me have it, and he was going to lose this pro- 20 perty, and he simply said to have our money safe why transfer the first time this property to me, and I bought this property in to me at this sheriff sale; of course I didn't know the sheriff sale, and so on, and he brought me down there himself.

By the Court: Q. What did he tell you? A. Simply told me to sign them papers and I had that property.

By the Court: Q. How about the money; you know property cannot be bought without money; 30 how about the money? A. I gave him couple of hundred dollars more at the time.

By the Court: Q. Where did you get the money from? A. Well, from working, saving it.

By the Court: Q. Where did you put the money? A. Well, generally let some good friend of mine hold it for me.

By the Court: Q. Where did you get this money from? A. Well, the first time I gave him the $300 40 I got this money off of Mr. Capreo.

By the Court: Q. Who is he? A. He is a coal dealer.

By the Court: Q. How did you come to get it from him? A. Well, of course I told him to hold on to it for me.

Q. That was in 1910? A. I don't remember just when it was. 10

Q. Where did you get the money in 1913? A. 1913?

Q. How much money did you give in 1913? A. A couple of hundred dollars.

Q. How much? A. Two hundred dollars.

Q. Where did you get that? A. I had it.

Q. Where did you keep it? A. In my pocket.

Q. And you loaned that to Mr. Megaro? A. Yes, sir,—no, not loaned that; I gave him that to get that property back the second time. 20

Q. You gave him that so he could get the property back, he should not lose it; is that right? A. I was in to lose out the second time.

Q. Lose what? A. The property.

Q. Why you didn't have it? A. No, I didn't have it, I lost it, and I gave him a couple of hundred dollars more to try to get it back if he could.

Q. So he could get it back? A. Yes.

Q. And so you loaned him this money? 30

Q. What did you do with the money, the two hundred dollars, what did you do with it? A. I gave it to Mr. Megaro.

Q. What for? A. To get this property back again, the time we lost it.

Q. Did you have it before that? A. Yes.

Q. Who had the property before? A. I mean the property, I had it before that sale.

Q. Who had it? A. I had it.

40

Q. Where did you get it? A. I got it to protect myself.

Q. Where did you get it before?

The Court: You say you got it to protect yourself; what do you mean by that, you got it to protect yourself? A. I got to protect myself with my money that I loaned to him before, to have it to protect myself and take this property and then not lose it, and by me loaning it he said he would try to get it back, and so on, for me, and I gave him a couple of hundred dollars more to invest in it.

Q. When you say you gave it to him, did you lend it to him? A. I gave it to him.

Q. But you expected it back from him, didn't you? A. Of course if I got the money back I would give him the property back at the time, I would sell it to him, sell the property back to him again.

Q. In other words, he gave you the property as security for your money? A. Yes.

Q. For the $200 you gave him in 1913? A. For the $300 had before, and then not for the $200, for the rest of the money too.

Q. How much? A. Between six and seven hundred dollars altogether, between interest and all.

Q. Well, how much was it? A. About seven hundred dollars.

Q. Why do you say about seven hundred; don't you know how much it is? A. $700.

Q. Well, how much was it? A. $700, I am telling you, and interest and all.

Q. How much money did you give him and when did you give him the money? A. I gave him $300 once and $500 another time.

Q. You gave him $300 once and $500 another time? A. Yes.

Q. And then did you give him any more? A. Now and then, yes.

Q. How much? A. Well, sometimes I give him forty or fifty dolars.

Q. Now you gave him $300 at one time; then you gave him $500, that is right, isn't it; that is what you said? A. Five hundred dollars altogether, twice, I gave him three hundred one time and two hundred another time.

Q. And what else? A. Well, of course I forgot all about it, but I gave him, between seven hundred dollars altogether I know I had coming off of him.

Q. Where did you keep count of it? A. In my pocket of course.

Q. Did you write down somewheres how much money you gave him? A. No, sir.

By the Court: Q. Did you take any paper from him? A. No, sir; I got money today somewheres else but I haven't got no paper with me, and I can prove that, from strange people, not relations, of mine, from strange people.

Q. Now Mr. Ianneci, you loaned him that money, didn't you, to buy the property? A. Yes.

Q. Now tell us when was it that you gave him the $200? A. I don't remember.

The Court: Give us your best recollection, tell us as nearly as you can. A. I think pretty nearly four years, four or five, I don't remember exactly.

Q. Is it four or five years? A. I don't remember I said.

Q. How long after you gave him this $300? A. I think that was a couple of years after.

Q. Well, how long? A. I don't remember I said.

Q. And you had no document, no paper to show that you gave your cousin all this money? A. No, sir.

10 Q. And you have nowheres any memorandum, anywheres, to show that you gave your cousin any money? A. I will explain, the way you ask me now you say I haven't got nothing to show; I could show you today by proving, not by showing but by proof I could show you where I got money coming from people, and I got nothing to show today; what I had for years, not only today, for years I had that money coming; I could prove that.

20 Q. Where do you save your money? A. In my pocket.

By the Court: Q. You do not mean to say you carry large sums of money around with you? A. No, not large ones, Judge.

By the Court: Q. Where did you put it when you carried it around? A. I let some of my friends keep it.

Q. Now Mr. Ianneci, how many times did you sign papers for this property? A. I remember

30 once for sure, but I don't remember twice, but I remember for once sure.

Q. The time you remember for sure, how long ago was that? A. I don't remember what year it was though.

Q. A year ago, two years ago? A. I don't remember what year, I say.

Q. Will you say five years ago? A. I think it was between four or five years ago.

Q. And that was the only time you remember you went down to buy property? A. Yes.

40

Q. Of course you would have remembered if you bought another time property, would you not? A. Well, of course the way I say, I don't remember, like the rest of them, they keep books of them, and I don't; the only thing I can remember is what I have in my brain.

Q. Did you ever collect rents over there? A. Sometimes.

Q. When did you collect the last rent? A. The last rent, no.

Q. How long ago did you collect rent? A. Well, that's quite a while.

By the Court: Q. You ought to be able to tell us something about that, you ought to be able to tell us about how long ago it was since you collected rent. Cannot you tell us? A. Well, Judge, the way I was sometimes, I am a working man and generally I let my cousin collect it, because he has more time, and he is living right into it, and only because I am a hard working man, and when I come home nights I am pretty tired and I haven't much time to spare to go around, and that is the reason, it was very seldom I could collect the money, and so on; I know I collected sometimes, but he generally collects.

By the Court: Q. Has he ever given you a statement of what he has collected, or anything to show, ever given you written statements? A. No, no statement; he generally pays the water bills and taxes, and so on, and the building and loan money.

Q. He pays the taxes, does he? A. I let him go down and pay them.

Q. You give him the money and he goes down? A. No, let them save it out of the rent he collects for me and pay them.

Q. When did he tell you that he paid the taxes? A. I didn't ask him.

Q. How do you know he paid the taxes, did he tell you he paid the taxes? A. Well, he don't have to tell me, because the taxes would show
10 whether they were paid or not.

Q. Who are the tenants in that house? A. There is Mr. Megaro, Corbo and Rymo.

Q. When were you up to collect rents? A. Oh, I don't remember exactly, two or three months ago.

Q. How much did you get? A. I got $10 off of Corbo and $8 off Rymo.

Q. What else? A. Then of course my cousin went down to the building and loan with the rest
20 of the money.

Q. How much does he pay? A. Fifty dollars.

Q. Did he ever give you checks for money that he collected? A. Sometimes.

Q. When? A. I don't remember when.

Q. The property in 53 Garside Street really belongs to Mr. Megaro, doesn't it? A. Well, I don't know.

Q. Well, I am asking you? A. You know; I don't know.

30 Q. I am asking you does it? A. No, not now.

Q. Not now? A. No.

Q. Who paid for the alteration, for fixing? A. Well, of course—

Q. Who paid it? A. He paid with rent money of course.

Q. Out of the rent money? A. Why certainly.

Q. How much did it cost? A. Well, I don't know what that cost, but it cost.

40 Q. It cost a lot of money there? A. Of course.

Q. And he paid that out of the rent money? A. Yes, and he put in some himself, he put some of the rest himself in it.

Q. How much rent does he collect in that house? A. Well, that is—

Q. Eighteen dollars, is it not? A. Yes, besides his own. 10

Q. How much is he to pay you rent for the place? A. Fifty dollars.

Q. How much do you pay the building and loan? A. Fifty dollars.

Q. So out of the $18 he pays the taxes, water, insurance, and paid for the alterations to the building? A. Well, of course he put some into it himself I suppose.

Q. You didn't know anything about it, did you? 20 A. Of course not.

Q. Didn't ask you about it, did he? A. Well, they did ask me.

Q. Asked you about what? A. About this decorating and so on, and money.

Q. He asked you for money? A. I told him I didn't have it, and I said "Pay it out yourself."

Q. You didn't have any money then? A. I told him I didn't have it, no.

Q. Did you have it? A. No, I didn't have it 30 then.

Q. Now you weren't down to any other place to buy that property except in the Union Building or Essex Building; is that right? A. No, no other place.

Q. Now you understand me, don't you, you understand me? A. I understand what you say.

Q. You are not mistaken about it, are you? A. I don't think I am. 40

CROSS-EXAMINATION by Mr. Finelli:

Q. How long have you been working? A. Twenty-seven years.

The Court: How old are you? A. Forty-three.

Q. How much a week do you make on the average? A. About $10 a week on the average.

Q. In 1910 who were you working for? A. I think I was working for Capreo.

Q. And who kept your money at that time? A. He kept it for me.

By the Court: Q. Where is he now?

Mr. Finelli: He is here in Stone Street, Newark, is he not? A. Yes.

By the Court: Q. What is his business? A. Coal dealer.

Q. When you say you gave Mike Megaro $300, how did you give it to him? A. Well, I gave him that money, and he was going to buy that property.

By the Court: Q. How did you give it to him? A. Capreo's check.

Q. You directed Mr. Capreo to give Mr. Megaro a check for $300 out of your money? A. Out of my money, yes, sir.

Q. And charge it to your account? A. Yes.

Q. How did you pay him the other $200 about three years ago? A. In cash.

Q. And the other $200? A. That was in cash too.

Q. Now you say that you once owned this property and then you lost it? A. I lost it, I couldn't come to the payments.

Q. You couldn't make the payments to whom? A. To the building and loan.

Q. And in consequence what did the building and loan do? A. Foreclosed of course.

Q. And after the foreclosure what did you do? A. I told my cousin to try his best and put in a little more money and get it back.

Q. You told your cousin to try his best, put in a little more money and you put in a little more money of your own and you got the property back? A. Yes. 10

Q. From whom did you get the property back? A. From the building and loan.

Q. Where did you go to get the property back from the building and loan? A. Up at Clinton Street.

Q. Whose office? A. Mr. Hood I think.

Q. Mr. Hood? A. I think his name is Hood, I don't remember.

Q. Did you give Mr. Hood any money? A. No, sir. 20

RE-DIRECT-EXAMINATION by Mr. Greenfield:

Q. Did you tell James DeRogatis at the time when he served you with the subpoena to come to court, get angry and tell him "What do I want to be bothered with that property, it doesn't belong to me, let Megaro go and bother his head about it?" A. No, sir, I didn't say nothing of the kind, sir. 30

Q. About seven or eight months ago, sometime in April or May of this year? A. I think it was on a Sunday morning the time he served it.

Q. That was about seven or eight months ago, wasn't it? A. About that I think.

Q. That is the time when the case was up in the court house, was it not? A. I don't know where the case was then, I don't know. 40

By Mr. Finelli: Q. Did you tell James DeRogatis at that time that you did not want to be bothered with the house? A. No, sir.

By Mr. Finelli: Q. You didn't say that to him? A. No, I didn't say.

10

SAMUEL SCHECHNER, re-called:

Direct-examination by Mr. Greenfield:

When Mr. Ianneci fell back with his payments in the building and loan and they foreclosed, then they came down to me and they said well, they wanted to straighten this matter up; originally
20 they gave this loan to me, they would never give Mr. Ianecci the $5,000, and the second time I appeared before the Board and I said, "Gentlemen, I would like to have this thing reinstated, and I will go on the bond," and they said, "Well, if you go on the bond we don't care, we will give it to him," and they gave back the $5,000 and would have given $5500 if I went on the bond, they had confidence in my bond, they knew the minute I had the property I was there to take care
30 of it, and I had the second mortgage, and there was my interest there to see that they got back the $5,000.

By the Court: Q. Why did they not stop at the very beginning; you got notice the time the foreclosure was started; now, why, instead of accumulating costs, did they not say at once: if you will pay up the back installments with interest and any other expenses attendant upon this matter,
40 we will drop the foreclosure and allow things to

be as they were. You see in that way you would not be liable for as much on your bond as you became liable for in the other way. A. When this property was foreclosed I was after several times Mr. Megaro to fix this matter up, and he said he will try, and this thing was pending a few months and he promised one time after another to fix this thing up, and at last the building and loan figured this way, well, we will simply go on with the foreclosure until he pays up the arrears, and he never kept his promise until it came to a sale, and when it came to a sale the property was sold, and it came to the same thing, promises, and it was pending in the sheriff's office, and interest wasn't paid, and this wiped out all the payments which were made before, and then I saw there was no end to it, and I volunteered to put up the money in order to get through with them, otherwise this thing would never be cleaned up; it was actually a foreclosure for default of the installments.

Q. In other words, Megaro or Ianneci invested no money at that time, the last foreclosure? A. Well, I couldn't say, but after I volunteered to put up the money and I don't know what they put in because Mr. Hood had charge of the entire transaction, whatever they put in I don't know; I know Ianneci was brought there and made a cross on the first bond and mortgage and on the second bond and mortgage.

Q. Were you there at the sheriff sale? A. Oh, I was there all right, I had to be there, my mortgage was there, sure, both times.

Q. Was Megaro there? A. That I couldn't tell, because Hood was there, and I knew Hood was

there to buy in, and the property was never sold, kept adjourning for months until we got together, and then the property was brought in by Ianneci, as the deed shows, and everything was cleaned up.

By the Court: Q. What I would like to know is where the money came from. Now it would seem as if the difference between the mortgage that you took first and the mortgage that you took the second time could not have been large enough to have paid everything that was then owing, back dues and costs and sheriff fees? A. I think they must have put up some money.

By the Court: Q. Somebody must have put up some money at that time? A. Yes, must have been some put up.

By the Court: Q. Whatever cash you paid out you got security for? A. I got a mortgage, yes.

Adjourned.

Tuesday, December 11th, 1917, at Chancery Chambers, Newark, New Jersey.

CHARLES HOOD, sworn.

Direct-examination by Mr. Greenfield:

Q. Mr. Hood, you are the solicitor and counsel for the Guarantee Building & Loan Association? A. Yes, sir.

Q. And some time in 1913 there was a foreclosure bill filed by you in behalf of the Guarantee Building & Loan Association against Samuel Schechner and others, on property located on Garside Street, and it appears by the record that John F. Monahan, sheriff, sold the property to Vin-

cenzo Ianneci, and the Guarantee Building & Loan thereafter took back a mortgage on the same property. Have you got any record of the transactions in that particular matter? A. Yes, I have a copy of the closing statement which shows the transaction at the time I closed the loan to Mr. Ianneci, which was on April 29th, 1914, and I have my cash book and ledger here which shows the transactions in reference to that property. 10

Q. Now does your cash book show any moneys received from Megaro in this transaction? A. It shows moneys paid to me by Mr. Megaro, and which were afterwards applied by me in closing the title for Mr. Ianneci.

Q. Will you look at those records, and give the dates and the amounts that you received from Mr. Megaro? A. On November 7, 1913 I received $200. 20

Q. Yes. A. On November 11, 1913 $100. On December 16, 1913 $100. On January 6, 1914 $100.

Q. These moneys that you have received, Mr. Hood, were preceding, some of the moneys at least, the first three payments were preceding the sale of the sheriff, were they not, according to the record. The deed is dated December 30, 1913, acknowledged January 9, 1914. A. Yes, I had received $400 from Mr. Megaro, had given him credit on my books for that amount, and—what was the date of the sale? 30

By the Court: Q. Have you your docket here? A. No, I haven't my docket; I understood it was only a question of the moneys.

By the Court: Q. I was going to ask you when suit was commenced, and when a final decree was made.

Mr. Greenfield: The decree, if your honor 40

please, is dated July 30, 1913; we have the record here, a synopsis of the record.

A. I have a copy of the decree in my office.

Mr. Greenfield: Dated July 30, 1913. That is correct, is it not, Mr. Finelli?

Mr. Finelli: Yes.

10

A. I think that is right.

Mr. Greenfield: And the deed is dated December 30, 1913, acknowledged January 9, 1914, recorded May 22, 1914; the decree was for $4907.50, the first mortgage; the second mortgage $658.25. That did not include the costs.

The Court: The property was bought in at how much?

Mr. Finelli: $6125.

20

A. The sale was held, I am very confident, by the sheriff.

Q. August 16, 1913. A. The sale?

Q. Yes,—no, the fi fa was August 16th. A. The sale was December 16th I think, 1913, because on that day I paid to the sheriff the $400 which I had received, which had been paid to me by Mr. Megaro.

Q. Have you received any other moneys from anybody else? A. Oh, on this transaction, yes, indeed. That will necessitate my turning to the account of Mr. Ianneci. This $400 which I had received from Mr. Megaro, upon direction, I credited subsequently to the account of Mr. Vincenzo Ianneci; also the sum of $441.14 which I received from Mr. Schechner, Samuel Schechner, and the sum of $4875, the proceeds of a loan for $5000 made by the Guarantee Building & Loan Association; the

30

40

balance between that and the principal sum of $5,000, namely $125, being the amount deducted for premiums and back shares.

By the Court: Q. When was this amount credited to Mr. Ianneci? A. Well, I credited this amount to Mr. Ianneci as of May 23, 1914. I received the amount of $441.14 from Mr. Schechner on May 21, 1913. 10

Q. 1914 or 1913? A. 1914. And the sum of $4875 from the Guarantee Building & Loan Association on April 16, 1914.

By the Court: Q. When were the entries made in that account? A. The entries were made in the account as I have read them, as of the date that I have read them.

By the Court: Q. Well, you said as of? A. Well, I mean that the entries were made on those particular dates. 20

By the Court: Q. The entries were made on the dates on which they purport to be? A. On which they purport to be.

By the Court: Q. When we speak of a decree as being as of a certain day, why it means that the decree was actually signed at a later date and dated back; you did not mean that? A. No, I didn't mean that; I mean these entries were made on the dates that they bear. 30

Q. You say that you were instructed to transfer, and that instruction was given to you by Mr. Megaro, to transfer the four or five hundred dollars so given by Mr. Megaro to Ianneci? A. Oh, yes, it must have been.

Q. Your entire transaction was with Mr. Megaro?

By the Court: Q. With whom did you have this 40

transaction? A. I had this transaction with Mr. Megaro and with Mr. Ianneci.

Q. You saw Mr. Ianneci? A. Several times, yes, sir; he applied for the loan, executed the bond and mortgage, and came to my office on several occasions for the purpose of discussing with me the securing of the funds for the taking of the title at the sheriff's sale and perfecting the loan. I have here the settlement statement.

By the Court: Q. Let us have that. A. It bears date the twenty-ninth day of April, and is as follows—

By the Court: Q. Twenty-ninth day of April what year? A. 1914. Decree in favor of the complainant $4907.50. Interest from July 1, 1913 to December 17, 1913, $137.28. Costs $147.40. Additional interest $4.64. Then interest to April 27, 1914 $111.71. Making a total amount due of $5308.53. To this was added the sheriff's costs of $104.50, making a grand total of $5413.03. As against that there was a credit allowed on the decree in favor of Mr. Schechner, who was the second mortgagee, of $658.25. Interest from July 1, 1913 to December 17, 1913 $18.40. Taxed costs allowed $10.56. Interest thereon .26. Making a total of $687.47, to which was added the further interest from December 17, 1913 to April 27, 1914 of $14.79, making a total, grand total, due Mr. Schechner under his decree of $702.26, and making a grand total due under both decrees of $6,115.29. The property was bought in for $6,125, and I paid to the sheriff on account $400, which I had received in cash from Mr. Megaro.

Mr. Greenfield: I have one more witness which I didn't know of; I would like to call him now if I may.

The Court: You may.

NICHOLAS DEROGATIS, sworn:

Direct-examination by Mr. Greenfield:

Q. What is your full name? A. Nicholas DeRogatis.

Q. You are a son of the complainant, Giovanna DeRogatis? A. Yes, sir. 10

Q. Do you know Vincenzo Ianneci? A. Yes, sir.

Q. Did you see him some time this year? A. Well, it was in about May.

Q. This year? A. Yes.

Q. Where did you see him? A. Well, down at the barn on High Street.

Mr. Finelli: I object. If I understood the Court at the last hearing, the further testimony was limited to a certain line; for instance, on the matter of how much Ianneci 20 had and where he kept the money, but I object to the complainant reopening his case and going over matters which were fully gone into on the main case, for the reason that Mr. Ianneci is not here and I will not be in a position to rebut this evidence.

The Court: Well would it be fair to allow you to put this evidence in and then let it go uncontradicted; they do not know anything about this, they are not at all in- 30 formed.

Mr. Greenfield: I have no objection if he wants to contradict it, but I take it it is material. I did not know myself until this morning of this testimony, when they came to my office and informed me; I understood that his brother served the subpoena, but it turns out that the brother did not serve

40

the subpoena, and at the time the subpoena was served Ianneci got angry because he was annoyed with the subpoena and made certain statements concerning this very property in question, disclaiming ownership, and I did not know it until this morning.

10

The Court: I would like to hear as much evidence as I can in regard to this case, and of course I will give you an opportunity of denying it.

Q. Now what did you go to see him for? A. I had a subpoena for him from the court.

Q. A subpoena for the court? A. Yes.

Q. Where did you see him? A. At High Street, at the barn.

20

Q. Did you eventually serve him with the subpoena? A. Yes.

Q. When was it? A. Well, it must have been May thirteenth, the last trial at the court house.

Q. What did he say at that time? A. He said that he didn't want to have nothing to do with the house because it didn't belong to him, he wouldn't accept the subpoena, he said the house belonged to Mr. Megaro, and he said "You can get all the officers you want at the barn, I won't show up"; went back with the officer and he wasn't there.

30

CROSS-EXAMINATION by Mr. Finelli:

Q. This was a Sunday morning? A. Monday morning.

Q. Had you been there the day before, on a Sunday morning? A. On a Saturday morning, and on a Monday too.

40

ANTONIO CAPREO, sworn:

Direct-examination by Mr. Finelli:

Q. Where do you live? A. Sixty-six Stone Street.

Q. And are you in business up at 66 Stone Street? A. Yes, I am in the coal and ice business. 10

Q. How long have you been in business? A. Well, I have been in the coal business about fifteen years, but directly in the business since I lived in Newark eleven or twelve years.

Q. Did you ever employ Mr. Ianneci? A. Oh, yes, he was my first working man.

Q. How long did he work for you? A. Well, he worked steady about five or six years.

Q. Did you ever have any money belonging to him? A. I had a little, yes. 20

Q. How much money did you have belonging to him? A. I had about three hundred dollars.

Q. Do you know where he got that money? A. Well, I don't know, he brought it to me, that I couldn't say.

By the Court: Q. You did not deduct it from his wages? A. No, no.

By the Court: Q. Or it was not anything that you owed him for wages? A. No, this wasn't for the wage; he brought that $300 to me, about three or four weeks before he took it. 30

Q. Where did he get the money from? A. I don't know where he got the money.

Q. Do you know who kept his money for him before you had it? A. Well, he said that he had some with his relation, but I don't know if it was true or not.

Q. Don't you know the relative of his that kept 40

the money before that? A. Well, according to what he said—

Mr. Greenfield: I object to what he said.

The Court: No, that will not do.

Q. How long did you keep the money? A. About three or four weeks.

10

Q. Then what did you do with it? A. Why he came to me and directed me to make a check to the order of Michael Megaro for $300.

Q. Did you follow his instructions, did you make the check? A. Oh, yes, I made the check, yes.

Q. Is this it? A. That is the check, yes.

Mr. Finelli: Dated April 29, 1910 The North Ward National Bank, Pay to the order of M. Megaro, Three Hundred Dollars. (signed) Antonio Capreo, and endorsed M. Megaro, and it is marked Exhibit D-1.

20

Mr. Greenfield: That was long before this transaction anyway, almost four years, three and a half years.

CROSS-EXAMINATION by Mr. Greenfield:

Q. Mr. Capreo, did Mr. Ianneci ever say anything to you about this property at Garside Street?

30

Mr. Finelli: I object. That is not cross-examination.

The Court: No, it is not cross-examination; the direct-examination was limited to this check.

Mr. Greenfield: I do not think this check is evidence, it is three and a half years before.

The Court: That may destroy its value,

40

but I will let it in. Mr. Ianneci, as I recall the evidence, testified that the money that he lent Megaro, or that he used to buy this property, was obtained from this witness.

Q. Is that the only money that you ever gave to Mr. Ianneci besides his wages? A. Yes, that is the only money. 10

Q. That is the only money? A. Well, I used to pay him by the week, that is wages, but that is the only money I gave him in one lump.

Opinion

(Filed Dec. 14, 1917) 20

Stevens, V. C. There can be no reasonable doubt that Ianneci holds the property in trust for Megaro. Megaro lives in a part of the property and rents the rest. He pays the interest on the Building & Loan Mortgage and other charges. What money was paid to Mr. Hood on the last sale ($500.) was paid by Megaro. He has never rendered any account of moneys received and paid to Ianneci. He has spent a considerable sum of money of his own in improving the property and 30 Ianneci has manifested no such interest in it as an owner usually manifests, Ianneci's statements as to money lent or given to Megaro are vague and contradictory. The only tangible evidence that he produced is a check of $300. which bears date nearly a year and a half before the property was acquired from Schechner. The Complainant is *entitled to a decree.*

40

Final Decree

(Filed Dec. 27, 1917)

IN CHANCERY OF NEW JERSEY

10 Between GIOVANNA DE ROGATIS, Complainant. And MICHAEL A. MEGARO and MARY MEGARO, his wife, and VINCENZO IANNECI, Defendants.	On Bill, &c.

20 This cause having been brought to a hearing upon the pleadings and proofs taken in open Court, and having been argued by William Greenfield, Esquire of Counsel wtih the Complainant, and Anthony R. Finelli, Esquire, of Counsel with the defendants, and after due and mature consideration by this Court;

It is on this Twenty-second Day of December, Nineteen Hundred and Seventeen, ORDERED, ADJUDGED and DECREED that the land and premises 30 described in the Bill of Complaint filed in this cause, and conveyed by John F. Monahan, late Sheriff of the County of Essex, to Vincenzo Ianneci, by a deed bearing date the Thirtieth Day of December, 1913, acknowledged on the Ninth Day of January, 1914 and Recorded in the Register's Office of Essex County on the Twenty-second Day of May, 1914, in Book L. 54 of Deeds for said County, on pages 221, &c., and more parti- 40 cularly described as follows:

BEGINNING on the Easterly side of Garside Street at a point distant one hundred feet Southerly from the Southeasterly corner of said Garside Street and Sixth Avenue; thence running Southerly along said Garside Street twenty-five feet; thence Easterly and parallel with Sixth Avenue one hundred feet to the rear line of lot No. 254 on Map hereinafter mentioned; thence Northerly along said rear line of lot No. 254 and parallel to Garside Street twenty-five feet to the rear line of lot No. 249 on said Map; thence Westerly along said rear line of said lot and other lots fronting on Sixth Avenue one hundred feet to the place of BEGINNING.

is, as against the Complainant, held by the said Vincenzo Ianneci in trust and for the use and benefit of Michael A. Megaro, one of the defendants herein, and that the said land and premises as hereinabove described, is, as against the Complainant to be held and deemed to be the property of the said Michael A. Megaro and not the property of the said Vincenzo Ianneci.

And it is further Ordered, Adjudged and Decreed that the said Vincenzo Ianneci and Michael A. Megaro and Mary Megaro, his wife, or any one of them, shall, within thirty days after service upon them or their Solicitor of this Decree and the taxed bill of costs in this cause, pay unto the Complainant or her Solicitor, the judgment recovered by the Complainant against the defendants Michael A. Megaro and Mary Megaro, his wife, in the Essex County Circuit Court, on the Fifteenth Day of May, 1917, for the sum of Nine-

teen Hundred and Eighty-six Dollars and Eighty-four Cents ($1986.84) and taxed costs amounting to the sum of Sixty-eight Dollars and Eighteen Cents ($68.18) together with the interest thereon from the date of the entry of the said judgment, and a second judgment recovered by one Eugene H. Meyer against the said Michael A. Megaro and Mary Megaro, his wife, on the Eleventh Day of April, 1912, in the District Court of the City of East Orange and docketed in the Essex County Court of Common Pleas, in the sum of One Hundred and Eighty Dollars and Twenty-three Cents ($180.23) and taxed costs amounting to the sum of Thirteen Dollars and Forty-nine Cents ($13.-49), which said judgment was duly assigned to the Complainant herein, together with interest thereon from the date of the entry of the said judgment, more particularly mentioned and described in the Bill of Complaint filed in the above cause.

And it is further Ordered, Adjudged and Decreed that the said judgments of the Complainant be and are hereby adjudged and decreed to be liens against the land and premises herein described, and as mentioned and described in the Bill of Complaint, paramount to any lien, claim or interest that the said Vincenzo Ianneci shall or may have in the said land and premises, which said judgments shall be subsequent, however, in the order of priority, to the mortgage of the Guarantee Building and Loan Association given to secure the payment of the sum of $5000. and a second mortgage held by Samuel Schechner, originally given for the sum of $1000., or such sum or sums as may now be due thereon.

And it is further Ordered, Adjudged and De-

creed that unless the defendants, Michael A. Megaro and Mary Megaro, his wife, and Vincenzo Ianneci, shall, within thirty days after service upon them or their Solicitor of a copy of this Decree and of the taxed bill of costs, pay to the Complainant or to her Solicitor, the amount due to her upon her several judgments in this cause referred to, and the taxed costs of this suit, that a writ of *fiere facias* do issue out of this Court, directed to Charles M. Meyers, Esquire, one of the Special Masters of this Court, commanding him to make sale, according to law, of all the right, title and interest of Michael Megaro, Mary Megaro and Vincenzo Ianneci in and to so much of the said land and premises as will be sufficient to satisfy the Complainant's debt, interest and costs, and the taxed costs of this suit, and that he pay the same to the Complainant or her Solicitor; and that in case more money shall be raised by the sale than shall be sufficient to answer such payment, such surplus may be brought into this Court, and be deposited with the Clerk to abide the Further Order of this Court.

Respectfully advised,

E. R. WALKER,
C.

Frederic W. Stevens,
V. C.

Notice of Appeal

(Filed March 14, 1918)

NEW JERSEY COURT OF CHANCERY

10 Between
GIOVANNA DE ROGATIS,
Complainant,
and
MICHAEL A. MEGARO, *et als.*
Defendants.
On Bill, etc.

The defendants, Michael Megaro and Vincenzo Ianneci, hereby appeal from the whole and from
20 every part of the Final Decree, entered in this cause, bearing date December 22, 1917, to the Court of Errors and Appeals, in the last resort in all causes.

Dated, March 11, 1918.

ANTHONY R. FINELLI,
Solicitor for and of
Counsel with Defendants.

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

ANTHONY R. FINELLI,
Solicitor for and of
Counsel with Defendants.

Petition of Appeal

(Filed March 26, 1918)

NEW JERSEY COURT OF ERRORS AND APPEALS

10

Between GIOVANNA DE ROGATIS, Complainant-Respondent, and MICHAEL A. MEGARO, *et al.*, Defendants-Appellants.	On Bill, etc.

To the Honorable Judges of the Court of Errors and Appeals, and of the last resort in all causes: 20

The petition of the defendant, Vincenzo Ianneci, the appellant, in the above cause, respectfully shows that your petitioner finds himself aggrieved by a decree made by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, filed in the Court of Chancery, on December 27, 1917, in a cause wherein Giovanna De Rogatis is complainant, and your petitioner and two others are defendants, in this respect, to wit: That the said decree, orders and adjudges that certain real estate is, as against the complainant, held by your petitioner in trust, for the use and benefit of the defendant Megaro; and your petitioner is ordered to pay the amount of a judgment recovered by the complainant in the Essex Circuit Court against the other defendants, Michael A. Megaro and Mary Megaro, and it is in said decree further 30 40

ordered that the amount of said judgment is a fixed lien against the said real estate paramount to any lien, claim or interest that your Petitioner shall or may have in the said land and premise.

And your petitioner humbly appeals from the decree of the Chancellor upon the ground that the same is erroneous, in that it adjudges that the said property is deemed to be the property of Michael A. Megaro, and also in that petitioner is ordered to pay the amount of said judgment; and also in that the complainant's judgment is deemed to be a lien against the said property paramount to any lien, claim and interest therein of your petitioner, when the said Chancellor should have decreed that the deed to your petitioner was bona fide and given in settlement of an honest debt, and that the value of the property received in settlement of the debt was not materially greater in value than the debt paid thereby.

Your petitioner, therefore, humbly prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden. And your petitioner may have such relief in the premises as to this Honorable Court may seem just.

ANTHONY R. FINELLI,
Solicitor and of
Counsel with Appellant.

New Jersey Court of Errors and Appeals

Between, GIOVANNA DE ROGATIS, Complainant-Respondent, and MICHAEL MEGARO *et al.*, Defendants-Appellants.	On appeal from Chancery.

BRIEF FOR APPELLANT

On November 6, 1911, by a deed containing covenants of warranty, appellant Vincenzo Ianneci, bought the building and land #53 Garside Street, Newark, from Samuel Schechner. The conveyance was made subject to a first mortgage of $5000. in favor of the Guaranty Building & Loan Association. No cash was paid for the deed, but he gave a purchase money mortgage to secure $684. Michael A. Megaro had prior thereto deposited with Schechner $200, to purchase the property. Megaro was at the time appellant's debtor to the extent of $300. The debt was paid by the assignment of Megaro's interest in the contract. The main question in the case is whether the value of the assignment received in settlement of the debt was materially greater in value than the debt paid thereby.

The question tried was whether or not when Schechner conveyed, Ianneci acquired an absolute title or only a title which he held in trust for Megaro (Statement by Court, Page 18).

The facts are not disputed.

Schechner bought the property from Bierman, and taking possession, was told by tenants that Megaro was the former owner, and made arrangements to sell the property back to him for $5,500 (p. 19, l. 25). The agreement had to be changed because Megaro was short of money and, therefore, Schechner raised a first mortgage of $5,000 and took a second mortgage for the differnce. No cash was paid (p. 25, l. 37).

Ianneci gave Megaro $300.00 by check and $400, in cash; he then failed to make monthly payments and the association foreclosed its mortgage and appellant bought the property back at the Sheriff's sale. (Ianneci direct 54, cross, p. 62. Schechner, re-direct, p. 64. Megaro, cross, p. 47, l. 32.)

Ianneci applied for the loan, executed the bond and mortgage and went to the office of the solicitor, on several occasions, for the purpose of discussing with him the securing of the funds for the taking of the title at the Sheriff's sale and perfecting the loan. (Charles Hood, direct, p. 70.)

Megaro says the property will belong to him when he pays Ianneci's claim amounting to $700; he has privilege to redeem; loans were made from time to time; and when Megaro entered into said agreement the earnest money was also furnished by Ianneci (p. 42, l. 20).

A married daughter of respondent lived on the property (48). Respondent had sold Megaro the property subject to a mortgage in course of foreclosure; but did not deliver the possession.

There is no doubt that Schechner acquired a valid title under that foreclosure proceeding (statement by the court, p. 47, l. 10).

The appellant's equity is at least equal to that of the respondent and he might protect himself by virtue of Schechner's title. This is necessarily the case, otherwise a party holding a perfect title might be unable to dispose of it and its value would be clearly impaired. *Holmes vs. 4 N. J. E.*, 3 Gr., 492; affirmed 2 Stockton, 419.

The property consits of a three-story frame dwelling, occupied in part by Megaro, and by two other tenants. Megaro is in possession as appellant's tenant, but there is a verbal understanding that the property will eventually belong to him if he re-pays appellant the sum of $700.

POINT ONE

The value of the assignment received in settlement of the debt was not materially greater in value than the debt paid thereby.

The $200, which Megaro gave Schechner as a deposit upon the agreement of sale was received from appellant (p. 42), appellant had further given Megaro $200, which was used to pay in part for the alteration of the building (p. 42, l. 9); the excess of $148, over the contract price of $5500, represented bonus and charges made by the association (p. 25, l. 33). Appellant is a teamster by trade and he had by his labor and expenditure of money, improved the value of the building. He is a single man, lives alone

and generally employes Megaro, to transact his business. In his own language:

> "Well, I came to buy it (the property), because my cousin, (Megaro) he was owing me quite a little money, and I told him to let me have it, and he was going to lose this property, and he simply said to have our money safe why transfer the first time this property to me, and I bought this property in to me at this Sheriff's sale; of course, I didn't know the Sheriff's sale, and so on, and he brought me down there himself. He simply told me to sign those papers and I had that property" (p. 54, l. 27).

Ianneci gave Megaro $200, more at that time; the first loan of $300, to Megaro, was corroborated by Ianneci's employer, who was the depositary of the money; the second transaction also involving $200, was not a loan; Ianneci constituted Megaro his messenger.

> "Q. And you loaned that to Megaro? A. Yes, sir—No—not loaned that; I gave him that to get that property back the second time.
>
> "Q. You gave him that so he could get the property back, he should not lose it; is that right? A. I was in the lose out the second time." (p. 55, l. 20);

Examining the case at (p. 56, l. 4), questioned by the Court, Appellant says:

> "Q. You say you got it to protect yourself; what do you mean by that, you got it to protect yourself? A. I got it to protect myself with my money that I loaned

to him before, to have it to protect myself and take this property and then not lose it, and by me loaning it, he said he would try to get it back, and so on, for me, and I gave him a couple of hundred dollars more to invest in it.

"Q. When you say you gave it to him, did you lend it to him? A. I gave it to him.

"Q. But you expected it back from him, didn't you? A. Of course, if I got the money back, I would give him the property back at the time, I would sell it to him, sell the property back to him again.

"Q. In other words, he gave you the property as security for your money? A. Yes.

"Q. For the $200, you gave him in 1913? A. For the $300, had before, and then not for the $200, for the rest of the money too. "Q. How much? A. Between $600, and $700, altogether" (p. 56, l. 30).

The alterations were paid with rent money (p. 60, l. 33). *He denies* that he ever made any statement *that the property did not belong to him* (p. 53); Ianneci fell back with his payments in the Association and the mortgage was foreclosed; the loan was then renewed upon the urgent prayer of Schechner, who loaned his name on Ianneci's bond; it was actually a foreclosure for default of installments (p. 65, l. 24); Schechner received a mortgage for whatever cash he gave out.

IN ORDER TO SET ASIDE, AS FRAUDULENT AGAINST CREDITORS, A CONVEYANCE TO ONE CREDITOR, HE MUST HAVE PARTICIPATED IN OR HAVE BEEN COGNIZANT OF THE GRANTOR'S UNLAWFUL MOTIVES WHEN HE ACCEPTED THE CONVEYANCE.

The burden of the complaint of the appellant is that, while the evidence does not justify the conclusion that either one of the conveyances in question was the result of a combination of the defendants to delay or defraud the respondent, or other creditors of Megaro, and conceding that there is no evidence that appellant knew of Megaro's fraudulent intentions, the Vice Chancellor nevertheless preceeds to deprive appellant of the fruits of his bargain.

The same evidence which is offered as proof of the fraud, is equally cogent in showing his design to have been merely a preference.

Appellant, on the evidence, stands entirely clear of any just imputation against his motives, or of a design to aid his cousin in any fraud, if, indeed Megaro was moved by bad faith towards Respondent. There is no doubt of the adequacy of the consideration or of the good faith of the assignment of the contract, and the honesty of the conveyance is not left in doubt.

Appellant was an honest and meritorious creditor of his cousin having loaned to him $300.00 in contemplation of Megaro buying the property in suit. When Megaro lost his application to set aside the Bierman sale, appellant gave him $200.00 more to deposit with Bierman's assignee. The fair value of the land embraced in the deed according to the evidence did not exceed $5500.

The property having been purchased with Ap-

pellant's money, it was the legal duty of Megaro, acting in honesty and in good faith to direct a conveyance to appellant for a surrender of the credit which was in an amount sufficient to constitute an honest adequate consideration for the sale. It was the right of the appellant to be vigilant and foremost in attaining this end, even though thereby other creditors were postponed or put to other disadvantage. It was equally the right of Megaro, if he so willed although in poor circumstances, to prefer him in payment to other creditors. Respondent waited many years before she came to court with her case, and the appellant was greatly prejudiced by the lapse of time.

IF THE HONESTY OF THE CONVEYANCE IS LEFT IN DOUBT, IT IS PROPER TO SET ASIDE THE SALE UPON EQUITABLE TERMS.

There is but a shade of difference, sometimes between the act of taking a conveyance of the property, as security for the payment of a debt which is approximately the value of such pledge, and taking it in payment of such debt; so that, subsequently, that shade of difference may perhaps innocently be lost sight of by the parties. Probably the arrangement by force of which appellant took his conveyance, was loose and ill-defined; such is often the case. All the evidence respecting the conveyance comes from the appellant and Megaro, who are the only witnesses speaking on this subject. They were called by the respondent and, therefore, she did, in part, vouch for their credibility.

In this feature the case bears a resemblance to that of *Demarest vs. Terhune,* 3 C. E. Gr., 532, in which lands held by absolute conveyance, but in-

tended to secure the grantee's debt, were ordered to be sold to pay first the claim of the grantee secured by his deed, and out of the surplus the costs and complainant's claim.

The appellant paid approximately the value of the property and there was no proof to show that either sale to him was not fair and proper under the circumstances.

The debt due from Megaro to the appellant was an honest one. It was the result of the accumulations and savings of a hard working laborer. Every good instinct in Megaro would plead for its payment if within his power. The debt in amount was fully adequate and equal to the value, as proved, of Megaro's interest in the lands embraced in the conveyance and sufficient to pay for its absolute purchase. Appellant further gave his personal bond to secure two mortgages on the property. Whatever money Megaro handled, as proved, either came from the pocket of the appellant or was the proceeds of the rents and profits derived from the property.

The propriety of the decree, upon the evidence produced in this case, amounts to divesting the appellant of the only security he had for the money advanced. The proof being that the outstanding liens against the property, together with the respondent's claim, amount to more than the sum the property can ever bring at a judicial sale. In the absence of any showing of fraud or of reckless buying with guilty knowledge the decree is inconsistent with the flexible and tolerant jurisdiction usually exercised by a court of equity.

Scanning the transaction with severe scrutiny; looking at all the facts, and giving to each one its due weight; dealing with the subject before your Honors according to right and justice a mort-

gage in form would have more correctly and definitely expressed the purpose of the parties, but the course pursued was, under the circumstances, justifiable, and relieved of all suspicion, under the belief that his debt and the encumbrances more than equaled the value of the property at the time of receiving the first deed clearly entitles appellant to recover in the right of his vendor Schechner.

For these reasons it is respectfully submitted that the decree of the Court of Chancery is erroneous.

ANTHONY R. FINELLI
Counsel for Appellant.