

New Jersey Court of Errors and Appeals

WILLIAM A. BAKER, Complainant-Respondent, vs. CHARLES BAGNOLE, <i>et als.</i> , Defendants-Appellants.	} On appeal.
--	--------------

BRIEF FOR THE DEFENDANTS- APPELLANTS

SABINO MONTEFUSCO, PASQUALE CASSESE, VITO
VERNIERI and JOSEPH CORDASCO.

This is an appeal from decree of the Court of Chancery declaring valid a mortgage for \$1500, on property owned by the defendants Montefusco and Cassese, described as first and second tracts, and on a property owned by defendants Vernieri and Cordasco, described as third tract given as a collateral security to the extent of \$200.

The defendants-appellants contend that:

1. The complainant is not a bona fide assignee of said mortgage in good faith and for value.
2. That the mortgage assigned to him was fictitious and without consideration.
3. That Bagnole was not the owner of said property.

4. When the property was sold to Montefusco and Di Geronimo, Bagnole and Schechner fraudulently concealed from the purchasers the existence of said mortgage and that the mortgage should be delivered up to them to be cancelled.

Statement of Facts

The evidence in the case shows that on or about the 9th day of November, 1908, the defendants Montefusco and Antonio Di Geronimo met Bagnole on Seventh Avenue, Newark, New Jersey. That Bagnole said to them, "I have a piece of property for sale cheap; Samuel Schechner is the owner." They went to see the property and Bagnole offered to sell it for \$10,500 (p. 59, ll. 10-20). At Bagnole's suggestion they went to Schechner's office. Bagnole told them that there were two mortgages on the property, one held by the Building & Loan Association for \$9500 and the other by Mr. Richards for \$1200 (p. 60, ll. 25-30). That they agreed to pay for the property \$100 in cash, and to assume the payment of the Building & Loan's and Richard's mortgage, and to pay the taxes for 1907, amounting to about \$200 (p. 78, ll. 13-40). That Montefusco then expressed the intention of employing a lawyer but Schechner said, "You need not spend any money for a lawyer, I am here to look after your interest" (p. 61, ll. 1-13). That they relied on these assurances and did not employ a lawyer (p. 60, ll. 34-40).

That he, Montefusco, wanted the check made payable to Schechner, but Schechner made it payable to Bagnole saying, "What are you afraid of. This \$100 is given to Bagnole as commission" (p. 154, ll. 12-25).

That Schechner drew up an agreement for the sale of the property which agreement was signed by Montefusco, Di Geronimo and Bagnole. As he and Di Geronimo could not read English, Schechner read the agreement to them (p. 59, ll. 30-40; p. 60, ll. 7-8). That Montefusco asked Schechner for a copy of the agreement and Schechner said, "Come around and I give it to you." That two or three days after he called for said agreement, but could not get it, and that many times during the period of one year thereafter, he demanded of Schechner a copy of said agreement, but Schechner failed to give it to him (p. 61, ll. 20-39). That he never saw the original deed and it was never delivered to him (p. 63, ll. 7-10). A certified copy of it was mailed to him about a year after the sale (p. 62, ll. 6-30). It was then that he learned of the existence of the third mortgage on said property.

That he then went to see Schechner and said to him, "What is the matter, you told me when I bought the property that there were two mortgages on the property and now I find that there are three." Schechner's aid, "I do not know anything about it. Bagnole was the owner" (p. 63, ll. 26-40). He went to see Bagnole and Bagnole told him that he had nothing to do with the property, that Mr. Schechner was the owner and that the mortgage for \$1500 was a fake mortgage (p. 65, ll. 5-12), and that he would say so in Court (p. 69, ll. 25-30). He also spoke to Crecca about it (p. 79, ll. 10-12), and Crecca said that he did not know anything about (p. 75, ll. 37-40; p. 76, ll. 1-2), and was surprised that there was a third mortgage on the property (p. 76, ll. 25-30). That Crecca further stated that when he left the property to Mr. Schechner there were only two mortgages

upon it; one held by the Building & Loan and the other by Richards, that they could not pay the taxes or dues to the Building & Loan (p. 76, ll. 30-35).

Montefusco further testified that when he and Di Geronimo bought the property it was in a bad condition, paying about \$35 or \$40 rent per month (p. 67, ll. 39-40). That when he received the certified copy of the deed he employed attorney Gottlieb to search the title (p. 73, ll. 25-30). That the first time Schechner asked him for the interest on the third mortgage was in 1910 and that he called him a thief, for the third mortgage should not have been on the property (p. 64, ll. 27-30). That Antonio Di Geronimo went to Italy a week after he bought the property (p. 70, ll. 13-26), and did not return to America and never paid any interest on the mortgage (p. 70, ll. 30-40). That Gerolamo Di Geronimo who signed the alleged letter was not his (Montefusco's) partner (p. 71, ll. 18-24; p. 77, ll. 34-40). That he (Montefusco) did not give Schechner \$45 in cash or check to pay the interest on the \$1500 mortgage and never requested Schechner to ask Baker for indulgence in the payment of the interest (p. 70, ll. 6-15).

PASQUALE CASSESE testified that before buying the one-half interest in said property from Di Geronimo he saw Bagnole about the third mortgage and Bagnole said to him, "You go ahead and buy the property, the mortgage is a fake, don't pay any more than they paid for it" (meaning Montefusco and Di Geronimo) (p. 96, ll. 38-40; p. 97, ll. 1-12). That he paid \$5000 for the one half interest in said property by assuming the payment of one-half of the first and second mortgage. That he was not afraid to take title; for it was a family affair (p. 102, ll. 30-40). That he

signed the agreement showing the three mortgages because it conformed with the deed (p. 103, ll. 20-40). Gottlieb his lawyer told him that the agreement should be made like the deed (p. 104, ll. 18-20). That he first found out about the \$1500 mortgage when he signed the agreement. Bagnole on that day told him that the mortgage was a fake and to buy the property and not bother with the said mortgage (p. 105, ll. 10-20).

VITO VERNIERI testified that in 1908 he and Bagnole were the owners of the Cutler Street property mentioned as third tract in said mortgage. That the first time he knew of the existence of the \$1500 mortgage was on October, 1914 (p. 87, ll. 1-20). That he was never asked to pay nor did pay any interest on said mortgage (p. 97, ll. 30-40). That Bagnole said to him, "Don't worry about the \$1500 mortgage for it is a fake mortgage" (p. 87, ll. 34-40). That he saw Baker about it and Baker said, "I do not know anything about the mortgage you had better see Schechner who sold and guaranteed the mortgage to me" (p. 87, ll. 35-40; p. 88, ll. 1-10). That he went to see Mr. Schechner and Schechner said that he would protect him for he knew that he (Vernieri) was innocent (p. 88, ll. 15-25). That he spoke to Bagnole about it in presence of Schechner while in the elevator of the Prudential Building at Newark, and that Bagnole said to him, "The third mortgage is a fake mortgage, they are a bunch of crooks." That Schechner then simply smiled (p. 88, ll. 25-30).

THEODORE GOTTLIEB, an attorney at law, testified that Schechner told him that he had prepared the agreement for the sale of the property by Bagnole to Montefusco and Di Geronimo. That Schechner looked in the safe, and could not find

it. Cassese and Montefusco were present (p. 111, ll. 27-40). That he merely acted in the capacity of drawing up a deed; the parties having previously agreed as to the terms and conditions. The transaction was a family affair (p. 122, ll. 10-22), and that Cassese did not assume to pay the \$1500 mortgage (p. 117, ll. 1-5).

That Baker told him through the 'phone that the interest on the mortgage had not been paid for some time and that he was loth to discuss the mortgage (p. 110, ll. 15-18).

SAMUEL SCHECHNER testified that during the years 1907-1908 he, Baker, Berger and Crecca, were partners in the real estate business, and the property in question was bought by Berger and Crecca for the benefit of all the partners (p. 176, ll. 17-23).

He further testified that Crecca and Berger bought the property not for the corporation of which they were members, but for themselves (p. 193, ll. 10-15). That when the property was sold to Bagnole, he said to Baker, "Do you want to go in," and they took him in. That Baker and Schechner's names did not appear in the deed as purchasers because they had full confidence in their partners (p. 193, ll. 30-40). That he was very friendly with Charles Bagnole who used to call him Sam (p. 195, ll. 1-5), and always trusted him (p. 196, ll. 30-40). That the agreement for the sale of the property by Berger and Crecca to Bagnole was signed by him and not Baker, because Baker left it all to him (p. 195, ll. 25-33). That Baker was not in Bloom's office when the property was sold to Bagnole nor when the mortgage in question was assigned to him. That he had had in his hands thousands of dollars of Baker's money and that in the year 1907, Baker

loaned him several thousand dollars (p. 187, ll. 30-40).

That when Montefusco called at his office with Bagnole to buy the property, Montefusco said to him, "Sam, is a search necessary?" He answered, "You can do anything you want, Mr. Bloom can look it up for you." Montefusco did not want to spend any money, and left it at his office and he took it to Mr. Bloom (p. 201, ll. 10-20). That no agreement was drawn, the terms were all agreed upon at the same time. That he simply drew up a little memorandum of the transaction and went right in to Bloom's office to have the deed drawn (p. 178, ll. 38-40; p. 179, ll. 1-5). That the agreement showed the different mortgages. That it was signed by some one, and that he gave Montefusco a copy and he kept a copy for himself (p. 199, ll. 1-13). That the deed was given to Montefusco right then and there (p. 179, ll. 1-20), after having been read to all the parties by Mr. Bloom (p. 180, ll. 4-10). That after the execution of the deed, Montefusco did not call at his office for the deed until six or seven months later (p. 204, ll. 1-5). He never called about the agreement until a year ago (p. 204, ll. 10-15). That when Gottlieb called at his office he looked in the safe to satisfy him, and told him the deed was made four or five weeks after the transaction was closed (p. 204, ll. 35-40). That he did not tell Montefusco that the deed had been lost (p. 205, ll. 1-4). That the check for \$45 was brought to him by Montefusco in 1912 when he received the letter that Montefusco asked to see Baker and influence him to be lenient (p. 208, ll. 10-20). That he gave Montefusco the deed personally, it was turned over to him direct from his office (p. 208, ll. 26-30). That he sent the original deed to the Seventh

Avenue address about five weeks after the transaction (p. 181, ll. 15-22). That he said to Montefusco, you buy the property and the interest is paid to us, and that is all. You have nothing to do with Charles Bagnole (p. 199, ll. 35-40). In 1908 the property was assessed at \$9000.00.

That the first time Baker demanded the interest on the mortgage was in the latter part of 1912 or 1913, and he called Montefusco's attention to it (p. 183, ll. 8-22), and Montefusco asked for further time (p. 185, ll. 22-35). Afterwards Montefusco called at his office and gave him a letter containing a check for \$45 and asked him to pay that money to Baker, which he did (p. 184, ll. 1-20). That he, Schechner, never paid any interest except the \$45 (p. 222, ll. 10-15), and that he did not know who made the other payments on account of the interest (p. 186, ll. 15-20). That he never told Montefusco that Baker wanted the principal or the interest of the mortgage (p. 210, ll. 24-25), but said to Baker not to be hard on them and get the interest only (p. 210, ll. 25-30).

CHARLES BAGNOLE testified that in consideration of said mortgage of \$1500 Berger, and Crecca also gave him some property on First Avenue (p. 180, ll. 25-30). That the agreement and the deed to Montefusco were drawn almost the same time, a day or two ahead (p. 136, ll. 5-10). That he received \$100 by check (p. 136, ll. 28-30). That the only thing he cared for was the check and not what Montefusco said against him in presence of Schechner (p. 138, ll. 25-30). That he said in a joke to Montefusco that the \$1500 mortgage was a fake mortgage (p. 139, ll. 5-10). That he did not know Baker. That a week after he bought the property he offered to sell the same to Montefusco and Antonio Di Geronimo for \$100 because he

could not keep the property (p. 151, ll. 30-40). He wanted to get rid of it (p. 132, ll. 24-40), and told Montefusco and Di Geronimo to go to Schechner's office. They went there (p. 133, ll. 1-12). The agreement and the deed were drawn at the same time, a day or two ahead (p. 136, ll. 5-10).

SAMUEL BERGER testified that he was a partner with Schechner when he sold his interest in the third mortgage to Baker (p. 219, ll. 12-17). He could not recollect whether he received a check or cash from Baker (p. 219, ll. 30-35). That the check was made payable to the firm of Berger & Schechner (p. 220, ll. 15-28). That their partnership was dissolved the latter part of 1908 and the share was paid to him then (p. 220, ll. 30-40).

DANIEL CRECCA testified that he gave the deed to Bagnole in the presence of Schechner. He did not think Mr. Bloom was present, Mr. Roessler took the acknowledgment (p. 213, ll. 30-35). That Montefusco called upon him a year after the sale, but did not speak to him about the third mortgage until a year ago. That he told Montefusco that there was a third mortgage (p. 214, ll. 1-15). That he did not tell him that he positively knew of the existence of the mortgage, but for that mortgage he received \$350 from Mr. Baker (p. 214, ll. 12-16). That Baker gave a note dated November 5th, 1908, and it was discounted in the National Banking Company. The note was not payable to his order (p. 215, ll. 17-20).

Conclusions

It is respectfully submitted that the evidence in the case fails to show what was the consideration paid by Berger and Crecca to Patrick Foy, when they bought the property. It was then assessed

at \$9000. The purchasers placed a mortgage thereon for \$9500. That they were in arrears in the payment of taxes and dues to the Building & Loan Association and that in the face of this condition of affairs they placed on said property a second mortgage for \$1200.

It is uncontradicted that the property was in bad condition, paying about \$35 or \$40 rent per month and that it became necessary to spend \$1000 by the defendants to make it tenantable.

It is admitted that Baker and Schechner were two secret owners, and that Schechner was intrusted with the management of the property. He acted for all the parties when it was sold to Bagnole and from Bagnole to Montefusco and Di Geronimo. Baker reposed full confidence in him, and trusted him with and loaned him thousands of dollars at the very time when that property was bought by Berger and Crecca, and also when it was sold to Bagnole.

The contention of the appellants that the sale of the property from Berger and Crecca to Bagnole was fictitious is supported by Bagnole himself who testified that the consideration for the execution of the \$1500 mortgage was the sale of the Seventh Avenue and Mt. Prospect Avenue property, and a property on First Avenue, Newark, New Jersey. This part of the testimony is very important, because it is contradicted by the testimony of Berger, Crecca and Schechner who testified that the only consideration received by Bagnole for the execution of the \$1500 mortgage was the sale of the Seventh Avenue and Mt. Prospect Avenue property. Such contradiction is a strong circumstance which goes to the very foundation of this case.

But assuming for the sake of argument, that the

sale to Bagnole was a bona fide sale, we still contend that the sale from Bagnole to Montefusco and Di Geronimo was the result of a conspiracy between Schechner and Bagnole, carried into effect for the benefit of William A. Baker, complainant, Schechner, Berger and Crecca, for when Bagnole, Montefusco and Di Geronimo called at Schechner's office to buy the property Montefusco expressly stated that he wanted to deal with Schechner and not with Bagnole and wanted to employ a lawyer and that Schechner told him that Bagnole was simply an agent, that no lawyer was necessary, and that he would look after Montefusco's and Di Geronimo's interests.

By making such a statement Schechner became the attorney of Montefusco and Di Geronimo and it was his duty to disclose to them all the encumbrances on the property. It is uncontradicted that Schechner drew the agreement for the sale of the property from Bagnole to Montefusco and Di Geronimo, and that a check intended for Schechner was made payable to Bagnole, Schechner saying that Bagnole was entitled to a commission. It also became the duty of Schechner to deliver the agreement for the sale of said property to the purchasers. This he did not do.

The deed, according to Schechner's own testimony was executed in his office on the same day or on the day following. It was also his duty to deliver the deed to the purchasers. This he also failed to do and what transpired thereafter is an additional proof that Bagnole was not the owner of the property when he sold it to Montefusco and Di Geronimo. The appellants' testimony to the effect that Bagnole had said to them that the \$1500 mortgage was fake mortgage is corroborated by Bagnole himself who testified that on a

certain occasion he said to Montefusco that the mortgage was a fake mortgage, and by two disinterested witnesses, Theodore Gottlieb, an attorney at law, and Pellegrino Pellecchia, a building contractor.

The attitude of Schechner after Montefusco received a certified copy of the deed was very suspicious. This is shown by his testimony, full of contradiction and inconsistencies. Montefusco testified that he went to see him immediately after he received the certified copy of the deed, and told him that the mortgage should not have been on the property and even went so far as to call him a liar and a thief.

It appears that neither the complainant nor Schechner, Berger or Crecca, who had guaranteed the payment of said mortgage, endeavored to collect any interest or the principal on said mortgage, and that for the period of nearly five years they did absolutely nothing in order to establish their rights under said mortgage. It is true that the mortgage was made payable three years from its date, but it is equally true that no interest was ever paid on account during that period nor at any time thereafter.

The complainant therefore cannot claim that he is a bona fide purchaser for value, for he was originally a secret co-owner of the property and one of the mortgagees. He cannot, therefore, receive the benefit of his partner Schechner's, wrongful acts. The fact that he demanded of Schechner, Berger and Crecca their personal bond as security for the payment of said mortgage shows that he knew that the mortgage was subject to attack by the owners of the property. The indifference on the part of the complainant to demand the pay-

ment of the interest or the principal on said mortgage and the statements by Schechner and Bagnole to the defendants on different occasions are such circumstances as to create the belief in the minds of the appellants that the mortgage in question was of no value whatever.

Points

The Court erred in allowing Samuel Baker, brother of the complainant to testify in the case in regard to the payments of the interest on the mortgage in question. He testified that he never saw the mortgage in his brother's possession, that the indorsements of the payments were in William A. Baker's writing (p. 57, ll. 30-40).

Baker was subpoenaed to appear but he being in a sanatorium could not be served personally, and the subpoena was left at his office (p. 56, ll. 30-35).

The Court erred in sustaining an objection to the following question propounded to Montefusco by his attorney tending to show the consideration paid to Bagnole for the execution of the \$1500 mortgage. "What did he sign the mortgage for?" (p. 65, ll. 20-22).

Parol evidence of the actual consideration of a deed may be given. *Silver v. Potter*, 48 E., 539.

Kempbell v. Perth Amboy Ship Building Co., 70 E., 59.

Attersley v. Bissett, 51 E., 507.

The Court erred in admitting in evidence a letter bearing no date and purporting to have been written by Gerolamo Di Geronimo, who was a stranger to the transaction and was never a partner of Montefusco's (Ex. 4, p. 236, p. 185, ll. 1-15).

The following question to Montefusco by complainant's attorney was allowed against the objection of the defendants' attorney,

“When you discovered that mortgage did you take any steps to have it cancelled of record” (p. 79, ll. 10-15).

The defendants were told by Schechner not to care for the third mortgage but pay the prior mortgage as the third mortgage was no mortgage at all (p. 79, ll. 1-20, p. 80, ll. 20-28).

In the case of *Magie v. Reynolds*, 51 E., 11-, the Court held that there was no duty on the defendants to commence suit to have the mortgage cancelled and that their not doing so formed no ground for estoppel. That they had a right to rely on the well settled rule, that the purchaser of a chose in action takes it subject to all equities and that he was or has the power to protect himself by making inquiries at the proper sources.

The Court erred when it permitted Schechner to testify as to the payments of interest endorsed on the bond (p. 185, ll. 35-40, p. 186, ll. 1-10, because he testified that he did not know who made the payments (p. 186, ll. 15-22).

The Court erred in excluding a question tending to show the consideration money paid by Berger and Crecca to Patrick Foy when they bought the property in question (p. 194, ll. 1-10).

Atersley v. Bisset, 51 E., 597.

The Court erred in allowing the defendant Crecca to testify in regard to a promissory note dated November 5th, 1908 which he claimed was given him by Baker in consideration of the assignment of his share in the \$1500 mortgage.

Crecca also testified that the note was dis-

counted at the bank, when from the note it appeared that it was made payable to him and not to his order (p. 216, ll. 1-10).

Law

The general rule is that fraud may be established by circumstances from the existence of which a fraudulent intent is the only and irresistible inference.

Fraud or misrepresentation of a partner in the course of the partnership business renders his co-partners civilly liable. *U. S. v. Thomasson*, 4 Biss, 99, 28 Fed. Cases, 16478.

If a purchaser has before him facts which should put him upon inquiry, and where such facts constitute a fraud on a third party, it will not protect the purchaser that he purchased for value. *Tandem v. Green*, 21 E., 364.

In *Eibel et al. v. Von Fell*, 55 E., 670, it was held that a Court of equity will rescind a transaction entered into upon the faith of material misrepresentation, false in fact if the person to whom it was made relied upon it and in consequence suffered injury.

In *Magie v. Reynolds*, 51 E., 114, paragraph 3, the Court held that a mere failure of the obligor or mortgagor to take proceedings to procure the discharge of record and delivery up of a mortgage, to which he has a valid defence, does not estop him from setting up such defence against an assignee for value without notice. That it is the duty of a person about to take the assignment of a bond and mortgage to inquire of the obligor and mortgagor as to his liability thereon.

In *Shannon v. Marselis*, 1 E., 424, the Court

held that the assignee of a bond and mortgage holds them subject to the same equity that existed against it, in the hands of the mortgagee.

It is respectfully submitted that the decree of the Court of Chancery should be reversed and the bond and mortgage ordered to be delivered to these defendants to be cancelled.

G. M. BELFATTO,
Solicitor for defendants-appellants.

New Jersey Court of Errors and Appeals

Between

WILLIAM A. BAKER,

Complainant,

and

CHARLES BAGNOLE, et als,

Defendants.

On Bill to
Foreclose.

On Appeal
from
Chancery.

Brief for Complainant-Respondent and Defendants-Respondents.

The question involved is, ^{largely} a question of fact and there is abundance of evidence to support the finding of the Court below.

At the outset, the Court's attention is called to the fact that William A. Baker, the complainant, is in no wise connected with any of the dealings or transactions set out in the testimony, and that the sole part he plays in the case is that he is the owner of the mortgage being foreclosed. He did have an interest in some small company that Messrs. Schechner, Berger and Crecca were interested in, but Mr. Baker was practically a silent partner simply having some money invested without having anything to do with, or any knowledge of the transactions of these gentlemen.

It appears (page 187) that Messrs. Schechner, Berger and Crecca sold the mortgage being foreclosed to William A. Baker, who paid full value therefor. (See pages 187, etc.) The Court will bear in mind

that William A. Baker did not appear as a witness because of the fact that he was seriously sick, and at the present time he is still seriously sick and there are grave doubts of his recovery. It is also to be remembered that William A. Baker is president of the Baker Printing Company, a large and prosperous business, conducted for many years in Newark, New Jersey, and that William A. Baker is a man of substantial means, and we repeat the sole part that he has played in this case is that he did buy the mortgage for value, and he did have some small amount of money invested in a small real estate company.

The mortgage was given by Charles Bagnole to Messrs. Schechner, Crecca, Berger and Baker (page 134), and was assigned to William A. Baker by Schechner, Berger and Crecca, for full value. Exhibit 3, page 233. See pages 187, etc.

On the nineteenth day of November, 1908, by Deed of Assignment which is duly recorded in the Register of Deeds office in Essex County in Book 87 of assignments, page 88.

The defense now raised is an after-thought, and is a mere attempt to evade payment of an honest indebtedness. This is apparent for the reason: First, That the defendants had repeatedly paid interest on the mortgage being foreclosed. There has been no question raised at any time with Mr. Baker as to any equities on the part of the defendants. They only pleaded for delay several times in the payment of their interest. This is evidenced by the fact of the endorsements on the bond in the handwriting of William A. Baker as follows: Page 56. See Exhibit C. 2, page 230 at 232. Also testimony of Schechner, 185 and 186.

236) on the 9th day of November, 1908, Tracts Nos. 1 and 2 to Montefusco and Di Geronimo, *and in this very deed it is recited that there are three mortgages. The first two we are not concerned with; the third mortgage, however, is the one being foreclosed.* That deed is dated November 9, 1908, and was recorded November 10, 1908, in Book Z 43, page 528, *and it is wholly improbable, as not to be believable, that the defendants did not know they were taking the property subject to the three mortgages.* This is evidenced not only by the conclusive facts that they paid interest repeatedly on the third mortgage, but also if one stops for a moment to figure out the consideration. The defendants repeatedly recognized the existence of the Baker mortgage as another instance. Cassese, on page 101, bought one-half interest of Di Geronimo, lines 17 to 38; *they state the consideration paid Di Geronimo was \$5,010 and Pasquale Cassese, a defendant, states that \$570.00 in cash was to be paid, and the balance by assuming three certain mortgages; one held by the Mutual Building & Loan; the second by Gustavus Richards, and the third by Samuel Schechner (being the mortgage now under foreclosure).*

This defendant, under direct examination, says, in answer to his own solicitor, that he bought one-half the property in September, 1911 (page 96). On page 100, under cross examination, he states that he assumed the first and second mortgage; then he states he didn't know how much was due on the building and loan mortgage; didn't have any knowledge of this when he bought the property, and on page 101 he states as follows:

Q When you made the agreement with Antonio Di Geronimo by Francisco di Geronimo, attorney in fact, did you know the existence of this third mortgage?

A Sure.

Q You made an agreement in writing on September 18, 1911?

A Yes.

Q Didn't you agree to the terms in the agreement to assume the three mortgages which were then on the property, was not the purchase price mentioned in the agreement \$5,010?

A Yes.

Q Didn't you agree to pay \$570 in cash?

A Yes.

Q And the balance by assuming three certain mortgages, one held by the Mutual Bldg. & Loan the second by Gustavus Richards and the third by Samuel Schechner (the mortgage being foreclosed)?

A Yes, sir.

Showing clearly that the parties knew all about the third mortgage. Here was a transaction between Cassese and Di Geronimo himself in which agreement the complainant's mortgage is recited as a valid and existing lien. On the bottom of page 102 and the top of 103, he attempts to evade the effect of this testimony by saying that Bagnole said it was a fake. Counsel then asked as follows:

Q But notwithstanding Bagnole's advice not to pay more than they paid for it, you did assume the three mortgages?

A How?

Q In your agreement.

A The lawyer made that agreement. I didn't make it.

The Court. You knew they (meaning the mortgages) were mentioned in the agreement?

A Yes.

Cassese is an extensive importer (see bottom page 104), so knows what he was doing. Does this not clinch the matter that the defendants knew all about the complainants' mortgage? The agreement was

drawn by Mr. Gottlieb, a reputable lawyer of Newark, New Jersey, and on page 103, on re-direct examination, Cassese states that he signed the agreement because the agreement conformed with the deed, and repeats on page 104 that he did sign the agreement for that reason. It appears on page 104, at the bottom of the page, that Cassese is an importer, who does an extensive business in New York and New Jersey, and he is a man of large experience in business, so there can be no mistake about the fact that Mr. Cassese knew thoroughly the transaction.

Please read page 115, testimony of Lawyer Gottlieb, a witness for defendants, as follows:

Q Did you represent Mr. Cassese when he bought the property?

A Yes.

Q Do you remember drawing the agreement in 1911 between Di Geronimo and Cassese?

A Yes.

Q Do you remember providing in the agreement that Cassese was to assume the three mortgages on the property?

A Yes.

Q Mr. Cassese said that you said that he would have to go in the agreement to make it conform with the deed to Montefusco?

A That is way back in 1911 and my recollection is not clear on that; I think I must have had furnished me at the time some description from somewhere, but as to the facts and circumstances as far back as that, I have no positive recollection.

Q Was the validity of the third mortgage mentioned at that time; had it been mentioned by anyone?

A I cannot say that it was.

Q You remember the deed from Di Geronimo to Cassese; had anyone questioned the validity of that mortgage?

A Not to the best of my recollection.

Does this not settle the matter in favor of complainant? On page 121 Mr. Gottlieb swears as follows:

Cross examination by Mr. Peirce.

Q Do you remember Mr. Montefusco and Mr. Cassese telling you that Mr. Baker was prodding him for the interest?

A Yes.

* * *

Q Did he tell you when demand was made?

A My recollection is that he had a letter from Mr. Baker, which he showed me.

Q Do you remember the date of the letter?

A I should say it was nine months to a year ago.

Take the testimony of Vito Vernieri (page 87) in answer to questions of his own lawyer, says that he first learned of the \$1,500 mortgage (complainant's mortgage) when he sold the property October 1, 1914, and bottom of page 87 and top of 88, it appears that Vernieri affirmed complainant's mortgage by attempting to secure a release for \$200 under the terms of complainant's mortgage.

It is to be borne in mind that the property on the third tract was owned by Bagnole and Vernieri jointly, and it appears on page 93 that Vernieri put up the same sort of defense as attempted in this case in another matter involving a \$600 mortgage on Cutler street, and the testimony further shows on that page that eventually he did pay that mortgage.

Value of the Property.

The value of the property is shown on page 126 to be \$13,000, so the defendants got a bargain. Three practical men appraised it at \$13,000.

Bagnole, page 130, says:

Q Did you talk to Mr. Baker?

A He showed me a mortgage there and I seen my signature on there.

Q What did you say to Mr. Verniero then?

A That it was right; I told him that was right, the mortgage was right.

Q Did you recollect the transaction then when you saw the mortgage; at this particular time, did you recollect that you had given a mortgage?

A I certainly did give the mortgage.

Q What did you say to Mr. Verniero?

A I told him that the mortgage was right.

Q Did you tell Mr. Verniero what you had received for the mortgage?

A Yes.

It is to be noted, page 137, that Bagnole got the check of \$100 from DiGeronimo *and gave him the agreement of sale.*

But defendants do not produce any testimony for DiGeronimo. Read Bagnole's testimony, pages 129 to 152; and Schechner, pages 175 to 210; Crecca, pages 211 to 217; Berger, pages 217 to 221; all of whom flatly deny defendant's statements.

Important.

On page 153 in answer to Mr. Belfatto:

Q MR. MONTEFUSCO, DO YOU KNOW HOW TO READ?

A NO.

Now read the cross examination, page 169, as follows:

Q That is a very free running hand; now write the "9th of November" on there. (Witness does so.) Now write "Newark, N. J.," on there. (Witness does so.) Write "Italy" on there. (Witness does so.) Write Charles Bagnole's name on there, "C-h-a-r-l-e-s." (Witness does so.)

Q What bank is that?

A West Side Trust Company.

Q You are doing pretty good for a man that cannot read and write. What is the first word there?

A Newark, N. J.

Q What is the rest of it?

A I don't know.

Q The 9th of November you put there, didn't you?

A Yes.

Q What is the date?

A Nineteen-eight.

Q What is the rest of it?

A West Side Trust Company.

Q "Pay to the—"

A I cannot write or read, no.

Q What does "t-h-e" spell?

A I can read Italian.

Q Write down there one hundred dollars.
(Witness does so.)

Q How much money is that drawn for?

A One hundred dollars.

Q Now write it down there; write one hundred.

(Witness does so.)

Q Write Mr. Belfatto's full name on there.

(Witness does so.)

Q Write "United States of America."

(Witness does so.)

Q What is this paper marked Exhibit C-4?

A This is the check.

Q To whom is it drawn?

A I think Mr. Schechner, because he—

Q Tell me whose name is on there?

A Charles Bagnole.

Q There isn't any "Schechner" about that?

A Mr. Schechner got his check in his hands.

Q For how much money is it drawn?

A One hundred dollars.

Q Who signed it?

A I signed it.

Q You signed that where?

A In Mr. Schechner's office.

* * *

Q I show you a paper marked Exhibit C-1, what is that at the top there?

A Mortgage.

Q What is this Exhibit C-2?

A Bond.

Q Who gave that bond?

A Charles Bagnole.

Q To whom was it given?

A Samuel Schechner, Samuel Berger and William A. Baker and Daniel Crecca.

Q What is the date there?

A October 17, 1908.

Q What is Exhibit C-3?

A Assignment of a mortgage.

Q Spell out this word "Assignment."

A (Witness does so.)

Q Suppose you spell "mortgage" out.

A (Witness does so.)

This simply shows the defendant is *not* telling the truth.

Montefusco says, page 155, the \$100 paid was commission to Bagnole and before that defendants claimed it was part of the consideration.

Answering Brief of Facts to Brief of Defendants.

The defendants say that on or about the ninth of November, 1908, Montefusco and Di Geronimo met Bagnole on Seventh avenue and Bagnole said to them then: "I have a piece of property for sale cheap; Samuel Schechner is the owner."

Bagnole testimony, case page 132, line 10.

"I told Mr. Montefusco, while I was the owner of that property, I said, 'I got property for sale if you want to buy it;' I said, 'Give me one hundred dollars because I want to get rid of it; you give me one hundred dollars and I will give you a deed to this property.'"

Q You obtained a deed for the property on the seventeenth of October, 1909?

A Yes.

Q How long before that deed did you meet Mr. Montefusco?

A I said, "Do you want to buy a piece of property?" I said, "I own this property"; there was another man with him, I said, "Give me \$100; I will give you this house." I didn't want it because I couldn't keep it.

Q How long after the seventeenth of October did you see him?

A A few days after, I don't know just how long.

Q A week after?

A About that.

Q A week after you received the deed you saw Montefusco and Cassese and Di Geronimo and said, "I want to sell this property; give me a hundred dollars?"

A Yes, I wanted to get rid of it.

The defendants say that Bagnole told them there were two mortgages on the property; one held by a Building & Loan Association for \$9,500, and the other by Mr. Richards for \$1,200.

Bagnole testimony, page 136.

Q Did you receive a hundred dollars after the agreement being executed, at that time?

A I received \$100. and signed the papers and I told them what there was on the property.

Case page 147, cross-examination by Mr. Peirce.

Q You said in your direct examination you told them what was on the property?

A Yes.

Q Whom did you tell what was on the property?

A At first I said they wanted \$14,000, and then they came down to \$12,000. I said there was a mortgage for \$9,500, and was paid down to about \$9,000, then I said there was \$12,000 second mortgage held by Mr. Richards; then there was \$1,500, third mortgage and \$100 in cash.

Q Did you tell that to Di Geronimo and Montefusco, both?

A Yes, "You give me one hundred dollars and there are three mortgages which amount to \$9,500, \$1,200 and \$1,500, and \$500, on the Building & Loan, and you give me one hundred dollars; you give me one hundred dollars and you get the credit for \$400 in the Building & Loan," I wanted to get rid of it and was glad to do it but that was the price, \$12,200.

Q Is there any mistake about your having told Montefusco and Di Geronimo that there was a \$1,500 mortgage on the property?

A I told them there was that mortgage on it for \$1,500.

Testimony of Mr. Schechner, page 178.

Q Do you recollect subsequently seeing Mr. Montefusco?

Q Yes.

Q Did he come to your office?

Q Yes.

Q With whom?

A Charles Bagnole.

Q For what purpose?

A Mr. Montefusco called at the office with Mr. Bagnole; he said, "Mr. Schechner, I purchased this property of Mr. Bagnole and I want you to

explain me all what he said." I explained the first mortgage, second and third mortgages, and everything was prepared right there and then.

Q Was he satisfied?

Q Yes.

Q Mr. Montefusco says an agreement was drawn?

A No agreement; the terms were all agreed; I simply drew up a little memorandum of the transaction and went right in to Mr. Bloom to draw the deed, as everything was done at the same time, practically.

Q Did that agreement contain the terms of sale?

A Yes, sir.

Q Did it show these different mortgages?

A Yes, sir.

On page 180, line 125.

Q Was Mr. Bloom there all the time while these negotiations were going on?

A He was there partly when they called at my office; it took about fifteen or twenty minutes until they agreed, and then called in Mr. Bloom and said, "Prepare the papers," and Mr. Bloom drew the check and it all took place.

Q Did he draw the deed?

A Yes, sir.

Q Who gave the instructions to Mr. Bloom?

A Everybody, they came in and said, "Mr. Bloom, draw up \$100 to Mr. Bagnole, and this is the consideration of the transaction." And we closed it.

Q As to the form of the deed, the recitals in the deed, who gave him the instructions?

A We told him what mortgages were there, and he drew the deed.

Q Was Montefusco there?

A Yes.

Q Are you sure of that?

A Absolutely.

Q Was Di Geronimo there?

A Yes.

There is no contradiction of the fact that a memorandum was drawn up which was signed by Montefusco, Di Geronimo and Bagnole. This agreement was read by Schechner, but Schechner did not sign it.

Testimony of Schechner, page 198, line 39 :

Q What became of the agreements?

A I turned them over; I had no interest in them.

Q To whom did you give them?

A To the proper parties.

Q Who were they?

A Mr. Montefusco, his partner, Mr. Bagnole, the parties who were in the transaction.

Q Did you give one agreement to the three parties?

A No, each got one; them two were one; and Mr. Bagnole got one.

In answer to second paragraph, page two, of Defendant's Brief, the testimony of Bagnole is that he told Montefusco that he, Bagnole, was the owner of the property, and that is the reason why he is getting the one hundred dollars (*Case, pages 132-133*), and Schechner's testimony, page 180, shows that the check was drawn by Mr. Bloom and that the instructions for preparing the deed were given to Mr. Bloom, in the presence of all the parties. (*Case, pages 180-181.*)

In answer to last paragraph, page 2 of defendants' brief, the testimony of Schechner shows that there was no agreement drawn up but just a memorandum of the transactions of it (*Case, pages 178-179*) and a copy of this memorandum was given to Montefusco. All admit Schechner did not sign this agreement, but it was signed by Montefusco, Di Geronimo and Bagnole, and that the deed, when it was prepared by Mr. Bloom, was read in the presence of Montefusco and Di Geronimo. (*Case, page 179, line 30.*)

In answer to Montefusco's testimony that he tried to get the deed from Schechner, this is answered by Schechner (*Case, page 181*), that, to the best of his recollection, the deed was sent to Montefusco after it was recorded, and this was what was told by Schechner to Montefusco.

Schechner testifies (*Case, pages 183-184*) that Montefusco sent him \$45 to pay Baker, as interest on the mortgage. He also testifies, on *page 183*, that Montefusco asked Schechner to intercede with Baker to get time for the payment of the interest.

In answer to second paragraph, on *page 4* of defendants' brief, Bagnole says that when he spoke of the third mortgage being a fake it was only in fun.

Cassese admits that he signed the agreement showing the three mortgages, and that he knew that the agreement when he signed it contained the three mortgages, that he was informed by his lawyer, Gottlieb, that the land must be bought subject to the mortgage. Anything that Bagnole might have told him about the mortgage would be of no weight because Bagnole no longer owned the property, and Cassese, by his own admission, knew all the facts and knew that this third mortgage for \$1,500 was upon the property.

In answer to the third paragraph of defendants' brief (*page 4*), Vernieri owned part of the third tract with Bagnole. The fact that he knew nothing of the mortgage would be of no weight. He gave up no rights in reliance upon the mortgage. Bagnole mortgaged his own interest and that is all the mortgage covered. The fact that Bagnole said to him, if he did say, at any time, that the mortgage was a fake, could not, in the least, be binding upon the complainant in this case.

Bagnole says he does not recollect any conversation in an elevator, concerning the mortgage. (*Case, page 140, line 25.*)

In answer to second paragraph, *page 5*, defendants'

brief, Gottlieb testifies that the parties had agreed as to the terms and conditions of the sale of the property, and the agreement was drawn by him accordingly (*page 122*).

In answer to paragraph 3, *page 5*, of defendants' brief, Gottlieb did not identify Baker as the man telephoning, and, in fact, what the party did say concerning interest due on the mortgage and his disinclination to discuss the mortgage has no bearing on the case.

In answer to fourth paragraph, *page 5* of defendants' brief, Schechner did testify that he and Baker and Berger and Crecca had been in the real estate business, and, in fact, did have an interest in the property sought to be foreclosed. But the reason that the property was taken in the names of Crecca and Berger was that it required too many women to bring to the office, that is, as the four parties were married, as Schechner says, *page 193, line 30*.

In answer to the first paragraph of defendants' brief, *page 6*, would say that third paragraph shows nothing to operate against Baker, the complainant. As a matter of fact, the property was bought for four people in the names of two, in order that all the wives would not have to be bothered to sell the property; that the complainant, Baker, had an interest in the property and was one of the mortgagees of the mortgage made by Bagnole as part of the purchase price. And later, for value and consideration, the mortgage was assigned to the said Baker (*Case, pages 186-187*). There is nothing in this to show any fraud.

In answer to the second paragraph, *page 6* of defendants' brief, when Montefusco asked if a search was necessary, Schechner said he could suit himself and take it to Mr. Bloom, and Montefusco elected to leave it at the office and not spend any money.

The statement made by the defendants' solicitor that the memorandum of agreement was signed by someone is not full and complete. Schechner testi-

fies that on *page 198, line 18, etc.*, that Bagnole, Montefusco and Di Geronimo all signed the memorandum, and on *page 199* that a copy of it was given to Montefusco.

Law and Argument.

Point I.

The mortgage sought to be foreclosed in this suit was a valid lien upon the property before the sale of the said property was made to the defendants, Montefusco and Cassese. The mortgage was made by Bagnole, the owner, on October 17th, 1908. Irrespective of any alleged misrepresentations or fraud (which the Court found in favor of complainants), the mortgage was on the property as a lien, and any subsequent sale of the property was bound to be subject to the mortgage. What the terms of the said sale of the property were, or the representations made at such sale, or prior thereto, would have no effect upon the validity of the mortgage.

Point II.

The defendants have failed, absolutely, to show fraud or misrepresentation in this suit. The mortgage is entirely regular on its face.

On October 17th, 1908, Bagnole, who at that time, was the record title-holder of the property, made the mortgage to Schechner, Berger, Crecca and Baker. The said mortgage was given for value and consideration (see Case, page 187). The attempt on the part of the defendants to prove otherwise was futile.

Point III.

The burden of proof in the cases of fraud is on the one alleging it. One claiming fraud in a sale must show it affirmatively by preponderance of evidence. 20 Cyc., pages 108-109.

“Fraud is never presumed but must be affirmatively proved. On the contrary, the presump-

"tion, if any, is in favor of innocence; and accord-
"ing to general principles elsewhere discussed the
"burden falls on him who asserts fraud, whether
"he be plaintiff or defendant, to establish it by
"proving every material element of the cause of
"action by a preponderance of evidence. Thus
"the burden rests on him to prove the falsity of
"the representations, the scienter, the intent to
"deceive, and his reliance on the representations
"to his damage," and cases cited.

No fraud has been shown by the defendants. On the contrary, the transaction of the sale of the property has been shown by the respondents to be absolutely square and honest (Case, page 178, etc).

Point IV.

Any statement alleged to have been made by Bagnole after the transaction of the sale was over and completed could not, in any way, be used to show fraud. Misrepresentations, in order to constitute fraud, must have been at the time, or prior to the time of the transaction. The one claiming fraud must show that he relied upon the representations, and one certainly could not rely upon representations which were not made until long after the transaction was completed. 20 Cyc., 39-40.

Point V.

The defendants are guilty of laches. The property was sold to them November 9, 1908. No search or investigation was made further than what was said at the sale. Upon their own testimony they state that the year following they learned there was a third mortgage, upon the property. Yet they made no move, whatsoever, to have this mortgage cancelled of record, although they say they believed it to be an invalid mortgage. In fact, they had waited seven

years until a bill for foreclosure was filed, before they set up this allegation of fraud in defense of the said bill. They cannot ask for relief now unless they rescind the contract, and no rescission has been attempted.

Point VI.

The defendants, in fact, have estopped themselves from denying the validity of this mortgage as a lien on their property. They took a deed to the property which included this third mortgage. This deed was placed upon record immediately after its making, and the defendants have paid interest on this mortgage; once by sending forty-five dollars on their own letter-head, signed by the names of Di Geronimo Bros. & Montefusco (see Complainants' Exhibit 4, Case, page 236).

This letter and the indorsements proves Ex. C. 2, 232, the defendants are reckless to an extreme, when they say no interest was paid; the letters and indorsements (page 236) prove they are false.

Read the testimony of Sabino Montefusco on page 153; he swears he cannot read English, and yet counsel under cross examination secures admissions he can read the letter, Exhibit, Case, pages 169, 170, 171, that it is written by Di Geronimo on Di Geronimo Bros. Montefusco letter-head, which absolutely proves Montefusco swears to something untrue. *And then again they paid interest through Schechner* (Case, pages 183-184), besides the bond (Complainants' Exhibit 2, page 230 at page 232) shows receipt of interest from April 17, 1907, to October 17, 1911, which was in possession of complainant. This also proves the falseness of defendants story and the Court of Chancery so found.

Point VII.

If there is any evidence to support the finding of the advisory master, this finding will not be disturbed. The questions involved in this case are the *questions of fact only*. There is no question of law involved in the finding of advisory master. The mortgage is regular on its face and the only question is that of fact. Advisory master has found the facts in favor of complainant, and as long as there is any evidence to warrant such a finding, the court above will not disturb the finding.

Where there is evidence to sustain the findings of the lower court, they will not be disturbed on appeal.

Mundy vs. Fountain, 76 N. J. L., 701.

Susquehanna Coal Co. vs. South Amboy, 77 N. J. L., 796.

Bogert vs. MacChesney, 77 N. J. L., 797.

Tuckerton R. R. Co. vs. State Board of Assessors, 77 N. J. L., 614.

Moran vs. Jersey City, 29 Vr., 653.

Berger vs. Berman, 79 N. J. L., 314.

Aschenberg vs. Mundy, 47 Vr., 352.

N. Y. & N. J. Telephone Co. vs. Connelly, 40 Vr., 182.

D., L. & W. R. R. Co. vs. Newark, 34 Vr., 310.

For the reasons above set forth we respectfully submit that the findings of the Court of Chancery are equitable and the final decree should be affirmed.

Respectfully submitted,

PEIRCE & HOOVER,

*Solicitors for William A. Baker,
Complainant-Respondent.*

SAMUEL ROESSLER,

*Solicitor for Samuel Schechner, Samuel
Berger and Daniel Crecca, Defendants-
Respondents.*

INDEX

	Page
Amended Bill of Complaint	1
Affidavit of Jermiah F. Hoover	14
Affidavit of Kenneth Weatherby	15
Subpoena to Answer in Chancery	16
Answer and Crossbill of Sabino Montefusco and Pasquale A. Cassese	17
Answer and Crossbill of Vito Verniero and Giuseppe Cordasco	23
Replication to Answer and Crossbill of Sa- bino Montefusco and Pasquale A. Cas- sese	26
Replication to Answer and Cross Bill as to Vito Verniero and Giuseppe Cordasca ...	30
Replication of Montefusco and Cassese filed May 1, 1915	33
Replication of Verniero and Guiseppe filed May 1, 1915	33
Order of Reference	34
Conclusions of Advisory	35
Final Decree	40
Notice of Appeal of Sabino Montefusco, Pas- quale Cassese, Vito Verniero, Joseph Cor- dasco	45
Petition of Appeal of Sabino Montefusco Pasquale Cassese, Vito Verniero and Giu- seppe Cordasco	46
Answer to Petition of Appeal of Samuel Schechner, Samuel Berger and Daniel Crecca	52
Answer to Petition of Appeal of William A. Baker	53
Testimony	54

TESTIMONY

Page

Complainant's:

Samuel R. Baker,	
Direct	55
Cross	57
George Peirce,	
Direct	58

Defendants':

Sabino Montefusco,	
Direct	58
Cross	69
Cross	78
Re-direct	83
Re-cross	84
Re-called:	
Direct	153
Cross	154
Cross	155
Re-direct	156
Re-called:	
Cross	167
Re-called:	
Direct	223
Cross	223
Re-direct	224
Pellegrino Pellecho,	
Direct	85
Vito Verniero,	
Direct	86
Cross	91
Cross	94

	Page
Pasquale Cassese,	
Direct	95
Cross	100
Re-direct	103
Re-cross	104
Re-direct	105
Re-cross	105
Re-direct	106
Theodore Gottlieb,	
Direct	106
Cross	107
Re-direct	108
Cross	115
Cross	121
Re-direct	121
Re-cross	121
Re-direct	122
James A. Berry,	
Direct	122
Cross	125
Cross	126
Re-direct	127
Re-cross	128
Re-direct	128
Re-called:	
Direct	153
Charles Bagnole,	
Direct	129
Cross	139
Cross	146
Re-direct	149
Joseph Bloom,	
Direct	157
Cross	161
Cross	164

	Page
Re-direct	166
Re-cross	167
Re-direct	172
Re-cross	174
Re-called:	
Cross	174
Samuel S. Schechner,	
Direct	175
Cross	191
Re-called:	
Direct	203
Daniel Crecca,	
Direct	210
Cross	213
Samuel Berger,	
Direct	217
Cross	219
Samuel Roessler,	
Direct	222

EXHIBITS

Complainant's:

	Offered Page	Printed Page
Exhibit 1—Mortgage dated October 17, 1908 between Charles Bagnole and Samuel Schechner, Samuel Berger, William A. Baker and Daniel Crecca	55	225
Exhibit 2—Bond accompanying Mort- gage bearing same date, and exe- cuted by same parties	55	230
Exhibit 3—Assignment of Mortgage from Samuel Schechner, Samuel Berger and Daniel Crecca to Will- iam A. Baker dated November 19, 1908	55	233

Exhibit 4—Letter, undated, from Di Geronimo Bros. & Montefusco to Baker Printing Co. <i>re</i> check for in- terest due on mortgage	Offered Page 72	Printed Page 236
--	-----------------------	------------------------

Defendants':

Exhibit 1—Indenture made November 9, 1908, between Charles Bagnole and Sabino Montefusco and Antonio Di Geronimo	223	236
---	-----	-----



New Jersey Court of Errors and Appeals

Amended Bill of Complaint

(Filed, March 18, 1915)

*To the Honorable the Chancellor of the State of
New Jersey:*

Your orator, William A. Baker by leave of the Court first had and obtained files this, his Amended Bill of Complaint, and humbly complaining, shows unto your Honor your orator, William A. Baker, of the City of Newark in the County of Essex, and State of New Jersey that on or about the Seventeenth day of October in the year One Thousand Nine Hundred and eight, Charles Bagnole of the City of Newark in the County of Essex, and State of New Jersey, became and was justly indebted unto Samuel Schechner, Samuel Berger, Daniel Crecca, and your orator, in the sum of FIFTEEN HUNDRED DOLLARS, and being so indebted, the said Charles Bagnole, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal and deliver unto the said Samuel Schechner, Samuel Berger, Daniel Crecca and your orator, A CERTAIN BOND OR OBLIGATION, bearing date the same day and year last aforesaid, in the penal sum of THREE THOUSAND DOLLARS, lawful money of the United States, with a condition thereunder written, that if the said Charles Bagnole, his heirs,

20

30

40

Amended Bill of Complaint

executors, or administrators should well and truly pay, or cause to be paid unto Samuel Schechner, Samuel Berger, Daniel Crecca and your orator, their executors, administrators or assigns, the just and full sum of FIFTEEN HUNDRED DOLLARS, lawful money aforesaid, on the Seventeenth day of October, in the year one thousand nine hundred and eleven, and the interest thereon, to be computed from the Seventeenth day of October, nineteen hundred and eight, at the rate of six per cent per annum, and to be paid semi-annually, then the said obligation should be void, otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear, and your orator further shows that the said Charles Bagnole, in order to secure the payment of the said sum money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto the said Samuel Schechner, Samuel Berger, Daniel Crecca, and your orator, A certain indenture of mortgage bearing date the same day and year last aforesaid, made by said Charles Bagnole of the first part, and Samuel Schechner, Samuel Berger, Daniel Crecca and your orator, of the second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto said Samuel Schechner, Samuel Berger, Daniel Crecca and your orator, said party of the said part their heirs and assigns, ALL the following described tract or parcel of land and premises, situate, lying and being in the City of Newark in the County of Essex, and State of New Jersey:

Amended Bill of Complaint

FIRST TRACT: BEGINNING at the Northwesterly corner of Seventh Avenue and Mount Prospect Avenue; thence running Northerly along the Westerly side of Mount Prospect Avenue ninety seven feet more or less to land of Charles W. Stickney; thence Westerly along said land twenty-nine feet more or less to land now or formerly belonging to Bridget Farrell; thence Southerly along the Easterly side of said land ninety-seven feet to Seventh Avenue; thence Easterly along the line of Seventh Avenue fourteen feet more or less to the place of BEGINNING. 10

SECOND TRACT: BEGINNING on the North side of Mill Street (now known as Seventh Avenue) at a point distant South sixty-nine degrees and forty-five minutes east thirty-five feet from the corner of lands of James Davis, deceased; thence running along Mill Street South sixty-nine degrees and forty-five minutes East twenty-five feet to the corner of lot No. 8, said point being about fourteen feet Westerly from the street now known as Mount Prospect Avenue; thence along the same North sixteen degrees East ninety-seven feet and eight inches more or less to lot No. 49; thence along the same North sixty-nine degrees and forty-five minutes West twenty-five feet; thence running South sixteen degrees West ninety-three feet more or less to the place of Beginning. 20 30

THIRD TRACT: BEGINNING in the Westerly line of Cutler Street at a point therein distant Northerly four hundred and fifty-three feet and ninety-five one hundredths of a foot from the Northerly line of Seventh Avenue; thence running Northerly along said line of Seventh Avenue thirty-one 40

Amended Bill of Complaint

feet and six inches; thence North sixty-one degrees forty-six minutes, West one hundred feet; thence South twenty-eight degrees fifteen minutes West thirty-one feet and six inches; thence South sixty-one degrees forty-six minutes East one hundred feet to the Westerly line of Cutler Street and place of BEGINNING.

10 And your orator further shows that at the time the mortgage was drawn and executed, as above set out, there was a mutual mistake between Charles Bagnole and the mortgagees, whereby the description on the Third Tract reads:

20 "Beginning in the Westerly line of Cutler Street at a point therein distant Northerly four hundred and fifty-three feet and ninety-five one hundredths of a foot from the Northerly line of Seventh Avenue; thence running Northerly along said line of Seventh Avenue thirty-one feet and six inches."

That said description should have read:

"Thence running Northerly along said line of Cutler Street thirty-one feet and six inches,"

30 the property in question being located on Cutler Street and not on Seventh Avenue; that the mistake in the description was a mutual mistake between mortgagor and mortgagees, and your orator prays that the said description in said mortgage may be reformed accordingly.

And your orator shows that said mortgage further provided that it was agreed and understood by and between the parties to said Indenture that
40 the said party of the second part will upon the

Amended Bill of Complaint

payment to them of two hundred dollars, release to the said party of the first part from the operation and lien of this mortgage the premises herein described as the Third Tract. It is further understood and agreed between the parties hereto that should default be made in the payment of any installment which may hereafter become due to the Building & Loan Association now holding a mortgage upon the said premises above described, and should said installment remain unpaid and in arrears for the space of thirty days, then and from thenceforth the aforesaid sum of fifteen hundred dollars shall immediately become due and payable, at the option of said party of the second part. 10

TOGETHER WITH ALL AND SINGULAR THE TENEMENTS, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also, all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold, the therein above granted and described premises, with the appurtenances unto Samuel Schechner, Samuel Berger, Daniel Crecca, and your orator, the said party of the second part their heirs, and assigns to them and their own proper use benefit and behoof forever, PROVIDED ALWAYS, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Charles Bagnole party of the first part to the said indenture of 20 30 40

Amended Bill of Complaint

mortgage, his heirs, executors or administrators should well and truly pay, or cause to be paid unto the said Samuel Schechner, Samuel Berger, Daniel Crecca and your orator, their certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted, should cease, determine, and from thenceforth be null and void. And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Charles Bagnole before Joseph B. Bloom, a Master in Chancery of New Jersey, and duly recorded in the office of the register in and for the said County of Essex in Book C 23 of Mortgages, page 202-203 on the twenty-first day of October in the year One thousand nine hundred and eight, as by the certificate of the register of the said county, endorsed on the said indenture of mortgage, more fully appears and to which your orator for greater certainty begs leave to refer, if it be necessary so to do.

And your orator further shows that on or about the 19th day of November, nineteen hundred and eight, the said Samuel Schechner, Samuel Berger and Daniel Crecca, assigned to your orator, William A. Baker, the said mortgage hereinabove referred to; that said assignment was in due form of law acknowledged by the said Samuel Schechner, Samuel Berger and Daniel Crecca before Samuel Roessler, Esq., an attorney at law of the

Amended Bill of Complaint

State of New Jersey, and is duly recorded in the office of the Register of Essex County in Book No. 87 of Assignments of Mortgages for Essex County on pages 88-90, on the twentieth day of November, 1908, as by the certificate of the register of the said county endorsed on the said Assignment of Mortgages more fully appears, and to which your orator for greater certainty begs leave to refer, if it be necessary so to do. 10

Your orator further shows at the time the said Charles Bagnole executed your orator's said mortgage, he was unmarried.

Your orator further shows on or about November 9, 1908 Charles Bagnole, widower, conveyed part of the above described mortgaged premises *inter alia* to Sabino Monte Fusco and Antonio Di-Geronimo, which deed is recorded in Essex County, State of New Jersey in Book Z-43, page 528. Your orator charges, however, that said conveyance was subsequent and subject to the lien of your orator's said mortgage and was taken with full notice thereof. That in said deed Di Geronimo's name is spelt Di Geronimo. 20

Your orator further shows that on or about the eighteenth day of September, 1911, Antonio Di Geronimo by Francisco Di Geronimo attorney in fact, entered into a contract of sale with Pasquale A. Cassese, which contract of sale was recorded in Essex County aforesaid, in Book E-51 of Deeds page 517. Your orator charges that said contract of sale was taken with full notice of and is subsequent and subject to the lien of your orator's said mortgage. 30

Your orator further shows that Francisco Di Geronimo claims to be the attorney in fact of An- 40

Amended Bill of Complaint

tonio Di Geronimo under power dated November 2, 1910. Your orator charges that if the said Francisco Di Geronimo has any rights thereunder, it is subsequent and subject to your orator's said mortgage.

10 And your orator further shows that the said Sabino Monte Fusco was a married man and his wife's name is Teresa Monte Fusco, and that said wife, by reason thereof, might claim some interest in dower, or otherwise, in said premises. But your orator alleges that any such interest is subject to your orator's said mortgage.

20 Your orator further shows that Antonio Di Geronimo is a married man, but that your orator is unable to ascertain the Christian name of said wife, and alleges that any interest in dower, or otherwise, that said Mrs. Antonio Di Geronimo might claim, is subject to your orator's said mortgage.

Your orator further shows that on or about the fourth day of January, 1909, Charles Bagnole a single man, made, executed, and delivered a quit claim deed for the remainder of the mortgaged premises to Vito Vernieri which is recorded in Essex County aforesaid, in Book U-44, page 69.

30 Your orator charges that same was made, executed and delivered with full notice of and subject to the lien of your orator's said mortgage.

Your orator further shows that on or about the fourteenth day of August, 1908, Guissepe Di Trolio and Matilda Ditrolio, his wife, and Michele Di Trolio and Pasqualina Di Trolio, his wife, made and executed a Deed of Confirmation or Deed of Correction to Charles Bagnole and Vito Vernieri, which instrument is recorded in Essex County

40

Amended Bill of Complaint

aforesaid, in Book S-48, page 275; that said conveyance was made with knowledge of and subject to the lien of your orator's said mortgage.

And your orator further shows that on or about the first day of October, 1914, Vito Vernieri and Maria Guiseppa Vernieri, his wife, conveyed to Guiseppe Cordasco by Deed of Conveyance recorded in Essex County aforesaid in Book T-54, of Deeds page 509, the mortgaged premises herein set out. Your orator charges same was taken with notice of and subject to the lien of your orator's mortgage. 10

And your orator further shows that said Guiseppe Cordasco is a married man and his wife's name is Louisa Cordasco, and the said wife might claim some interest in dower, or otherwise, in said mortgaged premises, but your orator alleges any such claim is subject to your orator's said mortgage. 20

And your orator further shows that on or about the first day of October, 1914, Guiseppe Cordasco and Louisa Cordasco, his wife, made and executed a mortgage covering part of the said mortgaged premises to Vito Vernieri to secure the sum of five thousand dollars, or some other sum, which mortgage is recorded in Essex County aforesaid, in Book Y-32 of Mortgages, page 524. And your orator expressly charges that said mortgage is subsequent and subject to your orator's said mortgage and was taken with full notice of your orator's said mortgage. 30

And your orator further shows that on the fifth day of August 1914, a judgment was entered in the Common Pleas Court of Essex County aforesaid, docketed from the Second District Court, 40

Amended Bill of Complaint

City of Newark against Vitro Vernieri in favor of Nicholas Pignataro for the sum of Two hundred and ninety-eight dollars and eighty-four cents, including costs. Your orator charges said judgment is subject to the lien of your orator's said mortgage. Your orator further shows that
10 at the time of the assignment of said mortgage to your orator by Samuel Schechner, Samuel Berger and Daniel Crecca, in consideration of the purchase of said mortgage by your orator and in consideration of the further sum of one dollar, they did guarantee to your orator the payment of the principal and interest of your orator's said mortgage to the extent of three-fourths' interest therein; it being agreed at the time, however, that
20 resort should first be had to the premises embraced in said mortgage, and that they should have notice of the sale of the said premises; that said agreement is evidenced by a certain endorsement upon the assignment of the mortgage to your orator under the hands and seals of the said Samuel Schechner Samuel Berger and Daniel Crecca, dated November 19, 1908.

And your orator further shows that the principal money shown in the said bond or obligation and secured thereby and by the said Deed of mortgage, with large arrears of interest still remains
30 due and owing to your orator no part thereof having been paid to your orator so that your orator is greatly delayed and disappointed in the receipt of the said money, by means of which said several premises the said Deed of Mortgage and the estates thereby mortgaged as aforesaid has become absolute in your orator and his heirs.

40 And your orator further shows that the said

Amended Bill of Complaint

Charles Bagnole and said defendants since the execution of your orator's said mortgage has possessed and enjoyed, and that they do still possess and enjoy, the said mortgaged premises, with the appurtenances, and that they have always received and still do receive the rents, issues and profits thereof. And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons for him has frequently and in a friendly manner applied to the said Charles Bagnole and said defendants, or one of them and requested them or one of them to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and Deed of Mortgage hereinbefore mentioned and set forth; and your orator well hoped that he would have complied with such reasonable requests of your orator, well hoped that he would have complied with such reasonable requests of your orator, and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and Deed of Mortgage, as in equity and good conscience they ought to have done.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises of and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises or safely sell the same for the payment and satisfaction of the said principal and interest moneys

Amended Bill of Complaint

so as aforesaid due to your orator on said bond
and obligation and Deed of Mortgage without the
aid and Decree of this honorable Court, To THE
END THEREFORE, that the said Charles Bagnole
and said defendants may upon their several and
10 respective corporal oaths true, full and perfect
answer make to all and singular the premises, as
fully and particularly as if the same were here
again repeated, and they and each of them thereto
particularly interrogated according to the best of
their respective knowledge, information and re-
membrance, and belief; AND that the said defend-
ants or some one of them may be decreed to pay
to your orator the said principal sums so due to
him on the said bond or obligation and Deed of
20 Mortgage hereinbefore mentioned and set forth,
and all the interest money now due and to grow
due thereon, together with all your orator's costs
and charges in this behalf sustained, by a short
day to be appointed by this honorable Court; AND
in default thereof that the said defendants, and
each of them and all persons claiming or to claim
under them, or any or either of them may be fore-
closed of and from all equity of redemption or
claim of, in and to the said mortgaged premises,
30 and every part and parcel thereof, with the appur-
tenances, and may deliver over unto your orator
all deeds demises and writings whatsoever relat-
ing to or concerning the same; or that all and sing-
ular the said mortgaged premises, with the appur-
tenances, may, by the order and decree of this hon-
orable Court, be sold, and out of the moneys aris-
ing out of the sale thereof, your orator may be
paid the full amount of the said principal sum of
40 money so due to your orator on the said bond or

Amended Bill of Complaint

obligation and Deed of Mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained.

And your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience; may it please your Honor the premises considered, to grant unto your orator a writ or writs of subpoena, issuing out and under the seal of this honorable Court, to be directed to the said

CHARLES BAGNOLE	ANTONIO DI GERONIMO	
NICHOLAS PIGNATARO	MRS. ANTONIO DI GERONIMO	
SAMUEL SCHECHNER	FRANCISCO DI GERONIMO	
SAMUEL BERGER	PASQUALE A. CASSESE	20
DANIEL CRECCA	GUISEPPE CORDASCO	
SABINO MONTE FUSCO	LOUISA CORDASCO	
THERESA MONTE FUSCO	VITO VERNIERI	
	MARIA GIUSEPPA VERNIERI	

therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor and this honorable Court, then and there to answer all, and singular the premises and to stand to, abide by and perform such order and decree therein as your Honor shall seem meet and shall be agreeable to equity and good conscience.

AND your orator as in duty bound, will ever pray, etc.

Affidavit of Jeremiah F. Hoover*Annexed to amended bill of complaint*

IN CHANCERY OF NEW JERSEY

10	WILLIAM A. BAKER, and CHARLES BAGNOLE, <i>et als.</i> ,	Complt., Defts.	} On Bill etc.
----	---	------------------------	-------------------

State of New Jersey, }
 County of Essex. } ss:

Jeremiah F. Hoover, being duly sworn on his
 oath according to law, deposes and says that he is
 20 a member of the firm of Peirce & Hoover, the So-
 licitors for the complainant herein.

Deponent further says that he has caused due
 inquiry to be made for the Christian name of Mrs.
 Antonio De Geronimo, wife of the defendant, An-
 tonio De Geronimo, as appears by the affidavit of
 Kenneth Weatherby hereto attached. That de-
 ponent has been unable to ascertain the Christian
 name of the wife of said defendant.

JEREMIAH F. HOOVER.

30 Sworn and subscribed to before me this
 10 day of March, 1915.

Frederick N. Wilderotter,
 Attorney at law,
 Of New Jersey.

Subpoena to Answer in Chancery

(*Filed,* *1915*)

New Jersey, to wit:

10 The State of New Jersey, to Charles Bag-
 nole, Nicholas Pignataro, Samuel
 (L. S.) 20 Berger, Daniel Crecca, Sabino Monte
 Fusco, Theresa Monte Fusco, Antonio
 Di Geronimo, Mrs. Antonio Di Geronimo, Fran-
 cisco Di Geromimo, Pasquale A. Cassese, Giu-
 seppe Cordasco, Louisa Cordasco, Vito Vernieri
 and Maria Guiseppa Vernieri: GREETING:

20 We command you, that you appear in manner
 and form required by law in our Court of Chan-
 cery, on the twelfth day of April, 1915, at Tren-
 30 ton, to answer to a bill of complaint exhibited
 against you in our said Court by William A.
 Baker, and to do further and receive what our
 said Court shall have considered in that behalf;
 and this you are not to omit, under the penalty
 that may fall thereon.

30 Witness his Honor, Edwin Robert
 Walker, Chancellor of our said state
 at Trenton, the thirtieth day of
 March in the year of our Lord one
 thousand hundred and fifteen.

PEIRCE & HOOVER,
 Sol'rs.

ROBERT H. McADAMS,
 Clerk.

Answer and Crossbill of Sabino Montefusco and Pasquale A. Cassese

(Filed, April 23, 1915)

IN CHANCERY OF NEW JERSEY

Between WILLIAM A. BAKER, Complainant, and CHARLES BAGNOLE, <i>et als.</i> , Defendants.	}	10
---	---	----

And the defendants Sabino Montefusco and Pasquale A. Cassese by way of crossbill exhibited against the complainant and the defendants Charles Bagnole, Samuel Schechner, Samuel Berger, and Daniel Crecca, say: 20

1. That on or about the tenth day of October, nineteen hundred and eight, the defendant Charles Bagnole offered for sale to the defendants Sabino Montefusco, and Antonio Di Geronimo the property described in the bill of complainant as first and second tract, for the sum of ten thousand eight hundred dollars, to be paid as follows: one hundred dollars in cash upon execution and delivery of the agreement, and ten thousand seven hundred dollars by said Sabino Montefusco and Antonio Di Geronimo assuming the payment of two mortgages one for ninety-five hundred dollars, held on said property by the Mutual Benefit Building & Loan Association, and another for twelve hundred dollars, held thereon by Gustave A. Richard. That the defendants then asked 30 40

Answer and Crossbill of Sabino Montefusco and
Pasquale A. Cassese

Charles Bagnole who was the owner of said property, and that Charles Bagnole answered "Mr. Samuel Schechner."

10 2. That on or about the ninth day of November
nineteen hundred and eight, said Charles Bagnole,
Sabino Montefusco, and Antonio Di Geronimo
called at the office of Samuel Schechner, in order
to buy the said property; that an agreement was
drawn up by Samuel Schechner, and signed by
said Charles Bagnole, Samuel Schechner, Sabino
Montefusco, and Antonio Di Geronimo. That the
consideration mentioned in said agreement for
20 sale of said property, was one hundred dollars in
cash, and ten thousand seven hundred dollars by
said Sabino Montefusco and Antonio Di Geronimo
assuming the payment of said two mortgages, one
for ninety-five hundred dollars, held by the Mu-
tual Benefit Building & Loan Association, and the
other for twelve hundred dollars held by Gustave
A. Richard. It was also agreed that the deed was
to be delivered within one week from the date of
said agreement.

30 That the defendants asked Samuel Schechner
for a copy of said agreement, and that said Sam-
uel Schechner promised to give them a copy on
the following day.

That said Samuel Schechner then and there as-
sured said Sabino Montefusco and Antonio Di
Geronimo that said property was free and clear of
any encumbrances with the exception of the two
mortgages, mentioned in the agreement. That
said Sabino Montefusco and Antonio Di Geronimo
told Samuel Schechner that they were going to
40 search the title of said property if Charles Bag-

Answer and Crossbill of Sabino Montefusco and
Pasquale A. Cassese

nole was the owner. That Samuel Schechner then said, "You are a foolish man, I will look after your interests, I know that the title of said property alright in every respect, with the exception of the Building & Loan mortgage, and Mr. Richard's mortgage. It is nonsense for you to spend any money for lawyers; you can trust me and I will see that everything is alright." 10

3. That the said Sabino Montefusco and Antonio Di Geronimo believing in the statements and assurances of said Samuel Schechner did not engage a lawyer to look after their interests and did not make a search of the title of said property.

4. That on the day after the execution of said agreement the defendants Sabino Montefusco and Antonio Di Geronimo called at the office of said Samuel Schechner to get a copy of said agreement, but Samuel Schechner told them that he had not yet made a copy of it, and promised to send them a copy in a few days. That afterwards Samuel Schechner utterly failed to send them a copy of said agreement, claiming that the original had been lost. 20

5. That after the execution of said agreement, Sabino Montefusco and Antonio Di Geronimo took possession of said property and spent about one thousand dollars for carpenter, painting, mason and plumber work in repairing, said building being almost all vacant, untenable, and in a dilapidated condition. 30

6. That the deed for the sale of said property was never delivered to these defendants. That about a year after the execution of said agreement, the defendant Sabino Montefusco received from 40

Answer and Crossbill of Sabino Montefusco and
Pasquale A. Cassese

said Samuel Schechner a copy of a deed purport-
ing to sell said property to them, subject to three
mortgages including the mortgage mentioned in
said bill of complaint. That these defendants
10 then called upon said Samuel Schechner and asked
what that mortgage of fifteen hundred dollars
meant, and that said Samuel Schechner answered:

“Never mind about the fifteen hundred dollar
mortgage, you pay the Building & Loan mortgage,
and Mr. Richard’s mortgage and don’t worry
about the fifteen hundred dollar mortgage.” That
said Sabino Montefusco then and there requested
said Samuel Schechner to cancel said mortgage
forthwith, but said Samuel Schechner refused, and
20 still refuses to cancel the same.

7. That the said defendant’s immediately after-
wards saw Charles Bagnole, and asked him to ex-
plain why he had given a mortgage for fifteen
hundred dollars to Samuel Schechner, Samuel
Berger, Daniel Crecca, William A. Baker.
That Charles Bagnole then said:

“I never was the owner of the property,
but acted as the agent of Samuel Schechner.
I don’t know anything about that mortgage
30 for fifteen hundred dollars, Schechner made
me sign it and paid me one hundred dollars
for my work. You need not worry about it,
the mortgage is no good at all; it is a fake
mortgage, and if you go to court, I will say
so.”

8. That on or before the first day of January,
nineteen hundred and twelve, these defendants
were informed that said mortgage for fifteen hun-
40 dred dollars has been assigned to the complainant;

Answer and Crossbill of Sabino Montefusco and
Pasquale A. Cassese

that they thereupon called upon said complainant; and told him that they had been deceived by Samuel Schechner and Charles Bagnole, and that said mortgage was not a valid mortgage, and should be cancelled of record. That the complainant then said to these defendants: 10

“I don't care whether the mortgage is good or not, because the payment of said mortgage has been guaranteed to me by Samuel Schechner.”

9. These defendants further say that the complainant William A. Baker, is not a bona fide purchaser of said mortgage for value, that he had full knowledge of the agreement between the said Samuel Schechner and Charles Bagnole, Sabino Montefusco and Antonio DiGeronimo and that from the time of the execution of said mortgage until the month of January nineteen hundred and fifteen, neither the complainant, nor Samuel Schechner has demanded of these defendants the payment of either principal or interest on account of said mortgage. 20

10. And these defendants further show that said indenture of mortgage executed by said Charles Bagnole to Samuel Schechner, Samuel Berger, Daniel Crecca, and William A. Baker, and afterwards assigned to the complainant, is fraudulent and null and void and ought to be delivered up to these defendants to be cancelled, no consideration having been paid therefore to said Charles Bagnole, and that such mortgage was executed under the influence and false and fraudulent representations of said Samuel Schechner. And that these defendants may have such further and other re- 30 40

Answer and Crossbill of Sabino Montefusco and
Pasquale A. Cassese

lief in the premises as the nature and circumstances of the case may require and agreeable to equity and good and conscience.

GASBANO M. BELFATTO

Solicitors for the defendants.

10 SABINO MONTEFUSCO AND PASQUOLE
A. CASSESE

IN CHANCERY OF NEW JERSEY

20 Between
WILLIAM A. BAKER,
Complainant,
and
CHARLES BAGNOLE, *et als.*,
Defendants.

State of New Jersey, }
County of Essex. } ss:

30 Sabino Montefusco, and Pasquale A. Cassese,
the above named defendants, being duly sworn according to law, on their respective oaths, say that they have heard the above answer and crossbill, and know the contents thereof, and that the same is true, of their own knowledge, except as to the matters that are therein stated to be on their information or belief, and as to these matters, they believe it to be true.

SABINO MONTEFUSCO

40 Sworn to and subscribed before me
this day of April, 1915.

Answer and Crossbill of Vito Verniero and
Giuseppe Cordasco

second tract in said bill of complaint, was sold subject to two mortgages one for ninety-five hundred dollars held by the mutual Benefit Building & Loan Association, and another for twelve hundred dollars held by Gustave A. Richard.

10 4. These defendants deny that on or about the seventeenth day of October nineteen hundred and eight, Charles Bagnole became and was justly indebted unto Samuel Schechner, Samuel Berger, Daniel Crecca, and the complainant in the sum of fifteen hundred dollars, and say that the bond and mortgage executed and delivered by him to said Samuel Schechner, Samuel Berger, Daniel Crecca, and the complainant, as in the bill of complaint
20 set forth, was without consideration. all of which the said complainant had full knowledge before, and at the time the said mortgage was executed and afterwards assigned to him.

5. These defendants further answering deny that there is any money due to the said complainant for principal and interest on said mortgage, and say that the said complainant is not a bona fide purchaser of said mortgage for value, and is foreclosing the same for the sole benefit of the said
30 Samuel Schechner, Samuel Berger, and Daniel Crecca.

6. These defendants further answering, deny, that the said complainant or any person for him has frequently applied to these defendants or any of them or requested them or any of them to discharge the said principal and interest on said mortgage.

7. And these defendants further show that said
40 indenture of mortgage was as aforesaid executed

Answer and Crossbill of Vito Verniero and
Giuseppe Cordasco

by the said Charles Bagnole to the said Samuel Schechner, Samuel Berger, Daniel Crecca, and William A. Baker and afterwards assigned to complainant by the said Samuel Schechner, Samuel Berger, and Daniel Crecca is fraudulent and null and void and ought to be delivered up to these defendants to be cancelled, no consideration having been paid therefore by the said Samuel Schechner, Samuel Berger, Daniel Crecca and William A. Baker to said Charles Bagnole and that such mortgage was executed under the influence and false and fraudulent representations of said Samuel Schechner. 10

And that these defendants may have such further and other relief in the premises as the nature and circumstances of the case may require and agreeable to equity and good conscience. 20

GAETANO M. BELFATTO,
Solicitor for Defendants,
Vito Veniero &
Giuseppe Cordasco.

Between WILLIAM A. BAKER, Complainant, and CHARLES BAGNOLE, <i>et als.</i> , Defendants.	}	30
---	---	----

State of New Jersey }
 County of Essex } s s:

Vito Verniero, and Guiseppe Cordasco the above named defendants, being duly sworn according to 40

Replication to Answer and Cross-Bill of Sabino
Montefusco and Pasquale A. Cassese

law, on their respective oaths, say that they have
heard the above answer and crossbill, and know
the contents thereof, and that the same is true, of
their own knowledge, except as to the matters that
10 are therein stated to be on their information or be-
lief, and as to those matters, they believe it to be
true.

VITO VERNIERO
GUISEPPE CORDASCO

Sworn to and subscribed before me this
20th day of April, 1915.
Chas. Giffoniello
Notary Public
of New Jersey.

20

**Replication to Answer and Cross-Bill
of Sabina Montefusco and Pas-
quale A. Cassese**

IN CHANCERY OF NEW JERSEY

(Filed, May 13, 1915)

Between 20 WILLIAM A. BAKER, Complainant, and CHARLES BAGNOLE, <i>et als.</i> , Defendants.	}	On Bill etc.
--	---	--------------

Replication to answer and cross bill filed on be-
half of the defendants Sabino Montefusco and
40 Pasquale A. Cassese.

Replication to Answer and Cross-Bill of Sabino
Montefusco and Pasquale A. Cassese

The complainant joins issue on so much of the defendants' answer as is not in the nature of a cross bill and as to that part of said answer which is in the nature of a cross bill, he says:

(1) That he has no knowledge of the matters 10
alleged in paragraph one of said answer and cross
bill and requires the said defendants to furnish
strict proof of the same.

(2) Complainant has no knowledge as to the
matters and facts alleged in paragraph two of said
answer and cross bill and requires the defendants
to make strict proof of the same.

(3) Complainant has no knowledge as to the
matters and facts alleged in paragraph three of 20
said answer and cross bill and requires the defend-
ants to make strict proof of the same.

(4) Complainant has no knowledge as to the
matters and facts alleged in paragraph four of
said answer and cross bill and requires the defend-
ants to make strict proof of the same.

(5) Complainant has no knowledge as to the
matters and facts alleged in paragraph five of
said answer and cross bill and requires the defend- 30
ants to make strict proof of the same.

(6) Complainant has no knowledge as to the
matters and facts alleged in paragraph six of said
answer and cross bill and requires the defendants
to make strict proof of the same.

(7) Complainant has no knowledge as to the
matters and facts alleged in paragraph seven of
said answer and cross bill and requires the defend-
ants to make strict proof of the same. 40

Replication to Answer and Cross-Bill of Sabino
Montefusco and Pasquale A. Cassese

(8) This complainant denies the matter set up in paragraph eight of said answer and cross bill and says that he informed the said Sabino Montefusco and Pasquale A. Cassese that he was the owner for value of said mortgage in question; that he had paid full value for the same, and had taken it without any knowledge of any infirmities whatever in the said mortgage, and had paid full consideration for the same, and that complainant knew nothing as to the alleged dealings between the said Sabino Montefusco and Pasquale A. Cassese and Samuel Schechner and Charles Bagnole, as is alleged in said answer and cross bill.

(9) This complainant denies absolutely the allegations contained in paragraph nine of said answer and cross bill and reiterates and alleges that he is a bona fide purchaser of said mortgage for value and that he had no knowledge of the alleged agreement between the said Samuel Schechner and Charles Bagnole and Sabino Montefusco and Antonio Di Geronimo, as is alleged in the said answer and cross bill; and that this complainant has caused demands to be made for the principal and interest due on said mortgage.

(10) Complainant absolutely denies the allegations contained in paragraph ten of said answer and cross bill and reiterates and alleges that the said indenture of mortgage, executed by Charles Bagnole to Samuel Schechner, Samuel Berger, Daniel Crecca and this complainant and afterwards assigned to this complainant, is a valid mortgage; that this complainant paid full consideration therefor; that the said mortgage was

Replication to Answer and Cross-Bill of Sabino
Montefusco and Pasquale A. Cassese

not executed under any false or fraudulent representations known to this complainant; that the execution of said mortgage and the assignment of same to this complainant; was a bona fide transaction on the part of this complainant; that this complainant took the said mortgage relying upon the bona fides of the same and without any knowledge of any infirmities in the same, and that the transaction on the part of this complainant was undertaken in good faith and for a valuable consideration and without notice of any infirmities whatever in the same. And this complainant further submits that the matters alleged in said answer and cross bill, filed herein on behalf of the defendants, Sabino Montefusco and Pasquale Cassese, should in no wise affect the validity of said mortgage in the hands of this complainant.

And this complainant prays as he has already prayed in his Bill of Complaint and further that the Cross Bill filed on behalf of Sabino Montefusco and Pasquale A. Cassese be dismissed with costs and for such further relief as this Honorable Court may deem equitable and just.

PEIRCE & HOOVER
Solrs. for Complainant.

**Replication to Answer and Cross-Bill
as to Vito Verniero and Giuseppe
Cordasco**

IN CHANCERY OF NEW JERSEY

(Filed, May 13, 1915)

10

Between WILLIAM A. BAKER, <div style="text-align: right; padding-right: 20px;">Complainant,</div> and CHARLES BAGNOLE, <i>et als.</i> , <div style="text-align: center;">Defendants. </div>	}
---	---

20 Replication to answer and cross-bill filed on behalf of the defendants Vito Verniero and Giuseppe Cordasco.

 The Complainant joins issue on so much of the defendants' answer as is not in the nature of a cross-bill and as to that part of said answer which is in the nature of a cross-bill, he says:

30 1. This complainant has no knowledge as to the matters and facts alleged in the second paragraph of the said answer and cross-bill, except that he believes the said defendant Giuseppe Cordasco is the owner of the premises described in the Bill of Complaint, and that he obtained same by deed from Vito Verniero and Maria Giuseppe Verniero, dated October First, Nineteen Hundred and Fourteen and recorded in the Register's Office of Essex County in Deed Book T-54 of Deeds, page 509, as is alleged in the Bill of Complaint

40 filed herein, and this complainant alleges that

Replication to Answer and Cross-Bill as to Vito
Verniero and Giuseppe Cordasco

the said defendant, Guiseppe Cordasco, took the said property with notice of and subject to the lien of this complainant's mortgage.

2. This complainant denies the matters alleged in paragraph three of said answer and cross-bill 10 and alleges that the property was sold subject to the lien of this complainant's mortgage.

3. This complainant says as to the matters and facts alleged in paragraph four of said answer and cross-bill, that it is true that on or about the Seventeenth day of October, Nineteen Hundred and Eight, Charles Bagnole became and was justly indebted unto Samuel Schechner, Samuel Berger, Daniel Crecca and this complainant in the sum of Fifteen Hundred Dollars (\$1500.) and did execute and deliver the bond and mortgage to the said Samuel Schechner, Samuel Berger, Daniel Crecca and this complainant, as in the Bill alleged, and that the said mortgage was given for full consideration and that this complainant had no knowledge whatever of any defects in said bond or mortgage. 20

4. This complainant says as to the matters alleged in paragraph five of the said answer and cross bill, that the principal money shown in said bond and mortgage together with interest thereon, as alleged in said Bill of Complaint, is due and owing to this complainant and that this complainant is a bona fide purchaser of said mortgage for value and is foreclosing said mortgage for the sole benefit of himself and not for the benefit of 30

Replication to Answer and Cross-Bill as to Vito
Verniero and Giuseppe Cordasco

Samuel Schechner, Samuel Berger, Daniel Crecca
or anyone else.

5. This defendant says as to the matters al-
leged in paragraph six of said answer and cross-
10 bill that he has demanded frequently the princi-
pal and interest due under said mortgage, but
that the same has not been paid.

6. This complainant further says as to the mat-
ters alleged in paragraph seven of said answer
and cross-bill that the said bond and mortgage is
not fraudulent and is not null and void and ought
not to be delivered up or cancelled, but on the
contrary says, that the said mortgage is a valid
20 instrument; that the same was executed and de-
livered to this complainant for full consideration
without any knowledge on the part of this compla-
inant of any defects whatever in the same; that
this complainant had no knowledge whatever of
any alleged misrepresentations made by Samuel
Schechner, as in said answer and cross-bill al-
leged, but that so far as this complainant is con-
cerned the execution and delivery of said bond
and mortgage was a bona fide transaction for
30 valuable consideration and that the matters al-
leged in said answer and crossbill should in no
wise effect the validity of said mortgage in the
hands of this complainant.

PEIRCE & HOOVER,
Solrs. for Complainant.

Conclusions of Advisory

office, Thirty-one Clinton Street in the City of Newark at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard thereon.

JOHN FRANKLIN FORT.

Advisory Master.

We consent to the above.

10

G. M. BELFATTO

Solicitor for defendants

S. Montefusco,

V. Verniero & S. Cassese.

all answering defendants.

PEIRCE & HOOVER,

Solicitors for Complainant.

Conclusions of Advisory

20

(Filed, December 9, 1915)

IN CHANCERY OF NEW JERSEY

Between

WILLIAM A. BAKER,

Complainant,

vs.

CHARLES BAGNOLE, *et als*,

Defendants.

On Bill, etc.

30

Heard on bill, answer and proofs.

Mr. George Peirce, of Peirce & Hoover, for complainant.

Mr. G. M. Belfatto for defendant Sabino Monte Fusco.

40

Conclusions of Advisory

Mr. Samuel Roessler for defendants Samuel Schechner, Samuel Berger and Daniel Crecca.

FORT, Advisory Master,

10 The bill in this case is filed to foreclose a mortgage made by Charles Bagnole on the property now owned by the defendant Sabino Monte Fusco. It is, and was at the time the defendant bought the property, a third mortgage. The first mortgage is held by the mutual Benefit Building and Loan Association, and a second is held by Gustavus Richards. The conveyance, under which the defendant Sabino Monte Fusco holds title to his property recites all these three mortgages, as follows:

20 "This conveyance is made subject to three mortgages, One for ninety-five hundred dollars, which has been reduced to nine thousand dollars, another for twelve hundred dollars, and the third for Fifteen hundred dollars, the payment of which is hereby assumed by the parties of the second part."

These mortgages and the payment of \$100 in cash were the sole consideration to the grantor for the conveyance to the defendant.

30 The conveyance was made by Charles Bagnole to the defendant Sabino Monte Fusco and Antonio DiGeromino as tenants in common, by Deed dated November 9th, 1908 and on that day the defendant Monte Fusco gave his check on the West Side Trust Company of Newark to Charles Bagnole, for One Hundred Dollars. The handwriting on the body of the check is that of Joseph
40 B. Bloom, an attorney and the master who took

Conclusions of Advisory

the acknowledgment. The date "9 November" and the signature "Sabino Monte Fusco" were written by the defendant Monte Fusco. The deed was received and recorded in the register's office of Essex County November 10th, A. D. 1908 at 11:55 a. m. On its face the whole transaction seems regular. If the property mentioned in the deed was conveyed subject to the mortgages mentioned and recited therein, as assumed by the grantees the consideration of the mortgage in this case is established. 10

Some point was made in the case that the deed from Bagnole to Monte Fusco was never delivered. In this there is nothing. Monte Fusco has been in possession of the property for about seven years—the deed was recorded on the 10th, 1908, and the certified copy of the original deed (said to be lost) was obtained and given to Monte Fusco on November 5th, 1909 and said certified copy of the deed was produced at the trial by the said defendant. The suggestion of non delivery under such circumstances is without force. 20

The only suggestion of a defense is that the original deed was a fraud upon the grantees therein, in that it recited this third mortgage as assumed by the defendant and as one of the mortgages to which the conveyance was made subject when no such agreement was made. The defendant testifies that he bought the property subject to only two mortgages. That he neither at the time of purchase nor for a long time after knew the third mortgage for \$1500 was upon the property, or was mentioned in the deed or was assumed by him. The bond accompanying the 30 40

Conclusions of Advisory

mortgage bears endorsements of payments of interest upon it in the handwriting of the complainant. It also appears that the last interest payment endorsed on the Bond was made by a check of the firm of which the defendant Monte Fusco was a member. Defendant denies knowledge of this or any other payments of interest to the complainant on this mortgage. Of course the mere endorsements of interest on the bond by the complainants without other proof, are not evidential against the defendant. But there are other circumstances, and there is the testimony of Mr. Schechner of payments to him of money by Monte Fusco to pay to the complainant for interest on this Bond, which he says he paid to the complainant.

In view of the length of time since this transaction was made and the recitals in the deed to the defendant Monte Fusco, *et al*, as to the assumption of the mortgage in this suit and of the implied notice by the record at the Register's Office it is clear that the burden of establishing the contention of the defendants against the validity of this mortgage is upon defendant. The defendant seeks to do this by statements of Charles Bagnole made to him and others that this mortgage for \$1500 was a "fake." Bagnole admits he made these statements, but says he at the time said to the defendant that he (the defendant) knew about the mortgage and that it was good. It is, under such circumstances, difficult to give much, if any, force to Bagnole's statement. But the difficulty was Bagnole's statements as to this mortgage being a fake is, that they were made long after the title had vested in the defendant, and over five years after the mort-

Conclusions of Advisary

gage was made to the mortgagees and assumed
 by defendant. Under such circumstances his
 statements should not be allowed to prejudice the
 rights of the mortgagee. He swears, and so do
 Berger and Crecca, from whom he obtained title
 to this property which he conveyed to Monte
 Fusco *et al*, subject to this mortgage that he
 made this mortgage as part of the purchase
 money consideration for the deed from Berger
 and Crecca to himself, at the time of the convey-
 ance by them to him. He says he paid no other
 consideration for the property than this Fifteen
 Hundred Dollars mortgage and the mortgages
 already on the property at the time of his pur-
 chase, and \$100 in cash. If this be true, how can
 this mortgage by any possibility, be other than
 a valid subsisting lien on the property? Even if
 Bagnole misrepresented the mortgages on the
 property at the time he sold to Monte Fusco and
 DiGeromino, how could that fact affect the mort-
 gagees at that time of record? Hence, there is
 no defence against this mortgage between the
 mortgagor and the mortgagee named in it; un-
 less, of course, the whole thing was a scheme of
 fraud between the mortgagor, Bagnole and all
 the mortgagees, which was devised and planned
 to cheat and defraud Monte Fusco and his co-
 grantee, by withholding the information as to
 this mortgage from him and giving him a deed
 with a greater mortgage lien, to the extent of this
 mortgage, than he agreed or understood he was
 paying. Under the evidence I cannot find that
 the proof so establishes, all the parties to the
 mortgage denying this, and I cannot accept any
 such theory as being established by the proof.

There will be a decree for the complainant. 40

John Franklin Fort
Advisory Master

Final Decree*(Filed, December 14, 1915)*

IN CHANCERY OF NEW JERSEY

10	Between WILLIAM A. BAKER, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> CHARLES BAGNOLE, <i>et als</i> , <div style="text-align: right;">Defendants.</div>	}	On Bill, &c.
----	---	---	--------------

It appearing that a decree *pro confesso* has been entered against the following defendants:

20 Charles Bagnole, Nicholas Pignataro, Samuel Schechner, Samuel Berger, Daniel Crecca, Theresa Monte Fusco, Antonio DiGeronimo, Mrs Antonio DiGeronimo, Francisco DiGeronimo, Louisa Cordasco and Maria Giuseppa Vernieri, and this cause coming on to be heard by John Franklin Fort, Esq., Advisory Master, by virtue of an Order of Reference made by the Chancellor of the State of New Jersey on the eighth day of October, A. D., 1915, and in the presence of

30 George H. Peirce, of Peirce & Hoover, Solicitors for the complainant; G. M. Belfatto, Esq., Solicitor for the defendants, Sabino Monte Fusco, Pasquale Cassese, Giuseppe Cordasco and Vito Vernieri; and Samuel Roessler, Esq., Solicitor for the defendants, Samuel Schechner, Samuel Berger and Daniel Crecca and the Court having heard the witnesses and considered their testimony, and having heard and considered the argument of the respective solicitors, and being of

40

Final Decree

the opinion that there should be a decree for the complainant for the full amount of the mortgage as set out in the Bill of Complaint filed in this cause, which principal sum is found to be the sum of Fifteen hundred dollars (\$1500.00) with interest thereon from the twenty-third day of September, Nineteen hundred and twelve, to December third, Nineteen hundred and fifteen, or One thousand seven hundred eighty-seven dollars and fifty cents, and that the mortgage of the complainant is duly registered and executed, and in addition there is due the complainant for search fees reasonably incurred in the above cause and necessary for said foreclosure Fifty dollars (\$50.00) and also Eleven dollars and eighty-one cents (\$11.81) for an Insurance policy which under the conditions of the mortgage was secured by complainant and paid for by him.

It is thereupon on this ninth day of December, Nineteen hundred and fifteen, by Edwin Robert Walker, Esquire, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED and the Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE AND DECREE that the said mortgaged premises set out in the Bill of Complaint be sold to raise and satisfy the sum of One thousand, seven hundred eighty-seven dollars and fifty cents (\$1787.50) due the complainant that is to say, the sum of Fifteen hundred dollars (\$1500.00) principal, together with interest thereon to be computed from the twenty-third day of September, 1912, being the date of the last payment of interest, to December third, 1915, besides search fees and in-

Final Decree

10 surance previously shown herein, together with costs in favor of the complainant to be taxed, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the sheriff of the County of Essex, commanding him to make
 20 sale, according to law, of said mortgaged premises; that out of the money arising from such sale he do pay to the complainant, or his solicitors, said debt, interest and costs, and in case more money shall be raised by such sale than shall be sufficient to answer said several payments, that such surplus be brought into this court, to abide the further order of the court, unless otherwise previously disposed of by this order of this court; and that the said sheriff make return,
 20 without delay, of his proceedings by virtue of the said writ.

AND IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

30 IT IS FURTHER ORDERED that the following described property be sold in accordance with this Decree.

ALL the following described tract or parcel of land and premises, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey:

40 FIRST TRACT: BEGINNING at the Northwesterly corner of Seventh Avenue and Mount Prospect Avenue; thence running Northerly along the Westerly side of

Final Decree

Mount Prospect Avenue ninety-seven feet more or less to land of Charles W. Stickney; thence Westerly along said land twenty-nine feet more or less to land now or formerly belonging to Bridget Farrell; thence Southerly along the Easterly side of said land ninety-seven feet to Seventh Avenue; thence Easterly along the line of Seventh Avenue fourteen feet more or less to the place of BEGINNING. 10

SECOND TRACTS BEGINNING on the North side of Mill Street (now known as Seventh Avenue) at a point distant South sixty-nine degrees and forty-five minutes East thirty-five feet from the corner of lands of James Davis, deceased; thence running along Mill Street South sixty-nine degrees and forty-five minutes East twenty-five feet to the corner of lot No. 8, said point being about fourteen feet Westerly from the street now known as Mount Prospect Avenue; thence along the same North sixteen degrees East ninety-seven feet and eight inches more or less to lot No. 49; thence along the same North sixty-nine degrees and forty-five minutes West twenty-five feet; thence running South sixteen degrees West ninety-three feet more or less to the place of BEGINNING. 20 30

THIRD TRACT: BEGINNING in the westerly line of Cutler Street at a point therein distant northerly four hundred and fifty three feet and ninety-five one-hundredths of a foot from the Northerly line of Seventh Avenue; thence running Northerly 40

Final Decree

10 along said line of Seventh Avenue thirty-one feet and six inches; thence North sixty-one degrees forty-six minutes west one hundred feet; thence South twenty-eight degrees fifteen minutes West thirty-one feet and six inches; thence South sixty-one degrees forty-six minutes East one hundred feet to the Westerly line of Cutler Street and place of BEGINNING.

AND IT IS FURTHER ORDERED that all the said premises be advertised for sale at one time, but that the Sheriff shall sell the first and second tracts first and in the event of the sale not bringing sufficient to satisfy the decree, interest and costs, then immediately thereafter the third tract
20 be sold to pay and satisfy any deficiency.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sum of Fifty (\$50.00) dollars be allowed Samuel Roessler, Esq., the solicitor of Samuel Schechner, Samuel Berger and Daniel Crecca, answering defendants, as counsel fee.

Respectfully advised,

JOHN FRANKLIN FORT,
Advisory Master.

Notice of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero, Joseph Cordasco

(Filed, December 16, 1915)

IN CHANCERY OF NEW JERSEY 10

Between WILLIAM A. BAKER, and CHARLES BAGNOLE, <i>et als.</i> Complainant, Defendants.	}	
---	---	------------------------------

The defendants, Sabino Montefusco Pasquale 20
 Cassese, Vito Verniero, and Joseph Cordasco
 hereby appeal from the final decree and from the
 whole and every part thereof made in this Court
 in the above stated cause as declares the mort-
 gage of said complainant, William A. Baker in
 the pleadings in the cause mentioned to be an ex-
 isting encumbrance upon the premises in said
 mortgage described, to the Court of Errors and
 Appeals in the last resort in all causes.

Dated, December 13th, 1915. 30

GAEFANO M. BELFATTO.

Solicitor for and of Counsel with de-
 fendants Sabino Montefusco, Pas-
 quale Cassese, Vito Verniero, and
 Joseph Cordasco.

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

GAEFANO M. BELFATTO,
 Counsel. 40

Petition of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero and Giuseppe Cordasco

(Filed January 10, 1916)

10 NEW JERSEY COURT OF ERRORS AND APPEALS

Between WILLIAM A. BAKER, and CHARLES BAGNOLE, <i>et als.</i>	}	Complainant, Defendants.	On Bill
--	---	---------------------------------	---------

20 *To the Honorable Court of Errors and Appeals
in the last resort in all causes:*

The petition of Sabino Montefusco, Pasquale Cassese, Vito Verniero and Giuseppe Cordasco, the appellants in the above stated cause respectfully show; that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey by his Honor Edwin R. Walker, Chancellor, bearing date the ninth day
 30 of December, Nineteen Hundred and fifteen, wherein William A. Baker was complainant and the said Charles Bagnole, Nicholas Pignataro, Samuel Schechner, Samuel Berger, Daniel Crec-
 ca, Theresa Montefusco, Antonio DiGeronimo, Mrs. Antonio DiGeronimo, Francisco DiGeronimo, Louisa Cordasco, Maria Verniero, Sabino Montefusco, Pasquale Cassese, Vito Verniero and Giuseppe Cordasco were defendants in this
 40 respect to wit:

Petition of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero Giuseppe Cordasco

And the Court having heard the witnesses and considered their testimony, and having heard and considered the argument of the respective solicitors, and being of the opinion that there should be a decree for the complainant for the full amount of the mortgage as set out in the bill of complaint filed in this cause, which principal sum is found to be the sum of Fifteen hundred dollars (\$1500.00) with interest thereon from the twenty third day of September, Nineteen hundred and twelve, to December third, Nineteen hundred fifteen, or One thousand seven hundred eighty seven dollars and fifty cents, and that the mortgage of the complainant is duly registered and executed, and in addition there is due the complainant for search fees reasonably incurred in the above cause and necessary for said foreclosure Fifty Dollars (\$50.00) and also Eleven dollars and eighty-one cents (\$11.81) for an Insurance policy which under the conditions of the mortgage was secured by the complainant and paid for by him.

IT IS thereupon this Ninth day of December, Nineteen hundred and fifteen, by Edwin Robert Walker, Esquire, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED AND DECREED and the Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER ADJUDGE AND DECREE that the said mortgaged premises set out in the Bill of Complaint be sold to raise and satisfy the sum of One thousand, seven hundred eighty seven dollars and fifty cents (\$1787.50) due the complainant, that is to say, the sum of Fifteen hun-

10

20

30

40

Petition of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero Giuseppe Cordasco

dred dollars (\$1500.00) principal, together with interest thereon to be computed from the twenty third day of September, 1912, being the date of the last payment of interest, to December third, 1915, besides search fees and insurance previously shown herein, together with costs in favor of the complainant to be taxed, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Essex, commending him to make sale, according to law, of said mortgaged premises; that out of the money arising from such sale he do pay to the complainant, or his solicitors, said debt, interest and costs, and in case more money shall be raised by such sale than shall be sufficient to answer said several payments that such surplus be brought into this Court to abide the further order of this Court, unless otherwise previously disposed of by this order of this Court, and that the sheriff make return, without delay, of his proceedings by virtue of the said writ.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

IT IS FURTHER ORDERED that the following described property be sold in accordance with this Decree.

”
All the following described tract or parcel of land and premises, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey:

Petition of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero Giuseppe Cordasco

FIRST TRACT: BEGINNING at the Northwesterly corner of Seventh Avenue and Mount Prospect Avenue; thence running Northerly along the Westerly side of Mount Prospect Avenue ninety seven feet more or less to land of Charles W. Stickney; thence Westerly along said land twenty-nine feet more or less to land now or formerly belonging to Bridget Farrell; thence Southerly along the Easterly side of said land ninety-seven feet to Seventh Avenue; thence Easterly along the line of Seventh Avenue fourteen feet more or less to the place of BEGINNING. 10

SECOND TRACT: BEGINNING on the Northside of Hill Street (now known as Seventh Avenue) at a point distant South sixty-nine degrees and forty-five minutes East thirty-five feet from the corner of lands of James Davis, deceased; thence running along Hill Street South sixty-nine degrees and forty-five minutes East twenty-five feet to the corner of lot No. 8, said point being about fourteen feet Westerly from the street now known as Mount Prospect Avenue; thence along the same North sixteen degrees East ninety-seven feet and eight inches more or less to lot No. 49; thence along the same North sixty-nine degrees and forty-five minutes West twenty-five feet; thence running South sixteen degrees West ninety three feet more or less to the place of BEGINNING. 20 30

THIRD TRACT: BEGINNING in the Westerly line of Cutler Street at a point therein distant northerly four hundred and fifty- 40

Petition of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero Giuseppe Cordasco

10 three feet and ninety-five one-hundredths of a foot from the Northerly line of Seventh Avenue; thence running Northerly along said line of Seventh Avenue thirty-one feet and six inches; thence North sixty-one degrees forty-six minutes west one hundred feet; thence South twenty-eight degrees fifteen minutes, West thirty-one feet and six inches; thence South sixty-one degrees forty-six minutes East one hundred feet to the Westerly line of Cutler Street and place of BEGINNING.

20 AND IT IS FURTHER ORDERED that all the said premises be advertised for sale at one time, but that the Sheriff shall sell the first and second tracts first and in event of the sale not bringing sufficient to satisfy the decree, interest and costs, then immediately thereafter the third tract be sold to pay and satisfy any deficiency.

30 AND IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that the sum of Fifty (\$50.00) dollars be allowed Samuel Roessler Esq., the solicitor of Samuel Schechner, Samuel Berger and Daniel Crecca, answering defendants, as counsel fee.

And your petitioners humbly appeal from the said decree of the Chancellor as aforesaid upon the ground that the same is erroneous for that the said decree should have ordered and directed that;

40 The sale of said premises by Samuel Berger and Daniel Crecca to Charles Bagnole was without consideration, that it was made solely to enable Charles Bagnole to execute the said mortgage covering said premises.

Petition of Appeal of Sabino Montefusco, Pasquale Cassese, Vito Verniero Giuseppe Cordasco

That said Bond and Mortgage executed by Charles Bagnole, to Samuel Schechner, Samuel Berger, Daniel Crecca and complainant, were without consideration, that the same were executed and delivered by the said Charles Bagnole as the undisclosed trustee for said Samuel Schechner, Samuel Berger, Daniel Crecca and complainant. 10

That the existence of said mortgage was fraudulently concealed by said Charles Bagnole and Samuel Schechner to Sabino Montefusco and Antonio DiGeronimo, when said premises were sold to said Sabino Montefusco and Antonio DiGeronimo; and that said Charles Bagnole sold said premises as the undisclosed trustee for the benefit of said Samuel Schechner Daniel Crecca, Samuel Berger and the complainant, all of which was known to and ratified by said complainant. 20

That the complainant was not a bona fide assignee for value of said mortgage, and that said mortgage should have been declared by the said Court to be fraudulent, null and void and of no force and effect and no lien on said real estate; and should have been delivered up to these defendants to be cancelled. 30

Your petitioners therefore pray that the said decree of said Chancellor may be reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

GAEFANO M. BELFATTO,
Solicitor for and of Counsel with Sabino
Montefusco, Pasquale Cassese, Vito
Verniero and Giuseppe Cordasco.
Appellants. 40

**Answer to Petition of Appeal of
Samuel Schechner, Samuel Berger
and Daniel Crecca**

(Filed February 7, 1916)

10 NEW JERSEY COURT OF ERRORS AND
APPEALS

Between
WILLIAM A. BAKER,
Complainant-Respondent,

vs.

SAMUEL SCHECHNER, SAMUEL
BERGER, and DANIEL CRECCA,
Defendants-Respondents,

20

and

SABINO MONTEFUSCO, PASQUALE
CASSESE, VITO VERNIERO and
GIUSEPPE CORDASCO,
Defendants-Appellants.

On Bill, etc.

30 The answer of Samuel Schechner, Samuel Ber-
ger and Daniel Crecca, the above named respon-
dents to the petition of appeal of the above
named appellants.

40 These respondents, not acknowledging all or
any of the matters which in said petition of ap-
peal are contained, to be true, for answer there-
to, nevertheless, say and admit that an order was
on the Ninth day of December, last past, made
and entered in the Court of Chancery, in the
cause for that purpose mentioned in said petition
as is therein stated, but as to the substance and

Answer to Petition of Appeal of William A.
Baker

form thereof, these respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said order is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents. 10

SAMUEL ROESSLER,
Solicitor for and of Counsel with Re-
spondents, Samuel Schechner, Sam-
uel Berger and Daniel Crecca.

**Answer to Petition of Appeal of Wil-
liam A. Baker**

20

(Filed, February 8, 1915)

NEW JERSEY COURT OF ERRORS AND
APPEALS

Between WILLIAM A. BAKER, Complainant-Respondent, and CHARLES BAGNOLE, <i>et als.</i> Defendants-Appellants.	}	On Bill &c Appeal from Chancery
---	---	------------------------------------

The answer of WILLIAM A. BAKER the above named respondent, to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the matters which in said petition of appeal are contained to be true, for answer thereto, nev- 40

Testimony

ertheless, says and admits: that a final decree was, on the 9th day of December, 1915, made and entered in the Court of Chancery of New Jersey as stated in said petition; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

PEIRCE & HOOVER.

Solicitors for the above named respondent.

GEORGE H. PEIRCE,
Of Counsel.

20

Testimony

IN CHANCERY OF NEW JERSEY

30	Between WILLIAM A. BAKER, <div style="text-align: right;">Complainant,</div> and CHARLES BAGNOLE, <i>et als.</i> , <div style="text-align: right;">Defendants.</div>
----	--

Transcript of testimony and proceedings in the above entitled cause before J. Franklin Fort, Esquire, Advisory Master, at his office, Essex Building, Newark, New Jersey, on Monday, November 8th, 1915, at 10:30 a. m.

Samuel R. Baker—Direct

Appearances:

Messrs. Peirce & Hoover for complainant.

Mr. Samuel Roessler for Samuel Schechner,
Samuel Berger and Daniel Crecca.

Mr. Gaetano M. Belfatto for Sabine Montefusco.
Pasquale Cassese, Vito Verniero, Joseph Cor- 10
dasco.

Mr. Pierce: I offer in evidence the mortgage bearing date October 17, 1908, Charles Bagnole to Samuel Schechner, Samuel Berger, William A. Baker and Daniel Crecca, recorded in Book C-23 of Mortgages for Essex County, page 202. The acknowledgment is taken before Joseph B. Bloom, Master in Chancery of New Jersey.

Marked Exhibit C-1.

I also offer in evidence the accompanying 20
bond, bearing the same date, executed by the same parties.

Marked Exhibit C-2.

I also offer in evidence the assignment of mortgage from Samuel Schechner, Samuel Berger and Daniel Crecca to William A. Baker, dated November 19, 1908, acknowledged before Samuel Roessler, Master in Chancery of New Jersey, November 19, 1908; recorded in Essex County, in Book 30
85 of Assignments, page 88 etc.

Marked Exhibit C-3.

SAMUEL R. BAKER, sworn for complainant:

Direct-examination by Mr. Peirce:

Q. Mr. Baker, you are a brother of William A. 40
Baker? A. I am.

Samuel R. Baker—Direct

Q. William A. Baker is president of the Baker Printing Company? A. Yes.

Q. You are what officer of that company? A. Treasurer.

Q. Is William A. Baker well today? A. He is very sick.

10 Q. Where is he now? A. At a sanitarium near Paterson. He has been there five months; he is a very sick man.

Q. Is he able to appear here this morning? A. No, sir.

Q. I show you bond marked Exhibit C-2 and ask you whose handwriting is on the back of that bond? A. William A. Baker's.

20 Q. Will you read those endorsements? A. "Date paid, April 24, 1909, received \$45, 6 months interest due April 17, 1909. November 10th received \$45 for six months interest—"

Mr. Belfatto: Mr. Baker is a very material witness in this case. We filed a cross-bill. We question the endorsements on the paper. I object because there were no interest paid to Mr. Baker. This is our proof.

Court: Whose handwriting is that?

Witness: Mr. Baker's.

30 Court: You can contradict it. Have you subpoenaed Mr. Baker?

Mr. Belfatto: Yes, we served a subpoena on Mr. Baker at his office the other day.

Court: That is not good service. Your motion is overruled.

A. (Continuing.) "November 10, 1909, received \$45, six months interest due October 17, 1909.
40 May 20, 1910, received \$45, six months interest

Samuel R. Baker—Cross

due April 17, 1910. December 3, 1910 received \$45, six months interest due October 17, 1910. June 3, 1911, received \$45, six months interest due April 17, 1911. September 23, 1912, received \$45, six months interest due October 17, 1911."

Q. The principal is due on this bond and mortgage? A. Yes, sir. 10

Q. And the interest is paid, as per the endorsements shown on that bond, as far as you know? A. Yes.

CROSS-EXAMINATION by Mr. Belfatto:

Q. Whose handwriting is that? A. William A. Baker's.

Q. Himself? A. Himself.

Q. Did you ever see that paper before today? A. I don't recollect seeing it before. 20

Q. Where was that paper before it came here? A. I presume—

Q. Where did you get it? A. I suppose his lawyer had it.

Q. Do you know yourself? A. No, I cannot say.

Q. Was that paper in the possession of Mr. Baker? A. At what time?

Q. At any time before this day? A. Oh, yes.

Q. When, if you know? A. The last time he wrote that interest on there it was in his possession. 30

Q. Did you see that paper in his possession? A. No.

Q. So you don't know whether that paper was in his possession at the time of the receipt of the last payment of interest? A. No, I cannot say.

Mr. Peirce: It must have been in his possession when he wrote on there.

Witness: Yes, sir. 40

Sabino Montefusco—Direct

Q. How long has Mr. Baker been sick? A. Seven months—since March 27, 1915.

Q. What is the last payment date? A. The last payment was made September 23, 1912, for interest due October 17, 1911.

10 Q. Does that memorandum endorsed on the mortgage show who paid the interest? A. It does not appear to.

GEORGE H. PEIRCE, sworn for complainant:

I have had the bond and mortgage and assignment in my possession since a short time before the filing of the bill to foreclose in this case. W. A. Baker brought it to me personally and said the money was due to him and asked me to take proceedings to foreclose it; that the defendants had not paid the principal and interest. It has been in my safe ever since.

Mr. Peirce: We rest. I think that makes a *prima facie* case.

I would like to put in evidence the search.

30

SABINO MONTEFUSCO, sworn for defendants:

Direct-examination by Mr. Belfatto:

Q. Where do you live? A. 161 Seventh Avenue.

Q. How long have you been living there? A. 40 About three years.

Sabino Montefusco—Direct

Q. Do you own the property situated on the corner of Seventh Avenue and Mt. Prospect Avenue?

A. Yes.

Q. The northwest corner? A. Yes.

Q. From whom did you buy that property? A. I buy from Mr. Bagnole. I meet one time at Mr. Bagnole's in Seventh Avenue and he told me I want to buy a piece of property for sale cheap. I say, "Where is it?" Then he bring it to me and show me Seventh Avenue and Mt. Prospect Avenue. I say "Who is the owner?" "He is, Mr. Schnechner, he is your friend." I said, "Yes, he is a friend of mine." Then in September I go and see the property and see how much he want. He said he want about \$10,500. I said "I don't pay that for it, I pay \$8,000."

Court: He did buy the property.

Q. Did you go to Mr. Schechner with Charles Bagnole? A. Yes.

Q. Who was with you? A. Me and Antonio DiGeronimo.

Q. Was Bagnole with you? A. Yes.

Q. So you and Antonio Geronimo and Charles Bagnole went to see Mr. Schechner? A. Yes.

Q. Where did you see him? A. In his office.

Q. Was any agreement signed for the purchase of the property? A. Yes, I signed an agreement which Mr. Schechner made.

Q. Who drew this agreement? A. Mr. Schechner.

Q. Did Mr. Bagnole sign it? A. Yes.

Q. Did you sign it? A. Yes.

Q. Did Mr. Schechner sign it? A. No.

Q. Did Antonio Geronimo sign it? A. Yes.

Q. Did you read the agreement? A. I can't read.

Sabino Montefusco—Direct

Q. Was the agreement read to you? A. Mr. Schechner—

Q. Did he read it to you? A. Yes.

Q. How many mortgages were on that property at that time?

10 Mr. Peirce: I object unless the agreement is produced.

Court: He cannot tell that. You must have somewhere an abstract.

Q. Was anything said about the encumbrance on the property?

Mr. Peirce: I object unless the agreement is produced.

Court: How is that admissible here? This is on the mortgage afterwards made.

20 Mr. Belfatto: The mortgage had already been executed about twenty days prior to this man purchasing the property.

Court: You may show how many mortgages they said were on it.

Q. How many mortgages were on the property at the time? A. Mr. Bagnole told me two mortgages, one for Building and Loan and one for Mr. Richards.

30 Q. Did he tell you anything about the third mortgage? A. No, sir.

Q. Did Mr. Schechner say anything to you? A. No, sir.

Q. Did you employ a lawyer to make a search? A. Yes.

Q. Did you employ a lawyer; did you have a lawyer? A. No, Mr. Schechner told me what use is to spend a lawyer, "I am here to take an interest for you."

40 Q. He told you there was no use to take a law-

Sabino Montefusco—Direct

yer because he would look after your interest; is that right? A. Yes.

Q. What did you say to Mr. Bagnole? A. When I see Mr. Bagnole was the owner, then I told Mr. Schechner I don't trust Mr. Bagnole one penny, because he is a crook; I want a lawyer. Then Mr. Schechner told me "You do not need to spend any money for a lawyer, because I am here to watch for your interest." Then after I asked him for a copy of the agreement; Mr. Schechner said "I got no blank; you go home and I will give you a blank with the agreement." 10

Q. You had the agreement executed that day? A. Yes.

Q. What became of the agreement, the paper; who kept the agreement? A. Mr. Schechner. 20

Q. Did you get a copy of the agreement? A. No, he says "You come around and I give it to you."

Q. Did you go to Mr. Schechner for it? A. For one year every morning; he never want to give it to me.

Q. Did you after that day see Mr. Schechner in order to get a copy of the agreement? A. He never want to give it to me.

Q. What did he say? A. I asked him for the agreement of this deed; he said, "I ain't got no blank; you come around tomorrow and you get one." 30

Q. Did you go around tomorrow? A. I go there and he say "I ain't got it yet"; he did that for one year.

Q. Did you ever get a copy of the agreement? A. No, sir.

Q. Do you know when the deed was executed for the property? A. No. 40

Sabino Montefusco—Direct

Q. Signed, sealed and delivered to you, I mean; do you know when that was? A. No.

Q. Was the deed of this property ever given to you or delivered to you? A. Mr. Schechner—

Q. (Question repeated.) A. No, I never get the deed; they gave me a copy.

10 Q. How long after? A. One year after.

Q. How long after the execution of the agreement did you receive the deed? A. One year.

Q. According to your agreement with Charles Bagnole and Schechner, when was the property to be deeded to you? A. November, 1909.

Q. Did Mr. Bagnole ever give you the deed, the original deed, at any time? A. No.

Q. Did Mr. Schechner give you the original deed at any time? A. No.

20 Q. What became of the deed? A. Mr. Schechner promised to give me the deed and agreement; he never gave it to me.

Q. So you never had the original deed? A. No.

Q. It was never delivered to you? A. No.

Q. I show you a certified copy of a deed; do you know this paper? A. Yes.

Q. That is a certified copy of the deed? A. Yes.

Q. You received that paper a year after? A. Yes, one year.

30 Mr. Belfatto: I offer the certified copy in evidence.

Marked Exhibit D-1.

Q. Why did you receive it? A. I go every morning to Mr. Schechner. I received the copy a year after.

Q. Who obtained this copy, you or Mr. Schechner? A. Mr. Schechner.

40 Q. Did you pay him any money for it? A. Mr.

Sabino Montefusco—Direct

Schechner said it cost \$3.50; I don't remember if I gave him \$3.50 or not for sure.

Q. Did you ever ask him for the original deed?

A. Yes, sir, every day.

Q. What did Mr. Schechner say? A. He said he ain't got it.

Q. When you signed this agreement in Mr. Schechner's office, how much money was paid to bind the bargain? A. \$100. 10

Q. To whom did you give it? A. I give Mr. Schechner a check; he drew the check out for \$100 and I signed it.

Q. And you don't know who got the money? A. No.

Q. After you received this deed a year after the day the agreement was signed at Mr. Schechner's office, did you see Mr. Bagnole? A. Yes. 20

Q. What did you say to him? A. I take that copy and go to my lawyer.

Q. Who was your lawyer? A. Mr. Finelli. Then I show him this copy; he said "That is not the original deed; this is a copy."

Q. When did you first find out there were three mortgages on the property? A. As soon as I received this copy.

Q. What did you do then? A. Then I go back to Mr. Schechner. 30

Q. And what did you say to him? A. I told him "what is the matter; you say there was two mortgages; then I find three mortgages"; he said, "I don't know; Mr. Bagnole was the owner." Schechner said, "I don't know anything; Mr. Bagnole was the owner." "I thought if you was the owner, I see the lawyer. Why is it now \$1,500 is on the mortgage, then you charge me pretty 40

Sabino Montefusco—Direct

near \$12,000." I spent \$1,000 already to fix it; then it cost about \$15,000.

Q. What did Mr. Schechner say to you? A. He said "Go to Mr. Bagnole, because I don't know anything about that mortgage; I am not the owner; Mr. Bagnole was the owner."

10 Q. What else did you say to Mr. Schechner? A. I find this mortgage now, when it never was before; I find \$1,500 more. "I don't know anything about it." "I told you I want to have a lawyer."

Q. What did Schechner say to you? A. He said "I don't know anything; Mr. Bagnole was the owner; you go to see Mr. Bagnole and then he fix it."

Q. Fix what? A. He fix that land. Then I go to Mr. Schechner.

20 Q. What else did you say to him when he said that? A. I told him well, "I don't see Bagnole because I don't know him, because you say you take care of my interest." Then he said the mortgage is there; what I can say; Bagnole had the money.

Q. Did you ever pay any interest to Mr. Schechner? A. Never gave him a cent.

30 Q. Did Mr. Schechner at any time ask you for any interest? A. He asked me in the summer time; I told him he was a thief, because the mortgage should not be on the property.

Q. Did you see Mr. Bagnole about that? A. Yes.

40 Q. What did Mr. Bagnole say to you? A. I go to him and ask him for an agreement what I signed, because Schechner says "I am not the owner, Mr. Bagnole was the owner"; I said, "Bagnole, do you want to give me the agreement we signed?" He said, "I ain't got it; Mr. Schech-

Sabino Montefusco—Direct

ner got it, because I take \$100." I want to see what I signed when I made the agreement; Mr. Bagnole said he have nothing to do with the property; Mr. Schechner was the owner. I just give \$100, that is all I give. Then I said I have this copy which got \$1,500 more mortgage on the property over the price what I pay. He said, "Oh, no, that is a fake mortgage." 10

Q. Who said that? A. Mr. Bagnole. Mr. Bagnole said, "You go to the Court, then I go to the Court, and go to say that I never get a cent; they put that mortgage on without a cent."

Q. He said to you he never got a cent? A. Yes.

Q. And did he tell you to go to Court? A. Yes.

Q. And he would testify? A. Yes.

Q. That he never got a dollar for it? A. Yes. 20

Q. What did he sign the mortgage for, did he say?

Objected to. Objection sustained.

Q. What else did you say after having seen Mr. Bagnole; did you go to see Mr. Schechner? A. Yes, I saw him the second time.

Q. What did he say then? A. He said, "I don't know nothing; you go to Bagnole; he is the owner; I have nothing to do with it."

Q. Have you ever paid any interest on that mortgage to Mr. Bagnole? A. Never. 30

Q. Or to the four mortgagees? A. No.

Q. That is Samuel Berger, Samuel Schechner, William A. Baker and Daniel Crecca? A. No.

Q. I show you the bond marked Exhibit C-2, which was signed by Bagnole; did you pay any money on the 24th of April, 1909? A. I never pay a cent on that mortgage.

Q. Did you ever pay any interest on the 24th of April, 1909, \$45? A. No. 40

Sabino Montefusco—Direct

Q. Did you ever pay any interest on the 10th of November, 1909, \$45? A. No.

Q. On May 20, 1910, \$45? A. No.

Q. Did you ever pay any interest on December 3, 1910? A. No, sir.

10 Q. Did you ever pay any interest on June 3, 1911, \$45? A. No, sir.

Q. Did you ever pay any interest on September 23, 1912, \$45? A. No, sir.

Q. You never paid a dollar? A. No, sir.

Q. Do you know William A. Baker? A. I saw him one time.

Q. When did you first see William A. Baker, the assignee of this mortgage? A. I think about last year.

20 Q. What month; what part of last year? A. I don't remember the month; I received a letter from him.

Q. Was it in the month of January or December; have you got the letter with you? A. It might be in January; last year, 1914, October or September, I don't remember.

Q. What did you do in answer to the letter; did you go to see him? A. Yes, I saw him at his place on Market Street.

30 Q. Who was with you? A. Mr. Cassese.

Q. Did you talk to him personally? A. Yes; he said, "I don't know anything about the mortgage, because I have a guarantee from Mr. Schechner."

40 Q. What else? A. Then I say—he ask for interest; I said I never pay a cent on the mortgage; he said I owe some money; I don't know who pay it. I don't want to pay a cent, I told Mr. Schechner the first time after I got the copy of the deed

Sabino Montefusco—Direct

in my hands, because they were robbers, because that mortgage was not there when I bought the property; he said, "I don't know nothing about it; you go to see Mr. Schechner; I don't care whether you pay interest or not, because he got to guarantee me the mortgage."

Q. Did you go to see Mr. Schechner after that? 10

A. No, I didn't go to see him any more.

Q. What did Mr. Baker say about the payment of any money or any consideration to the mortgagor for that mortgage? A. He said he don't care for me, and I say I never pay a cent because the mortgage I never get.

Q. Mr. Baker call me; they want the interest on the mortgage; I go to see Mr. Baker and ask him who give the mortgage; I say I never get a cent; he said, "I don't know; Mr. Schechner sold me that mortgage; I don't care for you; Mr. Schechner guarantee to me the mortgage." 20

Mr. Peirce: Mr. Schechner had guaranteed the mortgage to Baker?

Witness: Yes, and "I don't care for you."

Q. How many times did you see Mr. Baker?

A. Only the one time.

Q. Did you ever receive any letters prior to this particular time, requesting you to pay the interest on that mortgage? A. No. 30

Q. What was the condition of the property when you first bought it? A. It was old brick; the cellar was full of water.

Q. What was the condition of the property at the time you bought it? A. Very bad.

Q. How much rent did you get out of it? A. About \$40 or \$35; it was all empty.

Q. Was it tenantable? A. The people couldn't 40

Sabino Montefusco—Direct

stay in it. No, it was not; it was not fit to be occupied by the tenants.

Q. Did you spend any money to improve that property? A. Pretty near a thousand dollars I spent.

10 Q. How long after the 9th of November, 1908, did you spend a thousand dollars? A. After fifteen days.

Q. Do you remember whether or not you saw Mr. Schechner after the conversation you had with Mr. Baker?

Mr. Peirce: He has sworn two or three times he didn't.

Q. Do you know Mr. Gottlieb? A. Yes, I remember now.

20 Q. Do you remember having seen Mr. Schechner? A. Yes.

Q. About how long ago? A. About eight or nine months ago.

Q. With whom did you go to see Mr. Schechner? A. With Mr. Gottlieb and Charles Bagnole.

Q. What did you go there for? A. Because I want the agreement from Bagnole.

30 Q. Did you get it from Bagnole? A. Bagnole said, "I ain't got it; Mr. Schechner got it." Then Mr. Gottlieb said "Go to Mr. Schechner." Then we go to Mr. Schechner, me and Mr. Bagnole.

Q. In the presence of Mr. Gottlieb what did Mr. Schechner say? A. He said, "I don't know nothing about it, because when Mr. Montefusco bought the property, I was not the owner, Mr. Bagnole was the owner; I don't know nothing; I know the mortgage was up there, because Mr. Montefusco bought the property with the third mortgage on."

40 Q. Did you get a copy of the agreement? A.

Sabino Montefusco—Cross

Then, no. Mr. Schechner said he ain't got it, Mr. Bagnole got it.

Q. What did Mr. Bagnole say? A. He said, "You got the agreement, because you never give it to me."

Q. Schechner said Bagnole had it and Bagnole said Schechner had it? A. Yes. 10

Q. That was the same time when Mr. Gottlieb was with you? A. He said, "Look in the safe."

Q. Did Mr. Schechner look in the safe? A. Yes, he said, "I can't find it."

Q. What else was said; was anything else said? A. No, because Mr. Gottlieb said, "I am sorry, Mr. Schechner, you must have given the agreement to Mr. Montefusco; when you show it to him—you was the lawyer—you must have given the agreement to Mr. Montefusco." He said Mr. Bagnole got it, and Mr. Bagnole say Mr. Schechner got it. 20

Q. What else did Bagnole say at that particular occasion? A. He told me any time when I ask for the agreement, "what are you afraid of that mortgage; any time you go in the Court I come up there and tell the Judge that was a fake mortgage."

Mr. Peirce: Who said that?

Witness: Mr. Bagnole. He said, "You go in the Court, I come there and say it was a fake mortgage." 30

CROSS-EXAMINATION by Mr. Peirce:

Q. What property are you referring to? A. 161 Seventh Avenue, corner of Mt. Prospect and Seventh Avenue.

Q. Did you get more than one property from 40

Sabino Montefusco—Cross

Mr. Bagnole? A. That is the only one I get, the first one and the last I buy from Bagnole.

Q. You only got the Seventh and Mt. Prospect Avenue property from Bagnole? A. Yes.

Q. What are the numbers? A. 163-159, three
10 houses.

Q. You didn't have anything to do with Cutler Street? A. No.

Q. Who is Mr. Geronimo? A. He was my partner when I bought the property, Antonio di Geronimo.

Q. You and Antonio Geronimo bought it together? A. Yes.

Q. Where is Antonio? A. He went in Italy about a week after we bought the property.

Q. You are still partners in the property to-
20 day? A. Yes.

Q. Geronimo owns a half and you own a half? A. Yes.

Q. How long did Geronimo continue to be your partner? A. He was with me as partner.

Q. How long? A. About three or four years, two years, I don't remember.

Q. How much interest did Geronimo pay on Mr. Baker's mortgage? A. I don't know. Geronimo
30 after a week went to Italy.

Court: And never has come back?

Witness: No.

Q. Do you mean to say that Geronimo never paid any interest on this mortgage; do you swear to that? A. Yes.

Q. Do you know it? A. Yes, because he never was here.

Q. That is your reason for saying that? A.
40 Yes.

Sabino Montefusco—Cross

Q. Did he send any money from Italy? A. No, sir.

Q. Do you say that you never paid any interest on the mortgage? A. No, sir.

Q. Did you not take \$45 to Samuel Schechner in September, 1912, to pay on this mortgage? A. I never pay a cent at all. 10

Q. And don't you know that you asked Mr. Schechner to ask Mr. Baker for indulgence in the matter, so that he wouldn't foreclose? A. No, sir.

Q. Don't you know that on September 23d, 1912, Samuel Schechner sent to Mr. Baker \$45, which was the \$45 which you gave him? A. No, sir; I never pay a cent on that.

Q. You know the letterhead of Geronimo? A. I don't know the letterhead at all, because Geronimo never was here. 20

Q. Were you not in business with him for seven or eight years? A. No.

Q. You know when he was in business in Newark on Mt. Prospect Avenue? A. Yes—not Antonio, it was his brother.

Q. What is his brother's name? A. Di Geronimo.

Q. Who composed the firm of di Geronimo Brothers and Montefusco? A. I am a partner. 30

Q. Did you ever see your letterhead? A. No.

Q. Never saw your name on a paper like that (witness shown paper)? A. Yes—not this letterhead.

Q. I want to know about the letterhead; you have seen that many times? A. Yes, because I was in partnership.

Q. That is one of the letterheads that you used in your partnership? A. Yes, in business. 40

Sabino Montefusco—Cross

Q. And your business was Mt. Prospect Avenue and Seventh Avenue, was it? A. Yes.

Q. In this very property? A. Yes.

Q. How long did you occupy this property? A. Pretty near about seven years.

10 Q. You have been in this property? A. I am in three years, Geronimo was in seven years.

Q. Seven years your partner was there and you were there three years? A. Not in the house, but in partnership with the business.

Q. Did you ever see any of Geronimo's writing? A. Yes.

Q. You were in partnership with him seven or eight years? A. Yes, I know his writing.

20 Q. Isn't that Geronimo's writing (witness shown letter)? A. Yes, sir.

Q. That is Geronimo's signature? A. Yes, sir.

Mr. Peirce: I offer that letter in evidence.

Mr. Belfatto: I object to the letter; the evidence shows that Mr. Geronimo was not Mr. Montefusco's partner; Antonio Geronimo was, and it is not proper evidence.

Court: I will admit it.

Marked Exhibit C-4

30 Q. Di Geronimo took title with you to the property? A. Antonio di Geronimo.

Q. Took the deed with you? A. Yes.

Q. What is the other Geronimo's name? A. Gerolomo di Geronimo.

Q. And the property was put in Antonio's name because Gerolomo di Geronimo had trouble with his wife? A. I don't know.

Q. Isn't it a fact that he didn't live with his wife?

40 Objected to. Objection sustained.

Sabino Montefusco—Cross

Q. At the time you say there was a written agreement; how long after that agreement was executed was it before you took your deed? A. The same day when we go and see Mr. Schechner.

Q. You first executed an agreement in writing as to your buying the property? A. Yes. 10

Q. After that was executed, that agreement, how long after that did you get a deed for the property? A. I never get the deed.

Q. How long after that did you pay the money? A. I never pay any money, I only pay the Building and Loan.

Q. You paid \$100? A. Yes.

Q. Have you taken any proceedings in Court in the last seven or eight years except to file a defence to this mortgage, affecting the mortgage; how long after you got the property was it that you spent \$1,000 on it? A. After about fifteen days or a month, because we couldn't use the property. 20

Q. What lawyer did you retain to examine the title? A. Mr. Gottlieb, or Mr. Finelli at that time.

Q. You said a lawyer examined the title and found a third mortgage on there? A. I think Mr. Gottlieb.

Q. When was that? A. I think it was after one year, when I get the copy of the deed, in 1909 or 1910. 30

Q. Was it 1914? A. No, it might be 1909 or 1910.

Q. You got title back in 1908? A. No, it was one year after.

Q. When did you enter into possession of this property? A. In March, 1908—1908 we buy— 1909. 40

Sabino Montefusco—Cross

Q. You entered into possession 1909? A. Yes.

Q. You bought it in November, 1908? A. Yes.

Q. And took possession 1909? A. Yes, because we got to fix it.

10 Q. Between the time that you bought the property and the time you entered into possession, you were fixing it, making repairs? A. Yes.

Q. Then you were in possession then? A. Yes.

Q. Don't you know as a fact that that original deed was given to you and you lost it? A. He never gave it to me.

Q. Don't you know you went back to Schechner's office and you told him you lost the deed and you wanted another deed? A. No.

20 Q. And Schechner said he would get you a certified copy and did get it for you? A. No, he never gave me the deed or agreement; he is a liar.

Q. Isn't it a fact that you went to Mr. Schechner several times and asked him to intercede with Mr. Baker in order to have delay on the mortgage, not to foreclose, to give you time to pay the interest? A. Never.

30 Q. Don't you know that you were at least half a dozen times in Mr. Baker's office with Mr. Schechner? A. No, sir.

Q. Don't you remember that you asked Mr. Crecca to go and see Mr. Baker and ask him for delay? A. No, sir.

Q. Do you mean to say that you didn't see Mr. Crecca and ask him to go and see Mr. Baker for delay, Mr. Crecca, stand up) so you would have more time to pay interest? A. No, I think not.

40 Q. Did you ever talk with Mr. Crecca about it?
A. The first time I talked with Mr. Crecca—

Sabino Montefusco—Cross

Q. Did you ever talk more than once with Mr. Crecca? A. I saw Mr. Crecca after I received a copy of the deed and I asked Mr. Crecca how many mortgages was on it, and Mr. Crecca said there was only two mortgages, one for—

Q. When was this talk with Mr. Crecca? A. 10
After I got the copy of the deed.

Q. Did you have more than one talk with Crecca? A. Yes.

Q. How many talks did you have with him? A. Maybe every morning or every month.

Q. Didn't you already state you only talked with him once? A. Once for the property.

Q. You knew I didn't qualify that? A. I talked once with Mr. Crecca.

Q. Didn't you say you only talked once with him? A. Once on the property. 20

Q. Then you say you only talked with Crecca once about the property? A. Yes.

Q. But you saw him pretty near every morning? A. He lived near me; maybe I saw him every morning some weeks.

Q. You didn't mention this property matter to him at any time except the once? A. Yes.

Q. If that is so, why didn't you talk to Mr. Crecca about this more than once? A. I want to tell you that; you don't give me the chance; I can't talk English good; Mr. Crecca said— 30

Q. Why didn't you talk with Mr. Crecca about this property more than once? A. Why should I talk of the property?

Q. Mr. Crecca was one of the mortgagees? A. No, he said he didn't know nothing about the third mortgage.

Q. Didn't Mr. Crecca tell you about this property? A. No. 40

Sabino Montefusco—Cross

Q. You knew his name was in the mortgage?

A. He said he never was on the third mortgage.

Q. You knew Mr. Crecca and you knew the mortgage was given to Schechner, Berger and Crecca, didn't you? A. I don't know.

10 Q. You say you didn't know that Crecca's name was in that? A. No, I didn't know.

Q. At the time that you talked on this particular occasion about the property, didn't you talk to Crecca about his name being in the mortgage? A. No.

Q. Why did you talk to Crecca? A. I want to say what I told Mr. Crecca.

Q. Why did you talk to Mr. Crecca? A. On this matter.

20 Q. Why? A. Because I ask him about the third mortgage.

Q. Why did you talk to him if he didn't have anything to do with it? A. Because he was the owner before. I said, "Mr. Crecca, you owned the property." Then Mr. Crecca told me, "I don't know why you have another mortgage on the property. They say Montefusco; I don't know why."

Q. Who said? A. Mr. Crecca said.

30 Q. He said what? A. "Montefusco, I don't know about the third mortgage; when I left the property to Mr. Schechner then there was two, one for the building and one for Richards." Then I say "I don't know anything about it; we can't pay no tax, no water or building and loan." "Then I know nothing about it."

Q. Who said that? A. Mr. Crecca.

40 Q. Do you remember going to see Mr. Schechner and saying to him that if he would pay the taxes for one year you would then pay interest that is due? A. No, sir.

Sabino Montefusco—Cross

Q. Did you do that or not? A. No, I pay taxes.

Mr. Belfatto: Say yes or no.

Witness: No.

Q. How many letters did you receive from Mr. William A. Baker? A. One.

Q. Where is it? A. I took it to him again.

Q. What did the letter say? A. He said "You got to pay me interest." 10

Q. Or he would foreclose? A. He did not say foreclose.

Q. He wrote you for the interest? A. I said to him, "What interest? I don't pay interest because I never have a mortgage."

Q. You say you went to Mr. Schechner every day for the agreement? A. Yes.

Q. How long did that continue? A. For one year. 20

Q. Don't you know as a matter of fact that Mr. Schechner gave you a copy of that agreement at the time you executed it? A. No, sir, he did not.

Q. At the time you signed the agreement and paid the \$100, who was present? A. Mr. Schechner.

Q. Any one else? A. And Bagnole, Antonio di Geronimo and Schechner.

Q. You say Antonio di Geronimo is in Italy? A. Yes. 30

Q. What is his address? A. I don't know where he is.

Court: Where is the other brother?

Q. Was this Antonio that signed that letter? A. No.

Q. That was Gerolomo di Geronimo? A. Yes.

Q. Where is he? A. He is in Italy, too.

Q. When did he go to Italy? A. About two years ago. 40

Sabino Montefusco—Cross

Q. Your attention is called to Exhibit D-1 and asked when you got that copy? A. About a year after, Mr. Schechner give me that.

CROSS-EXAMINATION by Mr. Roessler:

10 Q. You spoke to Bagnole about the purchase of this property in 1908? A. Yes.

Q. Did you agree on any specific price for the property? A. Yes.

Q. What was the price? A. \$10,500.

Q. You knew there was a mortgage on this property of \$9,500? A. \$9,000, not \$9,500.

Q. So they fooled you as to the amount of the first mortgage? A. Yes, he said \$9,000 on the Building and Loan.

20 Q. You knew it was a Building and Loan mortgage? A. Yes.

Q. You knew that the mortgage had been reduced by payments, didn't you? A. He told me he got a \$9,000 Building and Loan mortgage.

Q. Was there \$9,000 due on the Building and Loan mortgage at that time? A. Yes.

Q. And there was a second mortgage of \$1,200, that made \$10,200? A. Yes.

Q. How much cash did you give him? A. \$100.

30 Q. You say you agreed to pay \$10,500? A. Yes.

Q. You did agree to pay \$10,500? A. Yes.

Q. They told you that the Building and Loan mortgage was \$9,000? A. Yes.

Q. That makes \$10,200, and the difference is \$300? A. I paid \$200 on the taxes; I paid those and Mr. Schechner signed a check.

Q. How much were the taxes? A. About \$240, Mr. Schechner drew the check.

Q. How much cash did you pay? A. \$100.

40 Q. You paid \$40 more than you were supposed

Sabino Montefusco—Cross

to? A. Yes, I think there was some more to pay. Mr. Schechner said, "You got a good piece of property, pay."

Q. How long after you closed this transaction did you discover the existence of a third mortgage? A. As soon as Mr. Schechner gave me a copy of the deed, a year later. 10

Q. When you discovered that did you take any steps to have this mortgage cancelled of record?

A. I went to Mr. Schechner—

Objected to. Objection overruled.

Q. Did you take any steps to establish your rights; you discovered a year after you bought this property that there was a third mortgage on this property, is that so? A. Yes.

Q. Did you take any steps to have that mortgage cancelled or discharged of record, or to have your deed corrected? A. I didn't take any steps because Mr. Schechner said "Montefusco, go and pay the Building and Loan, don't care for the third mortgage, because he never paid that mortgage." 20

Q. And Schechner told you that about a year after you bought the property? A. Yes.

Q. You believed Schechner, did you? A. Yes, but not now.

Q. You said you had been going to his office every day for a whole year trying to get your agreement? A. Yes. 30

Q. And trying to get your deed? A. Yes.

Q. It took you a whole year to get that certified copy? A. Yes.

Q. You were angry at Schechner all that time that he didn't get you this deed any sooner; you didn't like the idea of Mr. Schechner fooling you for that whole year? A. Yes. 40

Sabino Montefusco—Cross

Q. You were getting angry at him? A. Yes.

Q. You were a little suspicious of him? A. He never want to give me the deed.

10 Q. You became suspicious; you questioned his honesty when you saw it took him a whole year to get you the deed; you thought Schechner wasn't honest? A. Yes.

Q. You told him then that you didn't think he was honest because he didn't give you the deed? A. Yes.

Q. After a year you got your deed; then you discovered that this third mortgage was on the property?

Objected to.

Q. You got the copy of the deed? A. Yes.

20 Q. Then you discovered there was a third mortgage on the property? A. Yes.

Q. Then you spoke to Schechner? A. Yes.

Q. And Schechner told you never mind, that it would be all right? A. He said, "Never pay that."

Q. Did you believe Schechner then? A. Yes, he said, "Don't pay, because that is no mortgage at all."

30 Q. You were suspicious of Schechner, you thought he wasn't an honest man; you didn't think he was honest when you got that deed? A. Yes, because I got the \$1,500 mortgage.

Q. Why did you take Schechner's word that it would be all right? A. Because Mr. Schechner, when I was up there to have the agreement—

Q. What did you do when you found the third mortgage when you discovered the existence of that third mortgage, your confidence in Schechner had already been shaken?

40 Objected to.

Sabino Montefusco—Cross

Q. You didn't go to any lawyer? A. I went to Mr. Gottlieb after I got the copy.

Q. Didn't you go to Gottlieb shortly before you went to Mr. Belfatto in 1914? A. No, that was another time.

Q. When did you first go to Gottlieb? A. About 10
five or six years; he is a friend of mine.

Q. When did you go to him about this transaction? A. Last year, because I want to know, because Schechner come to see me and he said, "They are going to foreclose," and I went to see Mr. Gottlieb about this.

Q. You told Mr. Gottlieb to try to get a reduction on this mortgage, didn't you? A. No, sir; I went to Mr. Gottlieb; I want a copy of the agreement what I signed, and if that is there, I am willing to pay; that is what I told Mr. Gottlieb. I 20
ask Mr. Schechner if Mr. Bagnole give me the agreement when I signed the paper; I am willing if that mortgage is in the agreement, I am willing to pay, because he never wants to give me the agreement or deed.

Q. You gave your lawyer, Mr. Belfatto, the facts before he filed his papers?

Mr. Belfatto: That is admitted.

Q. Did you tell Mr. Belfatto how much you agreed to pay for the property? A. Yes, I told 30
him.

Q. How much did you tell him? A. I told him I paid about \$10,500.

Q. Why did you say "about"; aren't you sure? A. I know.

Q. How much did you agree to pay for the property? A. \$9,000 and \$1,200 and \$300 I pay taxes, and there was rear taxes paid. 40

Sabino Montefusco—Cross

Q. Do you know that in those papers which your lawyer filed he said you agreed to pay \$10,700 for the property? A. I don't know; Mr. Bagnole said \$9,000 was the first mortgage.

10 Q. Do you know that your lawyer in those papers said that you paid \$100 in cash and \$10,700 by Sabino Montefusco, Geronimo assuming the payment of said mortgages? A. Mr. Schechner drew the check and drew the agreement, too.

Q. Haven't you been in Schechner's office from time to time in the last two years? A. Yes.

Q. You have been going to his office right along? A. I haven't seen him in the last year.

Q. Didn't you see him in Orange with Mr. Crecca last summer? A. Yes.

20 Q. Didn't you speak to him about this, and didn't you at that time say you had better pay the taxes, otherwise they are going to make trouble? A. I said, "Why don't you fix up and cancel that mortgage?"

Q. You know Charles Bagnole pretty well? A. Yes.

Q. Didn't you offer to pay Charles Bagnole \$25 if he would make an affidavit that this was a fake mortgage? A. That is a lie.

30 Q. You did not? A. No, sir.

Q. Didn't you bring him to Mr. Gottlieb's office to get him to make an affidavit? A. I took him there on account of Mr. Bagnole telling me that "any time you want, I go with you and make an affidavit on account of that mortgage was a fake mortgage," and I then bring him to Mr. Gottlieb.

40 Q. Didn't you promise to pay him \$25 to swear to that? A. No, sir, I never do that.

Sabino Montefusco—Re-direct

RE-DIRECT by Mr. Belfatto:

Q. You say you saw Crecca after you obtained this deed, the certified copy? A. Yes.

Q. How long after? A. Maybe fifteen days or a month after.

Q. What did Crecca say with reference to the third mortgage of \$1,500? A. He said, "I don't know who give this third mortgage, because when I left the property we couldn't pay no taxes, we couldn't pay no Building and Loan, and then I left that property to Mr. Schechner." 10

Q. You saw Mr. Baker with reference to the letter; what did you say to Mr. Baker with reference to that letter, C-4? A. I never sent him any interest; I said he have nothing to do with the house, I am the owner.

Q. You said di Geronimo had nothing to do with Antonio Geronimo? A. Yes. 20

Q. How long ago was that? A. A year ago.

Q. Did you ever see Mr. Baker before? A. No, sir.

Q. You testified that you called with Mr. Gottlieb when was the first call between you and Mr. Gottlieb upon Mr. Schechner? A. I think pretty near about nine months ago.

Q. What was the purpose of going there? A. Because I told Mr. Gottlieb— 30

Q. You went there to get the agreement? A. Yes.

Q. Was the word "agreement" used? A. Yes.

Q. Did you or Mr. Gottlieb ask for the agreement? A. Yes.

Q. What did Mr. Schechner say about it? A. He said he didn't have it, Mr. Bagnole had it.

Q. These lawyers told you that you got the copy 40

Sabino Montefusco—Re-cross

the same day when the \$100 was paid? A. No, I never had it.

Q. Do you know or were you ever present at the execution of that deed by Charles Bagnole to you and Antonio di Geronimo, were you ever present
10 at the execution of that deed by Charles Bagnole to you and Antonio di Geronimo, were you ever present; did you ever see the deed signed and executed? A. That isn't the deed.

Q. No, not the agreement, the deed? A. No.

Q. The original? A. No, I never had it and never saw it.

Q. Did they ever send it to you? A. No.

Q. Were you ever notified that the deed was about to be delivered at any time after the execu-
20 tion of the agreement? A. No.

Q. You never saw Bagnole sign the deed? A. No.

Q. And Mr. Schechner was supposed to be your lawyer? A. Yes.

Q. Was he supposed to be your lawyer? A. Yes, he said, "I will do everything for you."

Q. And he told you that there was no necessity to see a lawyer? A. Yes.

Q. Are you positive about that? A. Yes.

30 RE-CROSS by Mr. Roessler:

Q. You say Mr. Gottlieb was your lawyer and you saw him about this matter? A. He never was my lawyer.

Q. But Gottlieb was your lawyer at one time?

A. He was a friend of mine but never my lawyer.

Q. You brought Bagnole to his office? A. Yes, he said he want to see Mr. Gottlieb.

40 Q. How did you happen to go to Mr. Belfatto

Pellegrino Pellechia—Direct

- in this matter? A. He is my lawyer.
- Q. Didn't he send for you? A. No.
- Q. Didn't Mr. Belfatto send for you? A. What for?
- Q. To ask you to permit him to act for you in this very matter? A. No, sir. 10

PELLEGRINO PELLECHIA, sworn for defendant Montefusco:

Direct-examination by Mr. Belfatto:

- Q. What is your business? A. Builder.
- Q. How long have you been a builder? A. About fifteen years. 20
- Q. Live in Newark? A. Yes.
- Q. How long have you been living in Newark? A. Over twenty years.
- Q. Do you know Charles Bagnole? A. Yes.
- Q. Do you know Mr. Sabino Montefusco, the last witness? A. Yes.
- Q. Did you ever have any conversation or was a conversation ever had in your presence between Mr. Montefusco and Charles Bagnole with reference to a mortgage? 30
- Mr. Peirce: I object to this line, unless Mr. Baker was present.
- Court: I will have to take it; I don't see how it can affect you unless you couple it up with Mr. Baker in some way.
- A. Yes.
- Q. When was that? A. A year ago or ten months ago—about a year ago—I don't remember exactly. 40

Vito Verniero—Direct

Q. What was the conversation about? A. I was
in an automobile coming down to South Broad on
Broad Street and Mr. Montefusco was in the au-
tomobile with me; Mr. Bagnole was, I think, near
the Prudential Building and came right in front
10 of us to talk to me about another matter—a differ-
ent mortgage altogether, and then Montefusco said
“Bagnole, I want to see you about that mortgage;
we have got to see that that mortgage has got to
be canceled”; Bagnole said, “Oh, yes, any time
you want we will take care of that; that was a fake
mortgage.” Montefusco then told him, “You got
to go with me to Schechner and tell that.” Bag-
nole said, “Sure, any time. That mortgage was
put in there, but I don’t think Schechner find any
20 objection to cancelling that mortgage, and any
time you want I will go with you.”

Q. Was this the only conversation you heard
with reference to this matter? A. Yes.

Mr. Peirce: We don’t think the evidence
is relevant and object to it.

No cross-examination.

30 VITO VERNIERO, sworn for defendant Mon-
tefusco:

Direct-examination by Mr. Belfatto:

Q. Were you ever the owner of the property
described as the second tract in the mortgage un-
der foreclosure? A. Yes, sir.

Q. In Cutler Street? A. Thirty-eight Cutler
40 Street that is.

Vito Verniero—Direct

Q. Who was the co-owner of that property in the year 1908? A. Myself and Charles Bagnole.

Q. Did you ever know that there was a mortgage of \$1,500 covering that property? A. No, sir.

Q. Did Mr. Bagnole ever tell you about it? A. 10
No, sir.

Q. When did you first learn that there was an encumbrance of \$1,500—a mortgage on that property? A. When I sold the property.

Q. When was that?

Mr. Peirce: I think this is improper.
The title stood on the record.

Court: I will take it.

Q. When did you first learn it? A. October 1, 1914.

Q. What did you do when you found out there was a mortgage on the property? A. I went to Mr. Bagnole about it and spoke to him and said "How about this mortgage on my property?" He said, "I don't know anything about it." I said, "You signed a mortgage." He said, "I don't remember of anything." I said, "You come down with me to see Mr. Baker," and he came down with me to Mr. Baker's office. 20

Q. How did you know that Mr. Baker had the mortgage? A. Mr. Shechner told me. 30

Q. Then you went to see Mr. Schechner? A. Yes.

Q. Was Bagnole with you then? A. No.

Q. Proceed. A. When me and Charles Bagnole went to see Mr. Baker, and Mr. Baker was not in, and so Bagnole said, "I will attend to this, don't worry, because this was only a fake mortgage," and then I went to see Mr. Baker myself person- 40

Vito Verniero—Direct

ally regarding this mortgage, and I said "Mr. Baker, I sold my property and I want a release of that tract of \$200 what is on the mortgage." He said, "I don't know anything about it; you had better go and see Mr. Schechner," and I saw him and told him what Mr. Baker said. He said, "I don't know how I can do that, because the mortgage is in default now." I said, "You can release that tract so I can give a clear title to my client, the one I sold the property to."

Q. You were about to sell the property then?

A. Yes, and Schechner said, "It is all right, I will see that you are protected in this case; you are innocent in this case, I will see that you are protected." He said, "You don't need to be there."

20 Then I saw Mr. Bagnole again on Clinton Street and he said "I will show you a lawyer who will give you a loan," and Mr. Bagnole took me in the Prudential Building.

Q. Who was there? A. Me and Mr. Bagnole went in the Prudential Building, got on the elevator and we met Mr. Schechner there on the elevator going up, and I told Bagnole, "I want you to speak to Mr. Schechner about that mortgage." He said, "That is a fake mortgage, these are a bunch of crooks."

30 Q. Who said that? A. Mr. Bagnole.

Q. Within the hearing of Mr. Schechner? A. Yes, and Mr. Schechner simply smiled, and I went to see Mr. Schechner a dozen times, so I could release that tract, so I could give this man a clear title; he said, "Don't worry, I will see that you are protected."

Q. Who told you that? A. Mr. Schechner; he said, "I know you are innocent; I will see that you are protected."

40

Vito Verniero—Direct

Q. When you first saw Bagnole about this third mortgage, what did you say to him? A. I said, "Why don't you fix it up; why don't you pay it so as to release my tract?" He said, "I didn't know anything about a mortgage"; he said, "I don't know anything about a mortgage; I got \$100 and that is all. I don't know what these fellows done," Bagnole said. 10

Q. How many conversations have you had with Mr. Bagnole about this matter? A. Several, because I was anxious to get a clear title; I didn't want the man to sue me on the warranty deed and was anxious to see that third tract clear.

Q. You say you went to see Mr. Schechner; when was that? A. After I received the foreclosure papers. 20

Q. In this proceeding? A. Yes; he said, "Don't worry, I will see that you are protected, because you are innocent in this case."

Q. Did you see Mr. Baker again? A. No, sir, only once.

Q. Did you ever go with Mr. Baker to the bank? A. I wanted to be sure whether Baker has the mortgage, and Mr. Baker took me to the National Newark Banking Company and says, "Here is the mortgage"; he said, "I got the bond from Mr. Schechner; that is good." He said, "Mr. Schechner and Mr. Crecca signed the mortgage, so I am protected." 30

Q. Did Mr. Baker say to you how much he had paid for the mortgage? A. No, sir, he simply said, "I got a bond from Mr. Schechner and Crecca."

Q. He told you that he knew nothing about the mortgage? A. Yes, he said he was bonded by Schechner and Crecca. 40

Vito Verniero—Direct

Q. Did you have another conversation with Mr. Schechner after you saw Mr. Baker and went with him to the bank to get the mortgage? A. I told Mr. Schechner that Mr. Baker sent me to him, and he said, "Go and see Schechner and see what he can do for you," and Mr. Schechner said, "I cannot do anything, because the mortgage is already in default, but I will see that you are protected."

Q. Was Mr. Bagnole's name mentioned in the matter? A. He said, "Bagnole done this thing;" he said, "I know you are innocent, but Bagnole did the trick to you."

Q. Did you ever receive a notice from Mr. Schechner or from Mr. Baker of the existence of this mortgage prior to your being served in these proceedings? A. No, sir.

Q. Was any interest ever demanded of you by Mr. Schechner or by Mr. Baker on account of this mortgage? A. No, sir; if I did, I would have seen that the thing was cleared before this time.

Q. Did you ever go to see Mr. Schechner together with Bagnole? A. No, sir.

Q. When you sold your interest in that property did you see Charles Bagnole—to whom did you sell the property? A. Joseph Cordosco, October 1, 1914; the third tract, I sold.

Q. Did you ever have any conversation with Joseph Cordosco about this third mortgage? A. I think I did; I went to see Mr. Bagnole in his own residence and I spoke to him regarding this mortgage and he said, "What can I do; if the mortgage is there, probably I signed it," and he said, "I don't know what I can do, but I will help you out all I can, because I know you have got a large family to support and I don't want you to lose any

Vito Verniero—Cross

money." He said he only got \$100 out of the property and that is all.

Q. Did he tell you whether any money had been paid him for getting that \$1500 mortgage? A. No, he said he don't know anything about the mortgage.

The Court: I don't think that is competent. 10

By the Court: Q. How did you think you could get a release for \$200? A. Because the mortgage says by paying \$200 it will release the third tract, because I read the mortgage at Mr. Baker's at the time I saw it, and that would release that tract of mine.

Q. When did you say that was? A. That was after I received notice of foreclosure, because I sold the property and I wanted to give the man a warranty deed, and I found out the thing was on and I couldn't give the deed. 20

Q. You say Mr. Baker had the mortgage in his possession after the foreclosure was commenced? A. Yes, sir.

Q. And after you were served with papers? A. Yes, sir.

CROSS-EXAMINATION by Mr. Roessler: 30

Q. You say that you discovered and learned of the existence of the third mortgage when you were served with subpoena in these proceedings? A. I discovered it when the man that I sold the property to made the search.

Q. Didn't you say a few moments ago that when you were served with the papers in these proceedings you learned of the existence of that third mortgage? A. I think I said before, that I discovered it when this man made the search. 40

Vito Verniero—Cross

Q. When did you sell the property? A. October 1, 1914.

Q. Did you know then that there was a third mortgage on the property? A. No, sir.

Q. You didn't know it then? A. No.

10 Q. When did you discover that there was a third mortgage? A. When this man made the search.

Q. When you closed title did you know about it? A. Yes.

Q. You are sure of that? A. Yes, sir.

Q. And you closed your title? A. I did, but I gave this man a written paper, if there is anything that will be lost on the property, I will stand for it.

20 Q. Didn't you first learn of the existence of this mortgage when you were served with subpoena? A. I don't know whether I got subpoena first or closed title.

Q. You were served with subpoena in April of this year, about six months after you closed title; didn't you learn it then for the first time? A. When I sold the property to Mr. Cordasco.

Q. Isn't it a fact that the third mortgage wasn't discovered at that time? A. It was discovered that time.

30 Q. Isn't it a fact that you, after you were served with the subpoena, then learned of the third mortgage and then went to Mr. Belfatto with the defendant Montefuso? A. After I was served.

Q. Mr. Belfatto is your lawyer? A. Yes. And he was the lawyer of course, for the purchaser Cordasco, and he made the search.

Q. Charles Bagnole originally owned Thirty-seven Cutler Street? A. He owned a half interest.

40 Q. He owned it all at one time? A. No.

Vito Verniero—Cross

Q. Didn't he convey a half interest to you? A. No.

Q. Did you purchase this property with Bagnole? A. Yes.

Q. You remember taking title to this Cutler Street property subject to a \$600 mortgage? A. Yes, I learned it afterwards. 10

Q. And there was a foreclosure on the Cutler Street property? A. Yes.

Q. And you put up the same defense, that you didn't know of that mortgage? A. Yes.

Q. But you paid that mortgage eventually, did you not? A. Yes, sir.

Q. You say that when you were served with subpoena you were anxious about this mortgage because of your warranty deed? A. Yes. 20

Q. What were you worrying about? A. Because I couldn't give this man a warranty deed because he was liable to sue me.

Q. You did give it to him? A. Yes, with the understanding I would clear everything up.

Q. Was that understanding reduced to writing? A. Yes, I did give him a writing.

Q. Who drew that writing? A. Mr. Belfatto.

Q. At the time of the closing of the title? A. After we received this notice of foreclosure. 30

Q. After you were served with subpoena you drew up this agreement to protect your purchaser, is that right? A. Yes.

Q. So that when you closed the title to Cordasco you didn't know of this third mortgage? A. I did that is when I discovered there was a third mortgage on there.

Q. When do you tell the truth, when you say you discovered it when served with subpoena or when 40

Vito Verniero—Cross

you closed title? A. I said I discovered it when Mr. Belfatto made a search for Cordasco.

Q. Didn't you just say a moment ago that when you were served with subpoena in this case you then drew up this paper to protect Cordasco? A.

10 Only the agreement, not the deed.

Q. You knew it was going to come up? A. I know I would be on the right side because Mr. Schechner said he would protect me so I could protect my client.

Q. This paper was drawn up to protect Cordasco only after you were served with subpoena?

A. Yes.

Q. Isn't that the fact, that was the first intimation you had of the existence of the third mortgage? A. No, sir.

20 Q. You are sure of that? A. Yes, sir, positive.

Q. Didn't you suggest to Mr. Montefusco that he should retain Mr. Belfatto in these proceedings?

. Objected to.

CROSS-EXAMINATION by Mr. Peierce:

Q. You had a talk with Mr. Baker? A. Yes, sir.

Q. Mr. Baker told you the interest was due and unpaid? A. No, sir.

30 Q. Didn't he tell you that interest was not paid on this mortgage? A. No, sir, he didn't say nothing about the interest.

Q. You didn't inquire whether it was paid? A. No, the only thing I inquired was to release that tract of mine.

Q. Didn't he tell you that some interest had been paid and some was not paid? A. No, sir.

40 Q. Who held title to the Cutler Street property

Pasquale Cassese—Direct

at the time the \$1500 mortgage was given? A. Me and Mr. Bagnole.

Q. How did Bagnole give a mortgage affecting your property unless you signed the mortgage?

A. Court: That couldn't be.

Q. How did Bagnole get title to the whole property so he could make a mortgage? 10

A. Witness: I think he only signed a half interest; I don't know if a half owner can sign a mortgage, but he did.

Q. Then it wouldn't affect you? A. Then I bought his interest out.

Q. You said someone was going to sue you on the warranty deed? A. I was afraid this man would sue me on the warranty deed I sold the property to. 20

PASQUALE CASSESE, sworn for defendants:

Direct-examination by Mr. Belfatto:

Q. You are one of the defendants in these proceedings? A. Yes.

Q. You own one-half undivided part and share of this property? A. Yes. 30

Q. When did you buy that one-half? A. From Antonio di Geronimo.

Q. When? A. I bought it in 1911, September 18.

Q. Where did you buy, in America or Italy? A. In America.

Q. Who sold that property to you? A. The brother of Antonio di Geronimo; he had a power of attorney from the brother to sell the property. 40

Pasquale Cassese—Direct

Q. You bought from Antonio di Geronimo? A. Yes, sir, represented by Francesco di Geronimo.

Q. He was the attorney for Antonio di Geronimo? A. Yes.

10 Q. When you bought it did you find out about the encumbrance on it? A. Yes, I had read the Montefuso deed, and my lawyer Gottlieb made the same as the Montefusco copy of the deed, and then Gottlieb told me it will be something the matter with this copy of the deed, maybe they have some trouble in the Court, so Francesco di Geronimo, he told me "go ahead, don't be afraid, I will guarantee you that you get your title," and Mr. Gottlieb made an agreement between me and
20 Francesco di Geronimo that the title is supposed to go in Italy, and let the wife of Antonio di Geronimo sign the deed before a Notary Public.

Q. When did you buy this property? A. September 19, 1911.

Q. Did you know anything about the title to the property before that? A. No, I didn't know anything about it before.

Q. Before you bought the property did you have a conversation with Charles Bagnole? A. No.

30 Q. You never had any conversation with him? A. The same day I made this agreement I went over to see Mr. Bagnole about that mortgage; that was the same day; I made that agreement in 1911, September 18th. I went to Bagnole's office because I was after a copy of the deed of Montefusco, and Mr. Gottlieb says, "You go ahead and inquire about this mortgage and see where you are at," so I went to see Mr. Bagnole and ask him about the property.

Mr. Roessler: I object to this.

40 Mr. Peirce: I also object.

Pasquale Cassese—Direct

Court: I will take the testimony. It must be coupled up.

Q. What did Charles Bagnole say to you? A. I asked him how the property stand; he said "Don't give more than they pay for it," and I asked about the mortgages; he said, "Let it go, the third mortgage is a fake; go ahead and buy the property, but don't pay more than they pay for it." 10

Mr. Roessler: Who do you mean by "they"?

Witness: Di Geronomo and Montefuso. Charles Bagnole told me, I asked him about the mortgage, how it was standing; he said, "Don't give more than they pay for it,"; then I asked about the third mortgage, because Montefusco told me that the mortgage is no good; he said, "Go ahead and buy; we never paid this mortgage; if you don't believe me, go ahead and see Bagnole yourself," and Mr. Bagnole said "It is a fake, and go and buy, but don't pay more than they pay for it." 20

Q. Where did you meet Mr. Bagnole at that time? A. I went to his office and he wasn't there, and I met him on Clinton Street, near the Union Building.

Q. How much did you pay for your share in that property? A. I paid \$5,000 according to the mortgages on it. 30

Q. And you assumed to pay the mortgage? A. Yes.

Q. The Building and Loan mortgage? A. Yes, and second mortgage.

Q. Did you ever pay any interest on the third mortgage? A. No, sir.

Q. Were you ever requested to pay any interest? A. No. 40

Pasquale Cassese—Direct

Q. Did Mr. Baker send you a letter requesting you to pay? A. The letter come in last year—I don't remember exactly the date—Montefusco received a letter, not me, and the letter said "come down and pay the interest; if you don't, it will be foreclosed," so I and Montefusco went down
10 to see Mr. Baker and I explained and said, "You made that agreement with these people, you ought to know all about this," and Montefusco told me about this agreement—

Court: Never mind that.

A. Continuing) I went to Mr. Baker and spoke to him personally, and I asked Mr. Baker about the mortgage; I said, "We must not pay this mortgage, because we don't know nothing about
20 it," and Mr. Baker said, "I don't know, this mortgage is guaranteed to me by Schechner," and at the time he said, "I got nothing to do with it; go ahead and see Schechner." So I told Mr. Baker "I want to ask you a favor:" "Mr. Montefusco told me the day they conveyed this property to Mr. Montefusco and Di Geronimo, there was an agreement made. I told Mr. Montefusco, "If you signed, you are supposed to be responsible," and I said, "Mr. Baker, I want a favor
30 off you to ask Mr. Schechner for that agreement or a copy of it, to see if Montefusco was not negligent enough to buy a property. He didn't have no lawyer to represent him, but if he signed anything, he has got to pay." So Mr. Baker said, "What do you say about it; why don't you go yourself and see about that agreement?" All right, so me and Montefusco went to Mr. Schechner's office; we got there and we asked about this
40 agreement; Schechner said. "I got nothing to do

Pasquale Cassese—Direct

with this matter; go ahead and pay the Building and Loan; don't bother with that."

Q. What matter? A. About that mortgage—that agreement, because we asked for the agreement. Mr. Montefusco asked for the agreement, and he said "I don't know nothing about that agreement." 10

Q. Was the third mortgage mentioned to Mr. Schechner? A. Yes. I told him about this Mr. Baker wants, and he said "Go ahead and pay Baker"; Mr. Montefusco said, "I won't pay this mortgage, because I never made the mortgage, and I know this mortgage wasn't on the agreement; I want the agreement; if that agreement calls that I got to pay this mortgage, I pay it."

Q. What did Schechner say then? A. He said, "I don't know nothing about it; I ain't got no agreement." 20

Q. That is all that was said about it? A. Yes.

Q. Did you ever call at Mr. Schechner's office with Gottlieb? A. Yes.

Q. How long after this particular occasion you just testified about? A. About two months after.

Mr. Peirce: May I have a formal objection?

Q. What was the purpose for which you went there the second time that you went, with Mr. Gottlieb? 30

Objected to.

Court: Mr. Baker was not there.

Q. How many times did you see Mr. Baker? A. Once.

Q. When you went to see Mr. Schechner the second time what did you go there for?

Mr. Peirce: Objected to. 40

Pasquale Cassese—Cross

Court: I will take that—the object of going there.

A. To get that agreement; I wanted to read the agreement.

Q. Did you get the agreement? A. No.

10 Q. What did he say to you about the agreement?

Court: I don't think that is relevant at this time.

CROSS-EXAMINATION by Mr. Roessler:

Q. You own this property with Montefusco at the present time? A. Yes.

Q. You and Montefusco are partners? A. No.

Q. In the ownership of the property? A. Yes.

Q. You paid \$5,000? A. Yes.

20 Q. And assumed the mortgages; what did you pay? A. I paid nothing.

Q. You mean you assumed half of the mortgages? A. Yes.

Q. You didn't pay any cash at all? A. No.

Q. Half of what mortgages did you assume? A. First and second mortgage—the Building and Loan and Richard's.

Q. How much is due on the Building and Loan mortgage? A. I don't know.

30 Q. Haven't any idea? A. I didn't think of that.

Q. Did you have any idea when you bought the property? A. No, sir, because it was a family affair.

Q. Between you and Montefusco? A. No, I bought from Di Geronimo; I ain't got nothing to do with Montefusco.

40 Q. You are sure about that, that you didn't pay any cash, you merely assumed the first and second mortgage yourself? A. It is my brother-in-law Di Geronimo.

Pasquale Cassese—Cross

Q. I want to give you another opportunity to correct your testimony; you say you are absolutely sure that you didn't pay any cash, you merely assumed the first and second mortgages?

A. Yes.

Court: One-half of the first and second?

Witness: Five hundred dollars is mentioned in my agreement. 10

Court: In the deed?

Witness: Agreement; the deed I got three years after.

Q. You did make an agreement in 1911 didn't you? A. Yes.

Q. Did you know then of the existence of the third mortgage? A. Yes, I told Mr. Montefusco and he said that is a fake. 20

Q. When you made the agreement with Antonio Di Geronimo by Francesco Di Geronimo, attorney in fact, did you know of the existence of this third mortgage? A. Sure.

Q. You made an agreement in writing on September 18, 1911? A. Yes.

Q. Didn't you agree, under the terms of that agreement, to assume the three mortgages which were then on the property; wasn't the purchase price mentioned in that agreement \$5010? A. Yes. 30

Q. Didn't you agree to pay \$570 in cash? A. Yes.

Q. And the balance by assuming three certain mortgages, one held by the Mutual Building and Loan Association, the second by Gustavus Richards, and the third by Samuel Schechner? A. Yes, sir.

Q. Why did you say a few moments ago that you didn't pay any cash, that you merely assumed the 40

Pasquale Cassese—Cross

two mortgages? A. I had an understanding with this brother-in-law of mine that at the time he go to Italy that I get the title in three months back here, but I had to go there myself to get it.

10 Q. Mr. Belfatto asked you whether you got the title here or Italy and you said here? A. Here; the title was made here and sent to Italy.

Q. Did you go to Italy for it? A. Yes, for my business, and I done that business, too.

Q. It was signed here by Franscesco Di Geronimo and signed in Italy by the wife and Antonio Di Geronimo.

Q. What is his address in Italy? A. Castel Muovo di conziza.

20 Q. Then the husband was not living with his wife? A. No.

Q. This was a family affair, you say, between you and Di Geronimo when you took this deed? A. I got to do with Francesco Di Geronimo.

Q. So you were not surprised when you took title? A. I wasn't afraid of them because it is my family.

30 Q. Didn't you say a few moments ago that you agreed to take over two mortgages, on direct-examination? A. That is the reason I went to see Charles Bagnole about it before I made any agreement, and I asked about the third mortgage and he said it was a fake, "It is all right, go ahead and buy, but don't give any more than they pay."

Q. But notwithstanding Bagnole's advice not to pay more than they paid for it, you did assume the three mortgages? A. How?

40 Q. In your agreement. A. The lawyer made that agreement, I didn't make it.

Pasquale Cassese—Re-direct

Court: You knew they were mentioned in the agreement?

Witness: Yes.

RE-DIRECT-EXAMINATION by Mr. Belfatto:

Q. Why did you not object to the assumption of the third mortgage in your agreement? 10

Mr. Peirce: The mortgage speaks for itself.

Q. Why did you permit the agreement to read that the property be sold subject to a third mortgage?

Mr. Peirce: I object.

Court: Why did you sign the agreement with the three mortgages mentioned, if you thought one of them wasn't good? 20

Witness: On account of the lawyer Gottlieb made the agreement on that deed.

Court: You signed that agreement because it conformed to the deed?

Witness: Yes.

Court: And that was the only reason?

Witness: That was the only reason. I had to do that.

Q. Did you expect to pay the third mortgage? 30
A. No.

Q. Have you ever paid any interest? A. No.

Q. Did you ever see Mr. Baker? A. No.

Q. Did he ever call at your house? A. No.

Q. Did he ever send for you? A. No.

Q. Did Schechner ever send for you to pay the interest? A. No.

Q. Did you ever pay any interest to Schechner?

A. No, nobody. 40

Pasquale Cassese—Re-cross

RE-CROSS-EXAMINATION by Mr. Roessler:

Q. You said you signed that agreement; that was to make it conform to the other deed? A. Yes.

10 Q. Then when Mr. Belfatto gets hold of you you say that it was because you didn't expect to pay the mortgage; when are you telling the truth; which is right? A. Because I signed that agreement on account because Gottlieb got hold of this deed; Montefusco furnished this deed to me and Gottlieb made it conform to that deed, because it was an agreement for sale like a deed, and Di-Geronimo promised me to send that deed back to me, and it was a deed made with it and the agreement, and Mr. Gottlieb said we got to make the agreement like the deed; I said "Mr. Montefusco told me that this mortgage was not to be paid." I went to see Mr. Charles Bagnole about it.

20 Q. Mr. Gottlieb told you that your agreement must conform to that deed? A. Yes.

Q. And you must assume that third mortgage? Mr. Belfatto: Objected to.

Court: That necessarily follows, if he signed the agreement.

30 Q. What is your business? A. Importer.

Q. You do an extensive business? A. Yes.

Q. You are in the cheese business? A. Yes.

Q. And you do business all over the country, don't you? A. Not all over.

Q. New York and New Jersey? A. Yes.

Q. And you have had considerable experience as a business man? A. Yes.

Pasquale Cassese—Re-cross

RE-DIRECT-EXAMINATION by Mr. Bel-
fatto:

Q. When did you first find out about this \$1500 mortgage? A. The same day I made the agreement.

By the Court: Q. You found that out when you went to sign the agreement; Mr. Gottlieb told you that was the condition of the title? A. Yes. 10

Q. And he said he would have to make the agreement that way? A. Yes. I went to see Charles Bagnole and he said "Go ahead, don't give more than what they pay for it."

Q. They didn't tell you how much they paid for it? A. No, he said "the mortgage is a fake, but don't bother with it"; Charles Bagnole said that.

RE-CROSS-EXAMINATION by Mr. Peirce: 20

Q. Did you ever talk with Schechner about it? A. No.

Q. Why not? A. I didn't know him at all; I didn't know him in the transaction.

Q. Didn't Bagnole tell you anything like this, that the \$1500 mortgage was to be paid first out of the Seventh Avenue property, on Seventh and Mt. Prospect Avenue, and then it would come on yourself, and there would be sufficient equity in that to pay it and you wouldn't have to pay it? A. He told me I wouldn't have to pay at all. 30

Q. Didn't he tell you the \$1500 mortgage covered first the Seventh Avenue property, and that they would have to resort to that before they fell back on your Cutler Street property? A. He didn't give me no explanation about the mortgage at all.

Q. Didn't he tell you that you wouldn't have to pay it for that reason? A. No, he didn't tell me that; he said "It is a fake." 40

Theodore Gottlieb—Direct

Q. The mortgage was first to be paid out of the Seventh and Mt. Prospect Avenue property and that your property was only a security? A. He didn't tell me that.

Q. He didn't explain anything of that kind? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. Belfatto:

Q. What do you mean by doing an extensive business?

Court: Large business.

A. I do not much large business, I am not a millionaire.

Q. How much goods do you sell every year? A. I handle about \$25,000 or \$30,000 in and out.

THEODORE GOTTLIEB, sworn:

Direct-examination by Mr. Belfatto:

Q. You are an attorney and counsellor at law of New Jersey? A. I am.

Q. Do you know Charles Bagnole? A. I do.

Q. How long have you know him? A. About ten years.

Q. Do you know Sabino Montefusco a defendant in this case? A. Yes, I have known him.

Q. How long have you known Pasquale Cassese? A. I don't know.

Q. Do you know William A. Baker? A. No, I do not, only by reputation; I don't know him.

Q. Did you ever talk to Mr. Baker? A. I believe I did over the telephone.

Theodore Gottlieb—Cross

Q. When was that? A. I cannot recall the time, but it must have been a year ago, or very nearly so.

Q. What was the purpose of the telephone? A. I rang him up to inquire about a certain mortgage on property in Mt. Prospect Avenue and Garside Street. 10

Q. Owned by whom? A. I think the title was in Mr. Cassese.

Q. Was Mr. Cassese there at your office at the time? A. I believe he was.

Q. Was Mr. Montefusco there? A. I don't recall that he was.

CROSS-EXAMINATION by Mr. Peirce:

Q. How do you know that this was Mr. Baker? 20

A. I rang up Mr. Baker's telephone number and asked for Mr. Baker and the gentleman who answered the telephone said he was Mr. Baker.

Q. That is all you know about it? A. Yes.

Mr. Peirce: I don't think that goes far enough; I think there has got to be some sort of identification in the nature of recognizing the voice; then it would be proper evidence.

A. Court: I think in these modern days I ought to take that testimony and let the burden rest upon the party who alleges that he wasn't at the telephone to prove it. 30

Mr. Peirce: In this case I trust your Honor will rule strictly.

Court: I recognize that this witness wouldn't have talked with Mr. Baker probably unless he at least thought it was Mr. Baker, and I think I will take the evidence. You may cross-examine further. 40

Theodore Gottlieb—Re-direct

Mr. Peirce: I don't think he is competent; I object to it formally.

Court: I will take the evidence subject to the objection.

10 RE-DIRECT-EXAMINATION by Mr. Belfatto:

Q. Before you telephoned to Mr. Baker did you have any conversation with Mr. Cassese? A. Yes.

Q. What was the conversation?

Objected to. Objection sustained.

Q. Why did you call Mr. Baker on the telephone? A. Mr. Cassese came in the office—

Objected to. Objection sustained.

By the Court: Q. You called him up to get
20 some information you wanted? A. Yes.

By the Court: Q. How did you verify that it was Baker? A. I rang up the telephone number that was Mr. Baker's in the book and someone answered it, and I know that there was an interval of time and then a man's voice replied, and I assumed from that that it was Mr. Baker.

Q. The same man you spoke to? A. No, there was an interval of the time a young woman or someone told, and then a man's voice replied.

30 Mr. Peirce: I move to strike that out for the reason that it is not properly identified with Mr. Baker.

Court: I will take the objection but I will see what the testimony is, and then I may strike it all out; I don't know of any decision that just hits it. I am inclined to be with you on the proposition; it cannot do you any harm, because when I come to dispose of this case, if I don't think it is

40

Theodore Gottlieb—Re-direct

competent, I will say so, but I will take the evidence.

By the Court: Q. Did you say anything to this gentleman when he came to the 'phone, as to who he was? A. It is so long ago that I wouldn't want to say that I did; I know what my usual practice is, but I don't know that I followed it in this case. 10

Q. Did the gentleman inquire who you were? A. He did; I told him who I was. I gave him my name.

Q. Did you ask for his name? A. Yes.

Q. Was his name given to you? A. When I got him on the telephone, or an individual on the telephone, by the voice on the telephone—

Q. Was it a man or woman? A. A man's voice.

Q. What did the voice say? A. We were discussing proposition involved in the condition of the property there. 20

By the Court: Q. Property where? A. At Mt. Prospect Avenue and Seventh Avenue.

Q. What did you say to Mr. Baker? A. I don't remember that, it is so long ago.

Q. Give the substance of the conversation. A. I can only give you what I presume it was.

Objected to. Objection sustained.

A. My recollection isn't clear on that, it is so long ago. 30

Q. What was it about? A. About the condition of property at Garside Street or Mt. Prospect Avenue and Seventh Avenue.

Q. The condition of the title? A. Yes.

Q. What did you say to Baker?

Mr. Peirce: The witness has already said he cannot remember.

A. I told him how Mr. Cassese had been to me 40

Theodore Gottlieb—Re-direct

and was worried about the prodding that he had been getting in reference to the interest matter.

10 Q. Prodding by whom? A. By Mr. Baker himself, and I started to explain the proposition to him as we understood it, and he was rather loath to discuss it, saying that he didn't care to discuss it, that the mortgage had been guaranteed to him, and he was very loath to discuss it; we didn't have very much of a discussion on the point, and referred me to Mr. Roessler.

Q. Was anything said about interest on the mortgage? A. Yes, my recollection is that it was, and that it hadn't been paid for some time.

20 Q. What was the purpose of referring you to Mr. Roessler; what was the conclusion which you deducted from that?

Mr. Roessler: Objected to.

Court: What he said.

Witness: He referred me to Mr. Roessler and to Mr. Schechner, and acting on that advice I saw Mr. Roessler and saw Mr. Schechner.

Q. How long after that conversation? A. It was either the same day or the following day. My recollection is that it was the same day.

30 Q. Did you see Mr. Schechner or Mr. Roessler first? A. Mr. Schechner.

Q. Who was with you at the time? A. At that time Mr. Cassese, and we also had a subsequent interview when Mr. Montefusco was present.

Q. At this particular conversation? A. Mr. Cassese.

Q. What did you say to Mr. Schechner, if anything?

Mr. Peirce: Did you talk to Mr. Schechner?

40 Witness: I did, in his office in the Union Build-

Theodore Gottlieb—Re-direct

ing. All we said—we had a conversation which lasted an hour.

Mr. Peirce: I object to it so far as Mr. Baker's position is concerned; anything Mr. Schechner said cannot bind Mr. Baker.

Court: Not unless Mr. Baker sent him. 10

Mr. Peirce: Mr. Baker didn't send him to Mr. Schechner to act as his agent.

Court: I will take exactly what he said.

Mr. Peirce: May I have a formal objection?

Court: Yes.

A. The subject of the conversation was that we were very desirous of seeing the agreement that had been prepared.

Mr. Peirce: At what date?

Witness: About a year ago—nine months to a year ago. 20

A. (Continuing) The substance of the conversation was that we went to Mr. Schechner's office and had a conversation with him concerning the original agreement that had been drafted and which would set forth the terms.

Q. Did you ask for that agreement? A. We did.

Q. Of whom? A. Mr. Schechner.

Q. Did you get it? A. No.

Q. What did he say? A. Mr. Schechner said that he had prepared the agreement and it had either been lost or mislaid, and I know he went to a safe that he had in the room to look up some papers that he had, and couldn't find it. 30

Q. Was Charles Bagnole there? A. I don't think he was.

Q. Was Mr. Cassese there? A. Yes.

Q. Was Montefusco there? A. He was on the second occasion I went to Mr. Schechner's office. 40

Theodore Gottlieb—Re-direct

Q. Why did you go the second time? A. Mr. Cassese and Mr. Montefusco had come into my office and wanted me to go over with them to see if we couldn't finally straighten this out and get a copy of the agreement.

10 Q. Was Mr. Bagnole there on the second occasion? A. Yes, we had an interview with Mr. Bagnole just a day or two before going over to Mr. Schechner's office the second time.

Q. Where was this conversation with Mr. Charles Bagnole? A. In my office upstairs in the presence of Mr. Cassese and Mr. Montefusco and myself.

Q. What did you say to Mr. Bagnole?

Mr. Roessler: Objected to.

20 Court: I think it is open to the standing of the original parties.

Mr. Peirce: Mr. Baker isn't participating. It is understood that my objection applies to this line of evidence.

Q. What did you say to Mr. Bagnole? A. I asked Mr. Bagnole specifically what his recollection of the transaction was with special reference to the preparation of the agreement and he told me that the agreement had been prepared.

30 Q. Which agreement do you refer to now? A. Original agreement of sale.

Q. In which Montefusco was one of the parties? A. Yes.

Q. What did he say? A. He said such an agreement had been prepared.

Q. Was anything said about the execution of a mortgage for \$1500 by him to four persons? A. He mentioned that himself. He told us it was a
40 fake mortgage.

Theodore Gottlieb—Re-direct

Q. Who said that? A. Mr. Bagnole.

Q. What did you understand by "fake mortgage?" A. Just what he said.

Q. Did he say anything else? A. There was a long conversation with special reference to the agreement and what became of it.

Q. Did Bagnole state the relations which he had in that transaction with Mr. Montefusco, as a seller or vendor or agent? A. Not that I recollect. 10

Court: I don't think that is at all material; the record must determine that.

Q. In pursuance of this conversation did you see Mr. Schechner? A. We did, I think within half an hour after.

Q. Was Bagnole with you then? A. No.

Q. With whom did you go? A. With Mr. Montefusco and Mr. Cassese. 20

Q. State the conversation. A. I told him what Mr. Bagnole had said and he denied it, and then we referred again to the old agreement which we were very anxious to secure, and he said that it was impossible to secure it; that it had either been lost or mislaid and he could not find it, and he gave us what was his recollection of it.

Q. What did you say, if anything? A. I tried to impress upon him how vital it was for us to have that agreement, and he should find it so we would be in a position to clear up the difficulties. 30

Q. Was anything said about the execution and delivery of the deed of Bagnole to Montefusco and DiGeronimo? A. Not that I recall.

Q. Did you hear Mr. DiGeronimo or Montefusco say anything to Schechner? A. Mr. Montefusco mentioned his deed, he wondered why 40

Theodore Gottlieb—Re-direct

when he received his deed back from the Register's office that it was a certified copy of the original deed, and there was a long discussion on that point.

10 Q. What did Mr. Schechner say on that point about the original deed not having been delivered? A. He said that it had been mislaid and that he had had Mr. Bloom get the certified copy.

Q. Will you repeat the conversation with reference to the delivery of the deed? A. Mr. Schechner told Mr. Montefusco that the deed had been mislaid and it became necessary to secure a certified copy, and that he had secured from Mr. Montefusco the money sufficient to pay for the execution of the certified copy.

20 Court: There is no doubt about the original deed being recorded.

Q. Did you have a conversation with Charles Bagnole after you saw Mr. Schechner the second time? A. Yes.

Q. What did Mr. Bagnole say?

Mr. Roessler: Objected to as not binding on the parties to the suit.

Court: Mr. Bagnole wasn't a party to the transaction.

30 Q. At the second conversation you had with Mr. Bagnole, what did Mr. Bagnole say about this particular third mortgage?

Mr. Roessler: Objected to.

Court: I will admit it.

A. Again he stated that it was a fake mortgage, and then I brought to his attention the facts as given by Mr. Schechner, and he characterized them as lies.

40 Q. Will you state the facts brought to your at-

Theodore Gottlieb—Cross

tention? A. I told him what Mr. Schechner said, that he understood that he was to assume those three mortgages, and he said that it wasn't so, and that Mr. Schechner lied in saying so, and that the whole transaction was a fake, and he offered to go up there with me at some convenient time and face Mr. Schechner. 10

Q. Did you do that? A. I tried to, but we were never fortunate enough to get there.

CROSS-EXAMINATION by Mr. Roessler:

Q. By whom were you retained? A. I never considered that I was regularly retained in this case. Mr. Montefusco was a friend of mine; Mr. Cassese is a very good friend of mine, and I never received any money for it, nor did I understand that I was under any retainer. 20

Q. Would you consider that you were acting as their attorney? A. In a general sort of way.

Q. When did they come to see you about the transaction? A. Mr. Cassese has been to see me many times.

Q. When was the first time? A. I cannot say. He brought it up longer than a year ago.

Q. Did you represent Mr. Cassese when he bought the property? A. Yes. 30

Q. Do you remember drawing the agreement in 1911 between DiGeronimo and Cassese? A. Yes.

Q. Do you remember providing in the agreement that Cassese was to assume the three mortgages on the property? A. Yes.

Q. Mr. Cassese said that you said that he would have to go in the agreement to make it conform with the deed to Montefusco? A. That 40

Theodore Gottlieb—Cross

is way back in 1911 and my recollection is not clear on that; I think I must have had furnished me at the time some description from somewhere, but as to the facts and circumstances as far back as that, I have no positive recollection.

10 Q. Was the validity of the third mortgage mentioned at that time; had it been mentioned by anyone? A. I cannot say that it was.

Q. You remember the deed from DiGeronimo to Cassese; had anyone questioned the validity of that mortgage? A. Not to the best of my recollection.

Q. When the deed was executed had the mortgage been mentioned? A. I cannot say that it had.

20 Q. Mr. Cassese says that he knew. A. What time was this?

Mr. Roessler: I withdraw the question.

Q. You say you saw Mr. Schechner some time last year? A. It may have been the early part of this year; it was about nine months to a year ago.

Q. What did you go to his office for? A. We were very anxious to secure that agreement.

30 Q. For what purpose? A. To see what the original transaction was, and in my numerous conversations with Mr. Montefusco and Mr. Cassese, I told them we should have the original agreement to see.

Q. Did Montefusco tell you how much he had agreed to pay for the property? A. He did; the amount he told me he had agreed to pay was the amount of the transaction less that last mortgage.

40 Q. Did he figure it out for you? A. I think he

Theodore Gottlieb—Cross

did. I don't recall the figures in dollars and cents.

Q. Was it as much as \$10,000? A. I think it was about that; I know positively that it was the amount of the transaction less \$1500 on this third mortgage.

Q. When you went to Schechner for the agreement, did he tell you that he had either delivered—that Montefusco had the agreement, or if he claimed he didn't have it, that it must have been lost? A. No, I don't think he did. 10

Q. Didn't he say anything about having delivered the agreement to Montefusco? A. No.

Q. You say Mr. Schechner went to his safe? A. Yes.

Q. How much time did he spend in his safe? A. Not over a minute or two at the most; he rambled over a few papers. 20

Q. And he assured you that the paper was not in his office? A. Yes.

Q. When you told Schechner that the validity of that agreement was being questioned, what did he say? A. He entered into an explanation with Mr. Montefusco and Mr. Cassese about the validity of it, and brought to their attention certain alleged conversations and agreements and so on. 30

Q. And Mr. Schechner maintained that it was a valid and subsisting lien? A. He did.

Q. And he also maintained that the mortgage was given for a bona fide consideration, did he not? A. He did.

Q. Didn't he explain to you and to Mr. Montefusco at that time that the \$1500 mortgage was a purchase money mortgage? A. I think he attempted to, yes, sir. 40

Theodore Gottlieb—Cross

Q. The record showed that it was a purchase money mortgage? A. I cannot say.

Q. Did you ever examine the record? A. I looked at the record, but a long time ago.

10 Q. The records do show that it is a purchase money mortgage? A. They may show.

Q. You saw Mr. Schechner a second time, did you not? A. Yes.

Q. What was the object of that? A. Merely on this thing—Mr. Montefusco and Mr. Cassese had been worrying me about this agreement, and they wanted to secure it, and wanted to make a last effort to get hold of it and we went over again, and we also wanted to look for certain things that Mr. Bagnole had said.

20 Q. Didn't you say you went there for the purpose of trying to settle up the affairs? A. Arranging it to get this agreement and see what the agreement provided.

Q. You knew when you were there the first time you couldn't get the agreement, and it couldn't be found? A. Yes, and Mr. Bagnole from time to time had given us other little points that were necessary to take up with Mr. Schechner.

30 Q. Mr. Schechner didn't promise to make any further search? A. No, except he promised to see you and Mr. Bloom and see what your recollection was.

Q. Of the transaction? A. Yes.

Q. And of this agreement? A. Of the agreement and the transaction.

40 Q. When you went there the second time you went there to try to settle up the affair? A. No, but merely to try and get that agreement and see

Theodore Gottlieb—Cross

what it provided, and then if the agreement provided what Schechner and Mr. Baker said, it would have been settled naturally.

Q. Didn't you suggest a settlement with Mr. Schechner at that time? A. No, because I was never empowered to offer any settlement. 10

Q. Didn't you suggest that Schechner pay a year's taxes, or that Schechner procure a reduction of the mortgage, and that that would be satisfactory to your client? A. No, I don't think so.

Q. You wouldn't say that you didn't make any such proposition? A. Yes, I will say I didn't.

Q. Are you sure of that? A. I am pretty sure of it.

Q. But you are not absolutely certain? A. No, on account of the lapse of time, but I am reasonably certain. 20

Q. The only reason you had for questioning the validity of the mortgage was the statement of your client and the statement of Charles Bagnole? A. The statement of Mr. Montefusco and Mr. Cassese and Mr. Bagnole.

Q. How long have you know Mr. Bagnole? A. All of ten years, possibly longer.

Q. How long have you been practicing law? A. About ten years, over ten years. 30

Q. And you have known Bagenole how long? A. About ten years, probably longer than ten years.

Q. Did you believe what Bagnole told you?
Objected to.

Court: I will allow it.

A. To be frank about it I didn't, and that is why from time to time we had Mr. Bagnole come 40

Theodore Gottlieb—Cross

in the office in the presence of Mr. Montefusco and Mr. Cassese, to check up various little points.

Q. Why did you doubt Mr. Bagnole's word; was it from your knowledge of his character and antecedents? A. No.

10 Q. Why did you question his statement? A. I don't know why I did, but I had a feeling that it wasn't the truth.

Q. You didn't believe him? A. No.

Q. It didn't sound like a plausible story to you? A. To be frank, it didn't.

Q. Was your opinion of Bagnole ever strengthened by subsequent developments?

Objected to. Objection sustained.

20 Q. Mr. Schechner endeavored to explain to you how the deed had been lost, did he not? A. Yes, he did.

Court: Deed or agreement?

Mr. Roessler: Deed.

Witness: He said the deed had been sent to the Register's office and gone astray, and that Mr. Montefusco had been in several times to secure it, and when he couldn't he told him it had been lost and suggested to him if he would pay the fee he would get him a certified copy.

30 Q. There was nothing irregular about that? A. I don't know about that.

Q. Did you ever go to the register's office to find out whether the deed is in the register's vault or one of those boxes? A. No, I did not.

Q. So you don't know as a matter of fact whether the deed is there or not? A. No.

40 Q. But Schechner told you that he had either given the deed to Montefusco or that it had been mislaid? A. I am strongly of the opinion that he said that it had been mislaid.

Theodore Gottlieb—Re-cross

CROSS-EXAMINATION by Mr. Peirce:

Q. Do you remember Mr. Montefusco and Mr. Cassese telling you that Mr. Baker was prodding him for the interest? A. Yes.

RE-DIRECT-EXAMINATION by Mr. Bel-¹⁰
fatto:

Q. Did he state the time when that interest was demanded? A. I don't recollect that he did; I don't remember; I know that there was a general demand that he pay interest on the mortgage and he came down to see me about it; it was discussed among other things after he finished business that brought him down to the office.

Q. Did he tell you when demand was made? A. My recollection is that he had a letter from Mr. Baker, which he showed me. ²⁰

Q. Do you remember the date of the letter? A. No, I should say it was nine months to a year ago.

RE-CROSS by Mr. Roessler:

Q. You explained to Mr. Cassese, did you not, the effect of his agreement to assume the payment of these mortgages? A. At what time? ³⁰

Q. When that deed was drawn up and prepared? A. I don't recall that I did.

Q. The record shows that Mr. Cassese demands that in the agreement which he had with Di-Geronimo, and the records also show that in the deed of record Cassese expressly assumed and agreed to pay the three mortgages which were on the property, mentioning the names, the holders etc.—the deed drawn by you at the time—can ⁴⁰

James A. Berry—Direct

10 it be possible that you prepared the deed in that form without telling your client the effect of that undertaking on his part? A. It can be possible owing to the fact that they brought all the information to me and it was a family proposition between them and I merely acted in the capacity of drafting a deed for them, previously agreed on as to all the terms and conditions.

Q. Do you mean to say that it is customary for you to have your client assume a mortgage; isn't it just the contrary; that you have your client, wherever possible, take a conveyance subject to the mortgage? A. That may be, but this transaction was a family affair and agreed upon long before they came to my office.

20 By Mr. Peirce: Q. You drew the agreement according to the terms they had fixed upon and according to instructions received; do you remember that? A. Yes.

RE-DIRECT by Mr. Belfatto:

Q. Do you remember whether or not Mr. Cassese agreed to pay the third mortgage?

Mr. Roessler: The record shows.

30 A. That is a long time ago and I have had nothing to refresh my recollection on it.

Q. Didn't Cassese object to entering into any agreement if he had to pay the third mortgage; do you remember that? A. No, I do not.

JAMES A. BERRY, sworn:

Direct-examination by Mr. Belfatto:

40 Q. Do you know Mr. Samuel Schechner? A. Yes.

James A. Berry—Direct

Q. Do you know Mr. Montefusco? A. Yes.

Q. And Mr. Cassese? A. Yes, sir

Q. You are an officer of the Mutual Building and Loan Association? A. I am the secretary of that association.

Q. How long have you been the secretary of that association? A. Twenty-five years. 10

Q. Were you such in 1908, in November? A. Yes.

Q. Do you remember whether or not this Build- and Loan Association at that time had a mortgage on premises situate on the northwest corner of Mt. Prospect and Seventh Avenue? A. We made a loan at that time; I cannot recall the exact names of the owners, but I know that Mr. Crecca was one of them. 20

Q. Have you a record of that mortgage? A. Yes, I made a transcript and have it in my pocket.

Q. Give the date when that mortgage for \$9500 was executed and mention the parties to the instrument? A. I cannot tell you who executed the mortgage; that is in the hands of our treasurer. The application, I think, was made in behalf of Daniel Crecca, I think it was Mary J., his wife, but who finally executed the instrument, I do not recollect. 30

Q. What property did that mortgage cover? A. The property known as 159-161 Seventh Avenue—possibly there was an additional number, and also naming a property by its number on Mt. Prospect Avenue, it all being one piece of property.

Q. What is the date of the mortgage? A. The mortgage was made November, 1907; the appli- 40

James A. Berry—Direct

cation for the loan was made to us on the 24th of September, 1907.

Q. Do you know if there was any collateral security given for that particular mortgage? A. I do not remember positively, but I do recall that collateral was referred to.

10 Q. Is that collateral in the possession of the officers of the Mutual Building and Loan Association? A. Probably not, because if it were given, the usual method would be to retain it for a definite time, say two years, in the event that it was deemed—the loan was rather close to the value, it might be we would ask for additional value.

20 Q. By looking at the books of the Association could you tell whether collateral was given? A. I think I found a legal pencil notation to that effect that collateral was given.

Q. Do you know what the collateral was? A. I could get it, the book was in my office; I can get it.

Q. Were the payments kept up by the mortgagor? A. Not with unfailing regularity, there was default.

30 Q. Please state what was the condition of the payments to the Association on October 17, 1908. A. There was \$65.95 unpaid.

Q. In other words, within one year from the date of the granting of the loan—

Mr. Roessler: How much had been paid?

Witness: The regular payments were \$95.50 per month—a share constitutes \$200, and there were 48 shares, and \$47 less, as we don't show half shares; that accounts for the odd payment; eleven months had been paid, barring the \$65.95, 40 would be a fair approximation.

James A. Berry—Cross

Q. That would be eleven times \$95.50? A. Of which \$47.50 was interest, yes sir; I find that the first month's payment had been deducted from the amount of money disbursed by us.

Q. Were the payments for the months of October and November, 1908, made? A. Perhaps I can best answer that in this way: there remained \$65.95 unpaid at the end of the first year after the granting of the loan. In the next year, by October, 1909, the arrearages had sprung to \$608.05. 10

Q. Were the taxes for the year 1907 and 1908 paid; have you any memorandum of that? A. I have nothing to indicate that; I might explain that I had the Association's lawyer, Mr. Conway, representing Mayor Kenny, here this morning, thinking perhaps the legal end of it might be explained by him. 20

CROSS-EXAMINATION by Mr. Peirce:

Q. Was there anything paid between November, 1908, and October, 1908? A. Yes, sir.

Q. How much? A. As the total payments for the year would have been about \$1140, approximately, a trifle more, and as there remained unpaid \$608.05, the difference would be approximately what the default was—what the payments were, I should have said; that would give you the difference. 30

Q. Was there any transfer on your books of the shares of stock after the sale from Bagnole? A. We never had the name of Bagnole; the names with which we dealt finally on our original records were Crecca and Berger.

Q. Was that ever changed? A. Yes, sir.

James A. Berry—Cross

Q. To whom? A. The name afterwards was DiGeronimo.

Q. That is the name that appears up to the present time? Did Montefusco's name appear?

10 A. We had it down DiGeronimo after Crecca and Berger, and I cannot tell you at this moment whether Montefusco's name was there, but I believe that it is.

Q. Your books would show that? A. Yes. I was going to explain one other matter, that in the case of mortgages frequently the properties are transferred, and as we go by book numbers, we don't know the names.

CROSS-EXAMINATION by Mr. Roessler:

20 Q. You have a record there of this transaction; does the record show what the appraised value of this property was at that time? A. Our loan application would show; I think it was \$13,000.

Q. And to determine that valuation, your association sends out a committee, does it not? A. Three men, yes, sir.

Q. And they are picked from the directors of the association, are they not? A. Yes, three of twelve.

30 Q. Three practical men? A. Yes, sir.

Q. In whom the association reposes trust and confidence?

Objected to. Objection sustained.

Q. And your report shows that that committee report which you have to make to the Department of Banking and Insurance, shows what value? A. We don't report to them.

40 Q. The records show what? A. \$13,000 is my best recollection, but I have the books.

James A. Berry—Re-direct

Q. Who was on the committee? A. One of the committee who signed that was the former surrogate of this county, Mr. John B. Dusenberry, and the other was Mr. William Hughes, a contractor—street paving—I found his name there, and the third member I do not remember.

Q. You were talking about collateral; you are not certain that there was any collateral? A. I do not recall having seen it. I would explain in this fashion: Mr. Crecca had been a member of our association prior to this time and he did to the best of my knowledge hold shares that were free, and from the memorandum which I believe I saw, and which I think is on that application, there was some reference to collateral, and I think it said \$1400, but I am not certain.

Q. But you don't know whether that collateral was ever accepted? A. I think our records would show that.

Q. What bonus did your association charge? A. Six hundred and some dollars.

Q. What per cent did that represent? A. That would be six and a fraction per cent.

Court: He paid the money?

Witness: Yes, and that was in the panic of 1907 and money was scarce.

RE-DIRECT by Mr. Belfatto:

Q. If the property had been considered a good security, would collateral have been demanded? Objected to.

Court: I will take it.

A. No; if collateral were demanded, it was because they thought security was insufficient.

Court: That is, you thought you should have

James A. Berry—Re-direct

something in addition to the real estate and the amount of the loan?

Witness: Yes.

10 Q. Does that effect the appraisal that was made for \$13,000? A. Our loan was \$9,000; I do not recall whether more was asked for; sometimes in a committee of three one man might think it was worth a little less, and that might have been the explanation.

Q. They all signed this appraisal, did they not, for \$13,000? A. Two did, which constitutes a majority report.

RE-CROSS by Mr. Roessler:

20 Q. If you did require collateral, it may be due to the fact that those were panicky times? A. Yes, 1907 is a notorious year.

RE-DIRECT by Mr. Belfatto:

Q. You have testified that Mr. Daniel Crecca was a shareholder in the Building and Loan? A. At that time, to the best of my knowledge.

Q. And he was borrowing money from time to time? A. The shares that I have reference to I think were free shares.

30 Q. And this was a rather large loan, \$9500?

Mr. Peirce: I object to that.

Objection sustained.

Mr. Roessler: Can you say what is due on the mortgage today?

Witness: Yes, sir. There are 48 shares at \$124.60 per share—I will make it, for quick figuring, \$125—96 times that would be about \$6,000; as against that there would be arrearages of nine hundred and some dollars; today the arrearages
40 are \$990.05.

Charles Bagnole—Direct

Mr. Peirce: That has continued from 1908 to date, more or less?

Witness: Yes.

Court: You mean that at no time has he been clear on the books?

Witness: The man has never been clear since the first year. 10

Court: More or less of interest due at all times?

Witness: Yes.

CHARLES BAGNOLE, sworn:

Direct-examination by Mr. Belfatto: 20

Q. How old are you? A. Thirty-three, going on thirty-four.

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

Q. How long have you been in the real estate business? A. Over seventeen years.

Q. Do you know Mr. Montefusco? A. Yes.

Q. And Mr. Pasquale Cassese? A. Yes.

Q. Do you know Antonio DiGeronimo? A. Yes.

Q. Do you know Mr. Samuel Schechner? A. Yes. 30

Q. Mr. Samuel Berger? A. Yes.

Q. Daniel Crecca? A. Yes.

Q. And William A. Baker? A. No, sir.

Q. Have you met Mr. Baker? A. I went there once in Market Street.

Q. When was that? A. Six or seven months ago—and he told me about some mortgage; I said I wanted to see it. 40

Charles Bagnole—Direct

Q. Did you see Mr. Baker? A. I don't know who it was; some man showed me the paper.

Q. What man? A. I don't believe I did see Mr. Baker. I never had any conversation with him.

10 Q. Do you know Mr. Baker at all; did you ever do any business with him? A. No.

Q. You never met him? A. I was down to the Market Street store about six or seven months ago.

Q. You went there with Mr. Vito Verniero? A. Yes.

20 Q. What was the object of going to see Mr. Baker? A. Mr. Verniero told me about some mortgage, I don't remember, a mortgage—it is so many years ago—about some \$1500 mortgage, and I said “I cannot remember unless you show it to me in writing.” “Then I will show it to you.” He said, “come with me and I will show it to you;” Mr. Verniero said that, and he said, “I will take you to Mr. Baker and maybe that will show you if it is right.”

Q. Did you go down? A. Yes.

Q. Did you talk to Mr. Baker? A. He showed me a mortgage there and I seen my signature on there.

30 Q. What did you say to Mr. Verniero then? A. That it was right; I told him that was right, the mortgage was right.

Q. Did you recollect the transaction then when you saw the mortgage; at this particular time, did you recollect that you had given a mortgage? A. I certainly did give the mortgage.

Q. What did you say to Mr. Verniero? A. I told him that the mortgage was right.

40 Q. Did you tell Mr. Verniero what you had received for the mortgage? A. Yes.

Charles Bagnole—Direct

Q. What did you say to him? A. I told him that I received \$100 from Mr. Montefusco and I had a half share in some property in Cutler Street, and that covered \$200, but the mortgage is practically on the Seventh Avenue and Mt. Prospect Avenue property. Then Mr. Bloom and Mr. Schechner and Mr. Crecca and Mr. Berger was there, they said, "We have got to have a little security." 10

Q. What did you say to Mr. Verniero as to the consideration money paid to you by the mortgagees when you signed that mortgage; did you say anything? A. Yes, I told him the mortgage was all right on the Seventh Avenue property.

Q. How much money was given to you when you signed that mortgage? A. When I signed the mortgage they gave me this property on Seventh Avenue for it; they gave me the Seventh Avenue and Mt. Prospect Avenue, on the corner, and they said, "We will give you the deed for this property if you give back a mortgage for \$1500." I didn't give them any money, but I gave the property for this mortgage, and they said, "Well, you have got to give me another piece of property for security." I said, "I have only one, a half share in the Cutler Street property," and they said, "We will take \$200 more on the Cutler Street property." 20 30

By Mr. Peirce: Q. Who said that? A. Mr. Schechner, Mr. Berger and Mr. Bloom was there.

Q. When did you first become owner of that property? A. About the year 1908.

Q. Before you became the owner did you see Mr. Montefusco and DeGeronimo? A. When I was the owner after. 40

Charles Bagnole—Direct

Q. Before you became the owner, before 1908, November 9; you were the owner of the property then? A. I was the owner of the property; I had the deed of it.

10 Q. How long before you got the deed for that property did you see Montefusco and Cassese? A. I told Mr. Montefusco while I was the owner of that property, I said, "I got a property for sale, if you want to buy it"; I said, "Give me \$100, because I want to get rid of it; you give me \$100 and I will give you a deed to this property."

Q. (Last question repeated) A week or month?

A. I was the owner of the property when I saw him.

20 Q. You obtained a deed for the property on the 17th of October, 1909? A. Yes.

Q. How long before that deed did you meet Mr. Montefusco? A. After I had a deed for the property.

Q. After you got the deed what did you say to Mr. Montefusco? A. I said, "Do you want to buy a piece of property?" I said, "I own this property"; there was another man with him; I said, "Give me \$100; I will give you this house"; I didn't want it because I couldn't keep it.

30 Q. How long after the 17th of October did you see him? A. A few days after, I don't know just how long.

Q. A week after? A. About that.

Q. A week after you received the deed you saw Mr. Montefusco and Cassese and the DiGeronimos and said, "I want to sell this property, give me \$100?" A. Yes, I want to get rid of it.

40 Q. What did Mr. Montefusco say? A. I said,

Charles Bagnole—Direct

“Go to Mr. Schechner’s office, but the mortgage and the deed—I have already got the mortgage showing—”

Q. Never mind about that; we will come to that. What did you do after you offered the property for sale to Montefusco and DiGeronimo; did you go to Schechner? A. We did. 10

Q. What for? A. I said, we will draw the deed from me to him.

Q. Is Mr. Schechner a lawyer? A. No. Where ever he wanted to go, it was up to him.

Q. You obtained the deed from Samuel Berger and Daniel Crecca? A. Yes.

Q. Why did you go to Mr. Schechner to draw a deed or the mortgage for the sale of the property to Montefusco and DiGeronimo? A. I didn’t ask him there; I said, “There is where I got my deed from; if you want to go to the place, I will take you there”, and he said, “I will go to the same place.” 20

Q. And you went to Mr. Schechner? A. Yes.

Q. Mr. Schechner gave you the original deed? A. No.

Q. The deed from Samuel Berger and Crecca was given to you at Mr. Schechner’s office? A. Yes, but I knew Mr. Montefusco before that. 30

Q. Who drew the deed? A. Mr. Bloom, I think.

Q. What did you go to Mr. Schechner for? A. It wouldn’t make any difference to me where we went.

Q. Did you see Mr. Samuel Berger and Daniel Crecca at the time you received the deed; did you see those two gentlemen? A. We got them at the same time; we were all in one office. 40

Charles Bagnole—Direct

Q. And then the mortgage for \$1,500 was signed then? A. First I signed the deed and then after I signed the mortgage and then they gave me the property.

10 Q. Which mortgage did you sign? A. The \$1,500. They gave me the deed for the property and they said "You give me back a mortgage for \$1,500 and then we will give you the property."

Q. And you signed the mortgage right then and there? A. Yes, a deed and mortgage.

Q. Was Mr. Baker there? A. No, he was not there.

Q. Was Mr. Schechner there? A. Yes.

Q. And Daniel Crecca? A. Yes.

20 Q. Was Samuel Berger there? A. Yes.

Q. Why did you give them \$200 additional security on the Cutler street property? A. They depended on this; Mr. Crecca says "If you have any other security, we would like to have it." I said, "I haven't got anything;" I said, "I only have a half share in a piece of property; if I can do that, all right", and the lawyer said I can do that. I sold that property for \$12,200.

30 Q. How much money did you receive at the time the mortgage was given? A. \$100.

Q. The only consideration which you gave for the sale of that property to you by Samuel Berger and Daniel Crecca was the \$1500 mortgage? A. Yes, and then they gave me the property.

Q. Did you know at the time you were giving this mortgage to William A. Baker and Schechner?

Objected to.

40 Court: I will take the evidence.

Charles Bagnole—Direct

A. Yes, Mr. Schechner, Mr. Crecca, Mr. Berger and Mr. Baker was in the same mortgage.

Q. Why did you put Mr. Baker and Mr. Schechner in the mortgage? A. I didn't.

Q. Who put it there? A. The men who took back a mortgage themselves.

Q. Who suggested to you the name of William A. Baker and Samuel Schechner? A. They claim they had an interest in this property. 10

Q. Who? A. The ones you just mentioned.

Q. That was the reason? A. Yes.

Q. Did you receive any money from any one of these four gentlemen, any money in cash besides the property in Mt. Prospect avenue? A. From Schechner.

Q. Yes. A. No. 20

Q. From any of the four mortgagees? A. No money.

Q. Crecca, Berger and Mr. William A. Baker? A. I didn't get none, I got the property.

Q. After you obtained this deed you saw Mr. Montefusco and you went with him to Mr. Schechner? A. Yes.

Q. Was Antonio DiGeronimo with you? A. He was the man I did most of the business with.

Q. You went to Mr. Schechner with these two gentlemen on what day; about a week after you obtained the deed, is that right? A. I think it was pretty nearly a month. 30

Q. You testified it was nearly a week? A. It was after that when I went there.

Q. Was it on the ninth of November, 1908, that you went there? A. I don't recollect that.

Q. Do you know when you signed the deed? A. Yes. 40

Charles Bagnole—Direct

Q. How long after this particular time when the agreement was signed in Mr. Schechner's office was it that you signed the deed? A. It was done practically all at one time, about a day or two ahead.

10 Q. You remember that Mr. Schechner drew the deed; you remember that? A. Mr. Bloom, he was drawing the deed when I was there—lawyer Bloom.

Q. Was Mr. Montefusco there? A. I think they were both there.

Q. In Mr. Bloom's office? A. I think they were there when the papers were drawn.

Q. Were those people present at the time when Mr. Bloom drew the deed? A. Yes, they were all there.

20 Q. Were they present at the time the agreement was signed in Mr. Schechner's office? A. I don't recall any agreement.

Q. Do you remember having taken \$100? A. Yes, I got the check; I think it was signed by Mr. DiGeronimo.

Q. Who drew the check? A. I think Mr. DiGeronimo's name was on it.

30 Q. You took \$100 yourself? A. Yes, I gave them the property for it.

Q. Mr. Schechner was present at the time and drew the agreement? A. He did or someone else there. I don't know, because I waited on the outside; they drew the papers inside.

40 Q. Did you receive the \$100 after the agreement being executed at that time? A. I received the \$100 and I signed the papers and I told them what there was on the property.

Charles Bagnole—Direct

Q. Was the agreement signed when you received the \$100 check? A. I believe so, but I don't recall.

Q. Who drew the agreement, if you remember? A. Everything was drawn in Lawyer Bloom's office.

Q. Isn't it true that Mr. Schechner drew the agreement? A. I don't recollect. 10

Q. Is it true that Mr. Schechner drew the check? A. I didn't see him write any check; I got the check from Mr. Montefusco's hands Mr. DiGeronimo's signature was on the check.

Q. Don't you remember Mr. Schechner drawing the check? A. No.

Q. Was that check paid in the presence of Mr. Schechner? A. They were all present when I got the check. 20

Q. And Mr. Montefusco was there? A. They were all there.

Q. Who else was there? A. They were there; there were four men there—I, Schechner, Antonio DiGeronimo and Montefusco.

Q. The agreement was signed and you got the check for \$100? A. Yes.

Q. What became of that agreement? A. I don't know anything about it. 30

Q. Don't you know who kept it? A. No.

Q. Was that agreement read to you? A. It was written and given to Mr. Montefusco.

Q. Did you read it? A. Yes.

Q. Was that agreement given to Mr. Montefusco? A. Yes, but DiGeronimo gave me the check and I gave him the agreement.

Q. How long after this agreement was delivered to Mr. DiGeronimo did you sign the deed? A. 40

Charles Bagnole—Direct

About the same time, a day or two after—about that time.

Q. And was Montefusco there when you signed the deed? A. Yes.

Q. Try to remember. A. Yes, I gave him the deed.

10 Q. You gave it to Mr. Montefusco or to Mr. DiGeronimo? A. Both of them were there; I don't recollect.

Q. You had the deed and gave it to him? A. Yes.

Q. You delivered the deed and agreement to them? A. Yes, when they gave me the money.

Q. When you went to Mr. Schechner in company with Montefusco and Cassese, did you hear Mr. Montefusco say to Mr. Schechner, "if Mr. Charlie
20 Bagnole, (meaning you) is the owner of this property, I am going to have a lawyer, because I don't trust him"; do you remember that? A. I don't recall anything like that; I didn't care much about it; as long as I got my check I didn't care; I gave them the deeds and I signed off and they gave me the check and I was done, then I went away.

Q. Your interest was simply in the \$100? A. I
30 sold the property, and what they did after that I don't know.

Q. You don't remember that? A. No.

Q. Do you remember having met Mr. Sabino Montefusco about a year after this property was sold? Mr. Montefusco came to see you and asked you why the third mortgage was on the property; what did you say to him?

Objected to.

40 Court: I will take the evidence.

Charles Bagnole—Cross

A. I told them there was a first, second and third mortgage when we signed the contract.

Q. Didn't you say that the mortgage was a fake mortgage? A. No, I told him that for fun.

EXAMINATION by Mr. Peirce:

Q. When did you say it was a fake? A. He said, "Charlie, I will give you some money." 10

Q. How much did he say he would give you? A. First, \$25; then he said this, and I said, "I will say this anyhow for you."

Q. He wanted to pay you \$25 to say it was a fake? A. Yes.

By Mr. Belfatto: Q. You say you were fooling when you said the mortgage was a fake? A. I told him the mortgage was not; he said, "You say that," I say, "If there is any way to help you along, I will do it for you." 20

Q. Do you remember when you came to my office when the sale was made? A. You were talking about Cutler street mortgage and I didn't know anything about it.

Q. Were you fooling? A. You didn't mention the Seventh avenue property.

Q. I mentioned the \$1500 mortgage on Seventh avenue and also Cutler street property? A. Yes. 30

Q. Didn't you say, "I never got a dollar from these people for this mortgage?" A. On the Cutler street property; I didn't know nothing about it and got nothing for it.

Q. Do you deny that you told me that? A. I told you that on the Cutler street property, but not Seventh avenue.

Q. Didn't you say in the presence of everybody in my office, that the mortgage was no good at 40

Charles Bagnole—Cross

all? A. I signed the mortgage; why ain't it no good?

Q. Didn't you say that? A. You say that my signature isn't any good?

10 Q. You also met Vito Verniero in the elevator of the Prudential Building? A. Yes.

Q. Mr. Schechner happened to be in the elevator? A. Yes.

Q. Do you remember having heard Mr. Verniero say to you, "Charlie, how about this \$1500 mortgage"? A. Yes, something about that.

Q. What did you say; didn't you say at that time that that was a fake mortgage? A. No, sir.

20 Q. Didn't you tell these people, Mr. Schechner and others were a bunch of crooks? A. No, sir.

Q. What did you say, if anything? A. I didn't say anything to them at all, as far as the mortgage is concerned.

Q. What was the conversation? A. I don't remember it. No mortgage was mentioned in the elevator of any kind.

Q. At that time Schechner was in the elevator, was he not? A. I don't recollect that.

30 Q. Don't you remember having had a conversation in the elevator with Verniero in the presence of Schechner? A. I don't remember that.

Q. Do you remember having met Pellegrino Pellechia on the street, the mason contractor, and in the presence of Montefusco you said that "that mortgage is a fake mortgage; I will go to Court and testify to that fact? A. No, sir, I didn't say that.

40 Q. Do you remember having seen Mr. Gottlieb about this third mortgage about a year ago? A. Yes, only lately.

Charles Bagnole—Cross

Q. What did you say to him? A. Mr. Montefusco took me upstairs.

Q. What did you say about the mortgage; didn't you say to him that it was a fake mortgage? A. No, Mr. Montefusco met me on the street, corner of Beaver and Market street, and we went and had a drink in the Anheuser-Busch and he said, "You come with me to Lawyer Gottlieb's office and go there about this \$1500 mortgage;" I said "All right, I will go up with you:" he said, "You say so and so."

Mr. Peirce: He said what?

Witness: I will give you a little money if you go to Gottlieb's office.

Mr. Peirce: What did he want you to say?

Witness: He said, "You come upstairs to Lawyer Gottlieb's office and you say that it is a fake mortgage and help me out about that \$1500 mortgage." I said, "If there is any way for me to help you along, but you know the mortgage is all right, it is \$1500 mortgage and it is correct." And he took me to Mr. Gottlieb's office, and he said, "What have you got to say about this mortgage?" I said, "Mr. Gottlieb, the mortgage is all right; there is no question about it at all. The mortgage was made as sure as there is a God in heaven; they gave me that property for that mortgage;" "If that is the case, I won't take hold of the case, you had better go and see Schechner"

Q. You never used the word "fake"? A. I told Mr Gottlieb there was no fake mortgage, and we went to see Mr. Schechner, and I said, "Look up the agreement for Mr. Montefusco.

Charles Bagnole—Cross

Q. You said you delivered the mortgage yourself? A. I said, "I go with you."

Q. You knew at the time that you had delivered the mortgage to Mr. Antonio DiGeronimo, at the time you received the \$100 check? A. Yes.
10 They had the papers in the office; when I signed off, they gave me the check.

Q. You went about other things afterwards and asked Schechner for the agreement? A. I didn't go and ask for them.

Q. What did you go to Schechner for? A. Mr. Montefusco told me to go there to get the agreement.

Q. What did you tell Mr. Montefusco? A. I said, "I can go there with you, but I don't know
20 anything about it."

Q. Did you tell Mr. Montefusco that you had given the agreement to Mr. Antonio DiGeronimo? A. The paper was signed there, I don't remember about it at all, but I remember when I signed off they gave me the check and the agreement and those were all left in the lawyer's hands, but what they did with them, I don't know.

Q. Then you were mistaken when you say that you gave the agreement to Mr. Antonio DiGeronimo at the time it was signed and you received
30 the \$100; you were mistaken about that? A. They wouldn't give me the check unless they got the papers signed.

Q. Are you positive that you delivered the agreement to Antonio DiGeronimo at the time the agreement was signed by you Montefusco and DiGeronimo and you received the check for \$100?

40 A. When I received the check I signed off.

Charles Bagnole—Cross

Q. Do you remember or not? A. I remember signing the papers and giving them.

Q. Do you remember having delivered the agreement to Antonio DiGeronimo? A. They got the papers when they gave me the check.

Q. Do you remember? A. I remember signing 10 the papers.

Q. That is all you remember? A. And they gave me the check.

Q. Why do you say that you delivered the agreement to Antonio DiGeronimo? A. It was delivered there in the presence of all of them.

Q. Do you know what delivery is? A. When I gave it to them.

Q. Did you hand the agreement to Antonio DiGeronimo? A. No, but I signed and left them 20 there and they gave me the check when I signed it.

Q. Do you remember the agreement was taken away from Mr. Schechner's office? A. No.

Q. You are mistaken when you say that Mr. Antonio DiGeronimo got the agreement; you are mistaken about that? A. He must have got it if he gave me the check.

Q. Is that why you remember? A. He wouldn't give me the money unless he got the papers; 30 that is as far as I can remember.

Q. Why did you go with Mr. Gottlieb seven years after that to Mr. Schechner and ask Mr. Schechner to give up that agreement? A. I didn't call there for that; Mr. Montefusco took me over there and said, "Charlie, you come over and help me out," and he said, "I need it." He said, "I don't know who has got it," and we 40

Charles Bagnole—Cross

asked for the agreement and they said they couldn't find it. That is all I know.

Q. Your memory is not accurate about the delivery of the agreement, is it? A. It is so far back I can hardly remember.

10 Q. You deny that you stated to Montefusco that you were the agent for Schechner? A. I never asked anything about agency.

Q. You bought the property from Samuel Schechner and Daniel Berger on the 17th day of October, 1908? A. Yes.

Q. On the same date you gave the mortgage for \$1500? A. The same day.

Q. On the ninth of November, twenty days after? A. About that.

20 Q. You sold the property? A. That is right.

Q. To Sabino Montefusco and Antonio DiGerónimo? A. Yes.

Q. Did you collect rent for that property for the month of October? A. Yes, I went up there and got a little rent, when I got the property, before I sold it.

Q. You became the owner of the property on the seventeenth of October; was the rent unpaid on the seventeenth of October? A. Some people
30 didn't pay and I went there and got it.

Q. Do you remember how much rent you collected? A. No, I don't recall the amount.

Q. Was there much rent to be collected? A. Yes.

Q. How much was the amount collected? A. \$90 a month.

Q. How many rooms were rented there? A.
40 I don't know just how much; I think it was prac-

Charles Bagnole—Cross

tically rented when I owned the property, except one flat upstairs.

Q. Did you collect \$90 for that month? A. No, because I took title on the seventeenth and I got some of it; the people who didn't pay I got.

Q. How much did you receive? A. I don't know. 10

Q. \$10? A. A little over that; I got some of it.

Q. How much rent did you say was due? A. \$90 a month.

Q. Did you make inquiry from the tenants in possession as to the amount of rent they were paying?

Objected to.

Court: What difference does that make?

Q. You owned the premises for twenty days? 20
A. Yes.

Q. You received \$100 as the consideration for your selling the property to Montefusco and Di-Geronimo? A. Yes.

Q. And you gave a mortgage for \$1500? A. Before I sold the property.

Q. You had already given a \$1500 mortgage covering the entire property on Cutler street and Seventh avenue?

Court: This is only one mortgage. 30

Q. I am talking about the third mortgage? A. Yes.

Q. Did you think it was a good business proposition to receive \$100 and give a mortgage for \$200; is that a good business proposition?

Objected to.

Court: He told you that he did.

Q. Is that the way you do business?

Objected to.

Objection sustained. 40

Charles Bagnole—Cross

Q. Did you give \$200 for \$100?

Objected to.

Objection sustained.

10 Q. You were satisfied to be the owner of that property for a period of twenty days and sign a mortgage and a bond; you also gave a bond for \$1500 and also a mortgage on the property which you owned, with Mr. Verniero, as a tenant in common, for \$100?

Objected to.

Court: He did.

A. No, I was going to sell it after twenty days; I thought I would get rent for five or six months, and I lost money.

20 Q. Why didn't you collect the rents for five or six months? A. I needed the money.

Q. You deny that you were the agent of Samuel Schechner? A. I never was agent for anyone except myself; I have my own office.

Q. Have you had any conversation about this case with Mr. Schechner? A. No, sir; that mortgage is as straight as a dollar.

30 Q. Do you know what is the meaning of taking an oath? A. I swear before God that I am telling the truth, and I am not here to tell you any fakes.

CROSS-EXAMINATION by Mr. Peirce:

Q. At the time the agreement was signed were there two copies drawn? A. I don't recollect.

Q. Montefusco was there? A. Yes.

40 Q. DiGeronimo was there? A. They were all together there and they made out a check and gave me the check, and I signed off.

Charles Bagnole—Cross

Q. You said in your direct examination you told them what was on the property? A. Yes.

Q. Whom did you tell what was on the property? A. At first I said they wanted \$14,000, and then they came down to \$12,000. I said there was a mortgage for \$9500 and was paid down to about \$9000; then I said there was \$1200 second mortgage held by Mr. Richards, and then there was \$1500 third mortgage and \$100 in cash. 10

Q. Did you tell that to DiGeronimo and Montefusco both? A. Yes, "you give me \$100, and there are three mortgages which amount to \$9500, \$1200 and \$1500 and \$500 on the building and loan, and you give me \$100; you give me \$100 and you get the credit for \$400 in the Building and Loan," and I want to get rid of it, and he was glad to do 20 it, but that was the price \$12,200.

Q. Is there any mistake about your having told Montefusco and DiGeronimo that there was a \$1500 mortgage on the property? A. I told them there was that mortgage on it for \$1500.

Q. Did they ever talk to you about that \$1500 after the mortgage was given? A. Yes, for two or three years.

Q. Did they at that time recognize the validity of that mortgage; if so, what did they say? A. 30 They took this property subject to the mortgages.

Q. You said something about the fact that Sabino Montefusco offered you \$25 to go and swear that the mortgage was fictitious and a fake? A. He didn't swear; he said he would try to help me out and he said, "I will give you the money and you say it was a fake mortgage;" I took it in a 40

Charles Bagnole—Cross

fooling way, but I said, "The mortgage is there, you know that;" I said, "I can't cut that out."

Q. Did they ever come to you and reproach you and say, "You didn't tell us about the \$1500 mortgage;" did they ever say that to you? A. 10 Yes, they told me that they didn't know anything about the \$1500; I told them, "the mortgage is there and you knew it was there; did you expect to buy the property for nothing?"

Q. You then referred to the Cutler street property as being included in the \$1500 mortgage?

A. Yes; that was in case this property wouldn't pay, they would take \$200 on the Cutler street property.

Q. Did you sell the Cutler street property to 20 Verniero? A. Yes.

Q. Did he know that the \$1500 was against the Cutler street property? A. I gave a quit claim deed against all encumbrances.

Q. Did he know about the \$1500 mortgage? A. No, it was up to him to find out when making search.

Q. You conveyed it to him subject to all encumbrances on the property? A. Yes.

Q. Did you tell him what was against it? A. 30 No, I didn't tell him what was against it.

By the Court: Q. You said something about some property; what did you get for the \$1500 mortgage? A. He gave me some property for it.

Q. What property? A. Seventh Avenue property.

Q. Another property? A. They gave me the 40 Seventh and Mt. Prospect avenue property, two

Charles Bagnole—Re-direct

properties on Seventh avenue and one property in the rear of that, part of the same tract.

Q. This same property? A. Yes.

Q. But they gave you another piece of property what do you mean when you say you got some property from them for this mortgage? A. 10
They gave me three houses; I gave them back a purchase money mortgage and they gave me a deed for the property—two houses in Seventh avenue and one in the rear—they are all together

Q. Someone deeded them to you? A. Yes.

Q. And you gave a purchase money mortgage back to them? A. Yes.

Q. That is this mortgage of \$1500? A. Yes.

Q. Then when you owned them with that mortgage on, you sold them to Mr. Montefusco and 20
DiGeronimo for \$100? A. Yes, over the mortgages.

Q. And in order to secure the \$1500 you gave a purchase money mortgage on Seventh avenue and Mt. Prospect avenue and one-half of Cutler street? A. Yes.

Q. That was the way you paid the consideration of \$1500? A. No.

Q. You didn't pay any money? A. No.

Q. They were not willing to take back the \$1500 30
mortgage only on this property unless you paid cash? A. I said, "I have a half share in the Cutler Street if you want that", and they took that in place of cash.

RE-DIRECT by Mr. Belfatto:

Q. This property consists of two tracts, one is the front where the store is and the other is the house in the rear, and then there is another rear 40

Charles Bagnole—Re-direct

house also on Mt. Prospect, but it is one piece of property? A. There are two tracts to it.

Q. That is first and second tract mentioned in the \$1500 mortgage? A. Yes.

10 Q. You gave that mortgage for \$1500 on this property? A. Yes.

Q. And at that time this property was subject to \$1500 held by the Building and Loan Association? A. Yes.

Q. And \$1200 by Mr. Richards? A. Yes.

Q. And then there was \$1500 more? A. Yes.

Q. You bought it only subject to \$9500 and \$1200? A. Subject to the first and second mortgage.

20 Q. And you created the other mortgage for \$1500? A. That is correct.

Q. As collateral security for the payment of the third mortgage you gave also the property of which you were part owner, together with Mr. Verniero, as collateral security? A. Yes.

Q. That is all you did in this case; you didn't do anything else? A. No.

30 Q. Did you get from Samuel Berger and Daniel Crecca beside the \$100 anything else for the \$1500 mortgage? A. I will have to remember that; I don't remember so far back. If you show me the record of that I will tell you but I remember some other transaction; I think they gave me some property on First Avenue.

Q. Does the deed show that? A. I cannot remember, it is so far back, but I remember something about First Avenue property.

40 Q. Are you able to say that you got any other consideration from this Samuel Berger and Daniel Crecca? A. I wouldn't swear to that unless the record shows it.

Charles Bagnole—Re-direct

Q. You didn't say to Mr. Verniero that you were going to give that \$200 mortgage; why didn't you tell him? A. That was our business, between me and him.

Q. Why didn't you tell him? A. I am not supposed to tell him anything; it is up to him to find out. 10

Q. You were a co-owner of that property on Cutler Street? A. Yes.

Q. Wasn't it your duty to inform the other man? A. That is none of his business.

Q. You had the same rights in the property? A. He could do the same thing as I did; I couldn't stop him.

Q. When did you first tell him that you had given a mortgage for \$200 on the property? A. 20 I never told him anything about any \$2000 mortgage, because I know the mortgage on the Seventh Avenue property is good.

Q. Why did you give that property on Cutler Street as additional security? A. Because they wouldn't give me the property and they said, "You give security on another piece of property and I will give you the deed." I thought I was going to make a fortune and finally I got stuck.

Q. Why didn't you hold the property for six 30 months? A. Because I couldn't.

Q. Before you bought the property you knew it was in bad shape; was it rented when you bought it? A. It was all right when I took it.

Q. Was it all rented? A. Some was and some not.

Q. Why didn't you keep the property? A. Because I didn't want it any more.

Q. You were satisfied to be the owner for twenty days? A. Yes. 40

Charles Bagnole—Re-cross

RE-CROSS by Mr. Peirce:

Q. The reason you gave the \$1500 mortgage was that you didn't have any money? A. Yes.

Q. And they wouldn't convey without money? A. Yes.

10 Q. And the conversation drifted over as to whether you had any other property? A. Yes.

Q. And you said you had a half interest in the Cutler Street property? A. Yes.

Q. And finally the bargain was struck that you should give a mortgage for \$1500 on the Seventh Avenue and Mt. Prospect and also on the half interest you owned in Cutler Street? A. Yes.

20 Q. The contract then for the conveyance to you was the encumbrances on the property, the Building Association mortgage, \$1200 due Richards, and \$1500 mortgage you then created which was a purchase money mortgage? A. Yes, sir.

Mr. Roessler: The First Avenue property was an entirely different transaction?

The Witness: I don't remember that.

The Court: The situation was this; you bought this property from these gentlemen and gave them a mortgage for \$1500 instead of giving them any money?

30 Witness: That is right.

Court: And they were not willing to let you have it for that and they said you must give something else, and you put this possible \$200 against this property?

Witness: Yes.

Court: You got \$100 for that?

Witness: I did.

Court: You paid nothing?

40 Witness: Nothing to anyone, not a cent.

Sabino Montefusco—Direct

JAMES A. BERRY, recalled,

Direct-examination by Mr. Belfatto:

Q. Will you please say whether there was any collateral security given by Samuel Berger and Daniel Crecca to the Mutual Building and Loan Association when the \$9500 was obtained on the mortgage on the property in question. A. I do not know and I cannot find that there was; I have here the application; I find that was signed by all three, William J. Hughes, John B. Dusenberry and William Holzner, Committee of three; the value placed on the property was \$4,000 on the land, \$9000 on the buildings, \$13,000. The application was made on the 24th of September, 1907. It is 39 by 95, two story frame buildings—I know those buildings, they are all really attached, and they are stores and dwellings. We have it down as containing 29 rooms. I have numbers 161-163 Seventh Avenue and 4-8 Mt. Prospect Avenue.

Continuation of testimony in the foregoing cause, before J. Franklin Fort, Esquire, Advisory Master, at his office, Essex Building, Newark, New Jersey, on Wednesday, November 10th, 1915, at 10:30 a. m., in the presence of counsel as before stated.

SABINO MONTEFUSCO, recalled for further direct-examination by Mr. Belfatto:

Q. Mr. Montefusco, do you know how to read and write? A. No.

Sabino Montefusco—Cross

Q. I show you a check for \$100 and ask you if this is your signature? A. Yes.

Mr. Belfatto: I offer this check—

Q. Who wrote this check? A. Mr. Schechner.

Q. When did he write the check? A. After the
10 agreement shall be made he signed the check—
the same day the agreement was made.

Q. This check is made payable to Charles Bagnole; who wrote the name "Charles Bagnole"?
A. Mr. Schechner.

Mr. Belfatto: I offer the check in evidence, dated November 9, 1908.

Marked Exhibit C 4.

Q. Did you tell Mr. Schechner to write the
check payable to Charles Bagnole? A. No, when
20 I saw the check, it was payable to Charles Bagnole; then I want to stop the contract; he said, "What are you afraid for, I am here. That is his (Charles Bagnole) commission of \$100." He said, "Don't be afraid".

Q. He told you that the \$100 was simply a commission? A. Yes.

Q. Did you see Mr. Berger at that time? A. No.

Q. Did you see Daniel Crecca? A. No.

30 CROSS-EXAMINATION, by Mr. Peirce:

Q. Who wrote that check? A. Mr. Schechner.

Q. Where? A. In his office.

Q. You saw him write it? A. Yes.

Q. Where did he sit when he wrote it? A. At the desk there.

Q. You saw Schechner write that check, did you? A. Yes.

40 Q. Exhibit C 4? A. Yes.

Sabino Montefusco—Cross

Q. Don't you know that that is not Schechner's handwriting? A. It is his writing; he may have three kinds of writing.

Q. I ask you about this writing; you swear you saw Schechner write that? A. Yes.

Q. Don't you know that it is not the fact that he told you that that was \$100 commission to Bagnole? A. Yes, that is what he told me. 10

Q. Have you talked with anybody about this case? A. What case, the check?

Q. Have you talked with anybody about this case? A. No, sir. I have to see Mr. Schechner about this.

Q. Have you talked with anybody about this case since you were on the stand? A. No.

CROSS-EXAMINATION by Mr. Roessler: 20

Q. Why didn't you tell us the check for the payment of \$100 was his commission to Bagnole? A. Nobody asked me; what I say for?

Q. Didn't you in answer to your lawyer's questions on Monday tell us that you had spoken to Bagnole before you bought this property and that you agreed to pay \$100 for the deed? A. No, sir, we never talked about the deed.

Q. You didn't say that the other day? 30

Mr. Belfatto: Objected to.

Court: That is proper.

Q. Didn't you tell us the other day that Charles Bagnole approached you with a view toward selling you this property on Seventh Avenue? A. No, the Schechner property, not him.

Q. Didn't you testify the other day that Bagnole spoke to you about this property on Seventh 40

Sabino Montefusco—Re-direct

Avenue; didn't you tell us that? A. Not in his name, Schechner's name.

Q. Didn't you tell us that Charles Bagnole—

10 Court: It couldn't be otherwise; he says he saw Bagnole and Bagnole told him he had this property for sale and he could have it—something of that sort.

Q. Didn't you tell us the other day that you agreed to pay Bagnole \$100? A. No, sir.

Q. For the deed? A. No, sir, because he never say he was the owner.

Q. Who was present when you gave this check of \$100? A. There was me, Mr. Bagnole, Antonio DiGeronimo and Mr. Schechner.

20 Q. None else there? A. No, there were four men there; I don't know who was.

Q. You say you saw Schechner write that check? A. That ain't my writing; Bagnole don't write, I know.

Q. Didn't you say that you saw Schechner write? A. I remember there were four men; I don't remember if Mr. Schechner or someone else was there.

RE-DIRECT by Mr. Belfatto:

30 Q. Will you try to be sure how many persons were present at the time this check was signed by you? A. It was signed by me, not written by me.

Q. Who wrote that check? A. I think Mr. Schechner, I signed it.

Q. Who wrote the words "Charles Bagnole"? A. I think Mr. Schechner.

40 Q. Who wrote the word "One hundred"? A. Mr. Schechner.

Joseph Bloom—Direct

Q. Are you positive that he did? A. Sure, because there were only four men there.

Q. Will you mention the names of the four men who were there? A. Mr. Bagnole, Mr. Schechner, Montefusco and Antonio DiGeronimo.

Q. Are you positive there was no one else? A. 10
No one else was present.

Q. You would make five? A. Yes.

Q. Have you received a tax bill for this property for the year 1915? A. Yes.

Q. How much is the property assessed at?

Objected to. Objection sustained.

Q. Do you remember the amount of the taxes in arrear for 1908 at the time you bought it? A.
They assessed me on about \$9,000.

Mr. Peirce: I move to strike out that an- 20
swer; it has no probative force.

Court: I will allow that to stand as to the assessed value in 1908.

Q. What is the assessed value today?

Objected to. Objection sustained.

Mr. Belfatto: We rest.

JOSEPH BLOOM, sworn: 30

Direct-examination by Mr. Roessler:

Q. You are a practicing lawyer of this state?

A. Yes, sir.

Q. You have an office in the Union Building?

A. Yes, I have been practicing law in this state since November 1903.

Q. Your office is in the Union Building? A. 40

Joseph Bloom—Direct

Yes; I have had my office in that building for the past seven or eight years.

Q. Do you know Samuel Schechner? A. Yes.

Q. Do you know Samuel Berger? A. Yes.

Q. And Daniel Crecca? A. Yes.

10 Q. Do you know Montefusco? A. Yes.

Q. Do you recall having charge of a real estate transaction for these gentlemen sometime in the year 1908? A. I cannot say that I do recall.

Q. You don't recall the circumstances? A. I don't recall the circumstances.

Q. Do you recall an occasion when these gentlemen called upon you at your office and you drew a deed for property on Seventh Avenue and Mt. Prospect Avenue?

20 Mr. Belfatto: I object.

Court: I will take the evidence.

A. I recall drawing the deed, but I don't recall the circumstances under which the deed was drawn.

30 Q. I show you certified copy of a deed dated November 9, 1908, between Charles Bagnole, party of the first part, and Sabino Montefusco and Antonio DiGeronimo, conveying property on Seventh Avenue and Mt. Prospect Avenue, which bears your name as subscribing witness, and your name also as the Master before whom the proof was made. I ask you to look at that.

Mr. Belfatto: I object. We don't dispute the signature or the acknowledgment.

Court: I shall have to admit it.

40 A. I remember drawing this deed and taking the acknowledgment; but I think that is about all I do remember.

Joseph Bloom—Direct

Q. Did you draw that deed in accordance with instructions which you received?

Objected to.

Court: That is right, undoubtedly.

Q. From whom did you receive the instructions? A. I cannot say that, I don't recollect that. 10

Q. Who was present when that deed was prepared and executed? A. I cannot say that.

Q. Did you at that time in 1908 meet Mr. Montefusco at the time this deed was prepared?

Objected to.

Court: If he cannot recall the circumstances without mentioning the names in that way, I don't think it is fair to do it; he ought to be able to tell whom he drew that deed for, and at whose request; if he cannot, he should say so. 20

A. I cannot; I cannot recall at whose request I drew the deed; I have an indistinct recollection of drawing this deed, but who was present at the time, I cannot remember, although I tried very hard to.

Q. I show you this bond marked Exhibit C 2, to which your name is appended as subscribing witness: did you prepare that bond? A. Yes.

Q. And the mortgage accompanying this bond? 30
A. Yes.

Q. Did you draw that in accordance with instructions? A. Undoubtedly.

Q. From whom did you receive the instructions as to the preparation of the bond and mortgage? A. I don't recollect anything about the transaction at all, except the fact that I do recollect drawing a deed from Charles Bagnole to Montefusco. 40

Joseph Bloom—Direct

Q. Let me refresh your memory. You say you don't know whether Mr. Montefusco was present or not, that is, you have a very indistinct recollection; is that so? For the purpose of refreshing your recollection, I show you a check which has been marked Exhibit C 4, made by Sabino Montefusco to the order of Charles Bagnole, and I now ask you in whose handwriting the body of that check is? A. Mine.

Q. Any doubt in your mind? A. No, I wrote "Charles Bagnole, One hundred 00/100", also "\$100" in figures.

Q. Mr. Montefusco says that Mr. Schechner wrote that check? A. No, that is my handwriting.

Q. After examining that check dated 9th of November, 1908—the date of the check is not your writing— I also call your attention to the fact that the deed from Bagnole to Montefusco was dated the 9th of November, 1908; having these facts brought to your attention—the date of this deed and the date of the check—can you now say whether Mr. Montefusco was present? A. I want to say this in explanation, that I think I met Mr. Montefusco just once, and that seems to me must have been this occasion, but I cannot recollect him being present in my office on that occasion; I saw Mr. Montefusco and I have met him only once in my office.

Q. And this was the only transaction you had for him? A. Yes, that is the only transaction I recollect having with him.

Q. Can you say whether that check was signed by Montefusco before you wrote out the words "One hundred"? A. I cannot say.

Q. You don't recollect? A. I know I had some

Joseph Bloom—Cross

papers—I got out those that I had—some papers in my possession—

Mr. Belfatto: I object.

Court: Let him go ahead.

A. (Continuing)—in which it was my impression that this deed or agreement that is claimed is lost was in—there was a box I had—I have since made a search for that box, but have been unable to find it; at one time I was connected with Mr. Roessler, that is, located in the same office, and the probabilities are that I turned that over to him when we separated, because he was the attorney for Berger and Schechner, but I have since made search for that box and have been unable to find it. 10

Q. You did work for Mr. Schechner for some time, did you not, while you were associated with me in the same office? A. I certainly did. 20

Q. And you prepared any number of legal instruments for him? A. Yes.

CROSS-EXAMINATION by Mr. Peirce:

Q. Fix in your mind the time you drew these papers; was there any dispute between the parties as to the correctness of the papers which you drew? 30

Objected to.

Court: I will take the evidence.

Q. Or were the papers drawn according to your instructions and were they satisfactory to all parties? A. They seemed to be satisfactory to the parties; that is to say, no one made any objection as I recall.

By the Court: Q. Do you recall that this deed was read by you to anyone? A. I don't recall 40

Joseph Bloom—Cross

that this deed was, but I will say that my usual practice is to read the deed over to anyone who was present.

Q. The man that makes the deed or going to take it? A. Those who are present at the transaction.

10 Q. In executing a deed, do you read it over to more than the person who executes it? A. All those who happen to be present at the time the deed is executed.

Q. Do you remember when you read that over and who was present? A. No, I don't recall that.

Q. You cannot recollect whether there was anyone but Mr. Bagnole present or not? A. No, I cannot, except I will say that I had simply this
20 one transaction with Mr. Montefusco, and whether that was the occasion of drawing the deed—whether that was the occasion on which I met him or not, I cannot say.

Q. Do you mean to say that this was the transaction, or do you mean another transaction? A. I cannot say positively whether this was the transaction or not; I wouldn't say that it was, but I will say that I met Mr. Montefusco just
30 once in my office, and I don't know whether or not there was any other transaction that he was involved in. If he brings it to my mind, I might recollect it. I wouldn't say that this was the transaction in which I met him in my office.

Q. Were you present when the deed was delivered in this case? A. I don't recall that; I have absolutely no recollection at all of the circumstances.

Q. Do you recall its having been delivered? A.
40 No.

Joseph Bloom—Cross

By Mr. Peirce: Q. Do you remember that it was suggested that Bagnole include in the mortgage the Cutler Street property, that Bagnole owned one-half interest in?

Mr. Belfatto: Objected to.

Q. There were three tracts in the deed drawn by you, shown by the certified copy, two on Mt. Prospect Avenue and one on Cutler Street; do you remember the fact that Mr. Bagnole owned a half interest in Cutler Street? 10

Mr. Belfatto: Objected to.

Court: I will take it.

A. Yes, I think I do.

Q. You remember it was required to be put in as additional security? A. Yes.

By the Court: Q. Who told you that? A. I cannot recall. 20

Q. Who was present at the time that this transaction occurred? A. I don't recollect.

Q. You don't know who gave you instructions as to drawing these various papers? A. No, I do not.

Q. Perhaps I can refresh your mind; was Mr. Schechner present? A. Mr. Schechner had an adjoining office and very often came in my office and then returned to his office, so that he may have been present and he may not have been present. 30

Q. How about Mr. Bagnole? A. Mr. Bagnole I know was present.

Q. And the man who signed the check must have been there? A. I cannot recollect that he was.

Q. His name is on the check C 4 which you 40

Joseph Bloom—Cross

drew, which bears the same date as the other papers.

Mr. Belfatto: I object to that.

Court: I will take it.

A. I didn't write the date in there.

10 Q. But you did draw the body of the check? A. Yes, sir.

Q. Then do you remember Montefusco signing that in your presence? A. No, I do not.

Q. But you do know that Bagnole was there? A. Yes.

Q. And you know he was there to close this title? A. Yes.

Q. And you know the other parties were there to close the title? A. I don't know that, no, sir; 20 this is almost seven years ago.

Q. You do know there were others there besides Bagnole, but you cannot tell who they were? A. As I said before, I have absolutely no recollection at all of the circumstances surrounding it, except that I know that Bagnole was there to acknowledge the deed, and also that I drew up the bond and mortgage.

Q. Do you remember the bond and mortgage was drawn to Schechner, Berger, William A. Baker and Daniel Crecca? A. I remember that. 30

Q. Does that refresh your memory as to who was present? A. No; I have been trying very hard to recollect what occurred.

Q. You couldn't find any papers in your office? A. No; I found no papers that would help me at all.

CROSS-EXAMINATION by Mr. Belfatto:

40 Q. Do you remember whether or not you pre-

Joseph Bloom—Cross

sented this bond and mortgage to the register's office for registering or recording; did you register this bond and mortgage? A. Personally?

Q. Yes. A. I don't think I did.

Q. To whom did you give the deed after it was executed? A. I don't recall at all.

Q. Do you mean to say that Mr. Montefusco called at your office at this particular time? A. He was there once at my office; that was the first and last time that I met him. 10

Q. How long ago was that? A. I cannot judge; it is quite a long while ago.

Q. Was it the same day the deed was drawn up or a year after? A. I don't recall.

Q. Try to recollect if Mr. Montefusco didn't call at your office. A. I wouldn't say that he was or wasn't; I know I met him once. 20

Mr. Peirce: Montefusco states under oath that he was there at the time these papers were executed.

Mr. Belfatto: No.

Court: He said he was present when the check was filled out; that Mr. Schechner filled up the check.

Q. Will you please state whether the words "9 November, 1908" is your handwriting? A. No, it is not. 30

Q. Do you know what became of the deed? A. No, I was under the impression and I think I gained the impression through looking through some papers that I had in my office, that the deed was in my possession, together with some agreement in a box that was marked "Berger and Schechner", and as I say, I made a very thorough search for that box in my office and 40

Joseph Bloom—Re-direct

have been unable to find it; I made a search as recently as yesterday.

Q. Did you call for the deed after it was recorded? A. No, I don't recall.

Q. In the register's office it appears that you took the deed. A. If that is in the register's office I must have gone for it.

Court: The register's office would show who took it away.

RE-DIRECT, by Mr. Roessler:

Q. Who wrote the figure "8" after "190"? A. It does look like my "8" but I cannot say that it is.

Q. Mr. Montefusco says that that check was filled out in his presence in Mr. Schechner's office by Schechner; you have already testified that you wrote the check; the fact that Mr. Montefusco says that that check was written in his presence and that he thinks Schechner wrote it, will that refresh your memory as to whether this gentleman was present at the time or not? A. That check was undoubtedly drawn by me; that is my handwriting, absolutely.

Q. And Mr. Motefusco says that he was present when that check was drawn. A. The conclusion is that it was drawn—

Court: That is a matter of argument.

Q. Look at the stamp certified; what date was it certified? A. November 9, 1908.

Q. Will you tell us first where your office was with reference to Mr. Schechner's in 1908? A. It was adjoining in the same suite of offices.

Q. Mr. Schechner, you and I all had offices in one big room which was partitioned off? A. Yes.

Sabino Montefusco—Direct

Q. There was a glass partition running through the center of the room? A. Yes.

Q. And you had a little coup in one corner and I in the other and Mr. Schechner in the ante-room? A. That is correct.

Q. So that we were all in the same office practically? A. Yes. 10

RE-CROSS by Mr. Belfatto:

Q. Is it possible that you might have written that check in your private room; wasn't that check taken to your room or office, which was adjacent to Mr. Schechner's office, and there filled out the check and wrote in the "Charles Bagnole" and "One hundred", isn't that possible? A. That is possible. 20

Q. Without anybody being present? A. That is possible. These offices are so arranged that they were all one—one big room and a partition running across that divided the room into two, and then there was another partition running lengthwise which partitioned Mr. Roessler's room from my room: Mr. Schechner had his room on the outside, which was the anteroom, so that it was practically all one.

Q. You are not positive as to who was present? A. No. 30

Mr. Peirce: I would like to ask Mr. Montefusco a question or two I overlooked.

SABINO MONTEFUSCO, re-called for further cross-examination by Mr. Peirce:

Q. How long have you been in this country? A. About twenty-two years. 40

Sabino Montefusco—Direct

- Q. How old a man are you? A. About 45.
- Q. What is your business? A. Wine business.
- Q. You are in business for yourself? A. Yes.
- Q. How long have you been in business for yourself? A. About five or six years.
- 10 Q. Where is your store? A. Up in Seventh Avenue.
- Q. How many people do you employ in your store? A. One, myself.
- Q. Do you import wines? A. No, I just sell the California wine.
- Q. What was your business before that? A. Agent for Mr. Mastrangelo of New York.
- Q. Were they in the wine business? A. No.
- Q. How long were you with them as salesman?
- 20 A. About ten years.
- Q. Did you travel over the country selling wine? A. No, I sold macaroni and cheese.
- Q. You traveled for ten years? A. Yes.
- Q. What did you do before that? A. A shoemaker.
- Q. Didn't you take orders for the New York firm from time to time, the house you worked for in New York? A. Yes.
- Q. Did you ever write them any letters? A.
- 30 Sometimes.
- Q. I am talking about the time you were traveling as salesman; didn't you write your house some letters? A. I cannot remember.
- Q. Will you say you did not? Did you not write to your house in New York in English? A. Sometimes.
- 40 Q. You did write letters occasionally in English? A. No, never.

Sabino Montefusco—Direct

Q. Haven't you written in the matter of your wine house in the last year letters in English? A. No, I cannot read English.

Q. But you can write English? A. No, sir; if I cannot read, how can I write?

Q. You can write your name? A. Yes. 10

Q. Did you ever go to school in this country? A. No, I got to support my family.

Q. You went to school in the old country? A. Yes.

Q. What schooling did you have in the old country? A. Fourth class.

Q. Did you go to a Parochial school? A. No.

Q. What school did you go to? A. To the city school.

Q. That is a very free running hand; now write the "9th of November" on there. (Witness does so) Now write "Newark N. J." on there. (Witness does so) Write "Italy" on there. (Witness does so) Write Charles Bagnole's name on there, "C-h-a-r-l-e-s". (Witness does so) 20

Q. What bank is that? A. West side Trust Company.

Q. You are doing pretty good for a man that cannot read and write. What is the first word there? A. Newark, N. J. 30

Q. What is the rest of it? A. I don't know.

Q. The 9th of November you put there, didn't you? A. Yes.

Q. What is the date? A. Nineteen-eight.

Q. What is the rest of it? A. West Side Trust Company.

Q. "Pay to the"—? A. I cannot write or read, no. 40

Sabino Montefusco—Direct

Q. What does "t-h-e" spell? A. I can read Italian.

Q. Write down there one hundred dollars. (Witness does so)

10 Q. How much money is that drawn for? A. One hundred dollars.

Q. Now, write it down there; write one hundred. (Witness does so)

Q. Write Mr. Belfatto's full name on there. (Witness does so)

Q. Write "United States of America". (Witness does so)

Q. What is this paper marked Exhibit C 4? A. This is the check.

20 Q. To whom is it drawn? A. I think Mr. Schechner, because he—

Q. Tell me whose name is on there? A. Charles Bagnole.

Q. There isn't any "Schechner" about that? A. Mr. Schechner got his check in his hands.

Q. For how much money is it drawn? A. One hundred dollars.

Q. Who signed it? A. I signed it.

Q. You signed that where? A. In Mr. Schechner's office.

30 Q. Who was present? A. Mr. Schechner, Mr. Bagnole, Mr. Montefusco and Antonio DiGeronimo.

Q. And Bloom? A. I remember now Mr. Schechner took that check and went in Mr. Bloom's office, because nobody was there; I never saw Mr. Bloom; I don't know him.

Q. You remember that Mr. Schechner took this check into the private office of Bloom and that it was drawn in there and then it was brought out?

40 A. I think so.

Sabino Montefusco—Direct

Q. Haven't you testified already that you saw Mr. Schechner draw that check? A. No, sir. He go with the check and take his pen in hand, Mr. Schechner did, and I never saw anyone there, because there was me, Mr. DiGeronimo and Mr. Bagnole and Mr. Schechner; he took the check and then he go in his office and wrote it. 10

Q. You are a property owner? A. Yes.

Q. You bought and sold property? A. Yes.

Q. And extensively? A. Yes.

Mr. Belfatto: Do you understand the question? He never bought a property in his life.

A. Witness: I never did buy property.

Q. Did you ever own any other property except the Seventh Avenue property? A. No, sir.

Q. You swear to that? A. Yes. 20

Q. Didn't you own a property on Hay Street? A. No.

Q. Did your wife own it? A. No, that is my father-in-law.

Q. You managed it for your father-in-law? A. Never.

Q. Does your wife own any property? A. No.

Q. Have you any property in your own name? A. No.

Q. You never owned any real estate except the Seventh Avenue property? A. That is all; I made an agreement to buy property in Millburn. 30

Q. I show you a paper marked Exhibit C-1, what is that at the top there? A. Mortgage.

Q. What is this Exhibit C-2? A. Bond.

Q. Who gave that bond? A. Charles Bagnole.

Q. To whom was it given? A. Samuel Schechner, Samuel Berger and William A. Baker and Daniel Crecca. 40

Sabino Montefusco—Re-direct

Q. What is the date there? A. October 17, 1908.

Q. What is Exhibit C-3? A. Assignment of a mortgage.

Q. Spell out this word "Assignment." A. (Witness does so.)

10 Q. Suppose you spell "mortgage" out. A. (Witness does so.)

RE-DIRECT by Mr. Belfatto:

Q. Do you know the Italian alphabet? A. Yes.

Q. Is there any difference between the Italian alphabet and the American alphabet? A. A little bit.

Q. Write the Italian alphabet. A. (Witness does so).

20 Q. How do you write the word "Samuel"? A. (Witness writes) "Samuele."

Q. How do you write the word "Daniel"? A. (Witness writes) "Daniele."

Q. By putting in "e" after "Daniel"? A. Yes.

Q. Did you ever buy any property in your life beside this property on Mt. Prospect Avenue? A. No, after I have an agreement.

Q. You never bought or sold any property? A. No, sir.

30 Q. When you started "November 9, 1908," why didn't you finish it? A. Because Mr. Schechner told me, "I write for you, Mr. Montefusco."

Q. Did you tell him that you could not write? A. Yes, I told him I couldn't write.

Q. To whom did you intend to give that check? A. To Mr. Schechner.

40 Q. When did you find out that the words, "Charles Bagnole" had been inserted on the check? A. The time when we have the agreement.

Sabino Montefusco—Re-direct

Q. What did you say? A. I don't want to buy any more, because I don't want anything to do with Mr. Bagnole, and Mr. Schechner said, "What do you care for Mr. Bagnole; I am the owner; I watch after your interest."

Q. That is the truth? A. Yes. 10

Q. Did you see Mr. Joseph Bloom? A. No, sir; I didn't see him there.

Q. At any time? A. No.

By the Court: Q. You never saw him at all? A. I never saw him.

By the Court: Q. Not until this morning? A. I saw him this morning.

By the Court: Q. Is this the first time you saw him? A. This is the first time.

Q. Didn't you say you saw Mr. Bloom? 20

Mr. Roessler: I object.

A. When I go there for the agreement or deed, then I was one time up there to Mr. Schechner, because I don't know Mr. Bloom; then Mr. Schechner had the office and I don't know if it was Mr. Bloom or who it was, and he gave me a copy; Mr. Bloom never talked with me; Mr. Schechner gave me the deed and I don't remember if I see Mr. Bloom.

Q. You saw him at the time Mr. Schechner 30 handed you the certified copy of the deed? A. Yes, I was in Mr. Schechner's office—I see Mr. Bloom was there—and he went in Mr. Bloom's office; that was when I got the copy.

Q. To whom did you give the copy? A. \$3.50 I gave to Mr. Schechner in his hand; Mr. Bloom never got a cent off me.

Joseph B. Bloom—Direct

RE-CROSS by Mr. Pierce:

Q. Don't you know that Mr. Bloom was not in that office at the time you got the certified copy of the deed which was offered in evidence? A. I go to Mr. Schechner's office.

10 Q. Don't you know that Mr. Bloom was not in Mr. Schechner's office at the time you got the certified copy? A. No, he was in his office next door; he never was in his office, because there are two doors, one this side and one the other side.

Q. Will you write "DiGeronimo Bros. and Montefusco" on that paper? A. (Witness does so.)

Q. Won't you write "Montefusco" a little slower and plainer? A. (Witness does so).

20

JOSEPH B. BLOOM, re-called for further cross-examination by Mr. Peirce:

Q. Did you have an office with Schechner on November 5, 1909, that is, including November 10, 1908, or had you moved upstairs? A. I think I had moved by that time in 1909.

30 By Mr. Belfatta: Q. Are you sure about that? A. I think May 1, 1909, I moved upstairs.

Q. Have you a lease of the offices which you occupied at that time? A. Yes, I had a written lease.

Q. Could you produce it? A. I haven't the lease now.

Q. Who was your landlord? A. Union Building Company.

Samuel Schechner—Direct

SAMUEL SCHECHNER, sworn:

Direct-examination by Mr. Roessler:

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

Q. Where is your office? A. Union Building. 10

Q. How long have you had your office in the Union Building? A. About nineteen years.

Q. In the same building? A. Yes, sir.

Q. How long have you been in the real estate business? A. About fourteen or fifteen years.

Q. Give us a better idea as to the nature of your business; what did you do? Are you an appraiser? A. I do appraising for various building and loans and institutions.

Q. Whom do you appraise for? A. For the city; I appraised only a few months ago; I have appraised certain property in Prince Street. 20

Q. Who else have you done appraising for? A. The United Security Life Insurance Company of Philadelphia.

Q. What local institutions have you done appraising for? A. Various times I have been consulted by various institutions; I have done quite some work for the Fidelity; I have certain opinions given to the Howard Savings Institution. 30

Q. What other banks? A. Various banks; sometimes—I do all the work for the National Newark Banking Company, also for various Building and Loans; I can give you the names.

Q. Have you done any appraising for any other banks in Newark? A. Newark Trust Company.

Q. Any other Trust Company? A. That is all. I also do quite some work for the Bankruptcy Court; I am called in. 40

Samuel Schechner—Direct

- Q. Do you consider yourself an expert? A. Yes.
- Q. Do you know Sabino Montefusco? A. Yes.
- Q. And Samuel Berger? A. Yes.
- Q. And Daniel Crecca? A. Yes.
- Q. Charles Bagnole? A. Yes.
- 10 Q. And Joseph B. Bloom? A. Yes.
- Q. Do you know this property on Seventh Avenue, corner of Mt. Prospect Avenue? A. Yes.
- Q. At the time this property was purchased you and Samuel Berger were partners, under the trade name of Berger & Schechner? A. Yes.
- Q. And at that time did you have business dealings with Daniel Crecca? A. Yes.
- Q. What were your relations with Daniel Crecca? A. He was a broker in our office, he used
- 20 to bring in property; sometimes we bought together and sometimes we sold on commission.
- Q. And you have been doing business with him ever since? A. Yes.
- Q. You say you know this property on Seventh Avenue and Mt. Prospect Avenue? A. Yes.
- Q. From whom was that purchased? A. Some Irish lady, Mrs. Foy.
- Q. In whose name was the property bought? A. In the name of Daniel Crecca and Samuel Berger.
- 30 Q. Were you interested in the property? A. Yes.
- Q. But your name did not appear in the deed? A. No, sir.
- Q. Was that property sold? A. Yes, sir.
- Q. To whom? A. Charles Bagnole.
- Q. Do you recollect when that property was sold?
- Mr. Belfatto: Produce the deed.
- 40 Q. Have you got the deed? A. No, sir.

Samuel Schechner—Direct

Q. Do you know when it was sold to you? A. I think it was sold October 17, 1907.

Q. What sort of a deal was that with Bagnole?
A. Mr. Bagnole called at the office.

Q. What were the terms of sale? A. I think it was \$12,000, about \$12,000 or \$12,200, and Mr. Bagnole had no cash; he said, "Gentlemen, I would like to buy that property, but I have no cash. I will give you some sort of security." After several discussion, we agreed on \$12,000 or \$12,200 on the figures, and there was a mortgage to the Building and Loan, and \$1,200 second mortgage held by Mr. Richards—he is a man who takes mortgages—and for the difference of the purchase price Mr. Richards took a second mortgage. 10

Q. Did he examine the mortgage? A. No, I did it myself. 20

Q. And the second mortgage was for \$1,200? A. Yes. For the difference Mr. Bagnole gave us back a third mortgage of \$1,500, and the only equity which he gave us for our mortgage was—to secure our \$1,500 he gave us security on a half interest he had on Cutler Street.

Q. And that mortgage provided what? A. It provided—our understanding was that if he pays up with the Building and Loan, and at any time he pays \$200, we release the tract on Cutler Street. 30

Court: You had better rely on the mortgage; it is here. The terms of it, the mortgage itself shows just what that transaction is.

Q. You knew Charles Bagnole at that time? A. Yes.

Q. Had you had any dealings with him prior to that date? A. Yes, several times. 40

Samuel Schechner—Direct

Q. You say the only security that you had in addition to this property on Seventh Avenue was this property on Cutler Street? A. Yes.

10 Q. What did you know about Bagnole's financial responsibility at that time; did you know whether he owned any other property? A. Yes, I knew he owned quite some.

Mr. Belfatto: Objected to.

Court: No one has attacked Bagnole yet.

Q. Who had charge of the legal affairs in connection with these transactions? A. You used to have a Mr. Bloom; if you were out I used to give it to Mr. Bloom.

Q. Did Mr. Bloom have charge of this? A. Yes.

Q. Did he prepare the deed? A. Yes.

20 Q. Did he prepare the deed? A. Yes.

Q. Did he prepare the bond and mortgage? A. Yes.

Q. Was Bagnole there when the deed and the mortgage to Bagnole were executed? A. Absolutely, at the time the deal was closed.

Q. Do you recollect subsequently seeing Mr. Montefusco? A. Yes.

Q. Did he come to your office? A. Yes.

Q. Whom with? A. Charles Bagnole.

30 Q. For what purpose? A. Mr. Montefusco called at the office with Mr. Bagnole; he said, "Mr. Schechner, I purchase this property of Mr. Bagnole and I want you to explain me all what he said." I explained the first mortgage, second and third mortgage, and everything was prepared right there and then.

Q. Was he satisfied? A. Yes.

40 Q. Mr. Montefusco says an agreement was drawn? A. No agreement; the terms was all

Sabino Montefusco—Direct

agreed; I simply drew up a little memorandum of the transaction and went right in to Mr. Bloom to draw the deed, as everything was done at the same time practically.

Q. Did that agreement contain the terms of sale? A. Yes, sir.

Q. Did it show these different mortgages? A. Yes, sir. 10

Q. What became of that memorandum? A. I gave it to Mr. Montefusco and he took a copy of it.

Q. Was it signed by the parties? A. It was only signed by Mr.—I know it was signed by someone.

Q. And the deed was given to Mr. Montefusco right then and there? A. Yes.

By the Court: Q. Memorandum, deed and everything was done right there and then? A. They come in and made a memorandum; whether it elapsed a couple of hours, I don't remember; the deed was drawn up and he got a hundred dollars right there. 20

Q. Are you sure that it was done that same day? A. Not absolutely positive; I know it was practically within a very short time that day.

Q. You say Mr. Bloom prepared the deed to Montefusco? A. Yes, sir.

Q. Who was present in the office? A. Montefusco, Mr. DiGeronimo, Mr. Bagnole and myself. 30

Q. Was the deed read by Mr. Bloom? A. Yes, sir.

Q. In whose presence? A. Mr. Montefusco's and Mr. Di Geronimo's and Mr. Bagnole's and myself.

Q. The certified copy of the deed recites that 40

Samuel Schechner—Direct

the conveyance was made, but you say that Mr. Bloom did read the deed to the parties?

Court: Were you there?

Witness: Yes.

Q. Who else was there when the deed was read?

10 A. Mr. Montefusco, Mr. DiGeronimo and Mr. Bagnole.

Q. I show you this check which has been marked C-4; do you recall the circumstances under which that check was drawn? A. This check was drawn at the same time when this transaction was put through.

Q. Mr. Montefusco says that you wrote that check? A. I never did.

20 Q. In whose handwriting is it? A. Mr. Joseph B. Bloom's.

Q. Do you recall how he happened to draw the check? A. This is my usual custom; when the transaction is closed, the attorney takes care of the transaction.

30 Q. Was Mr. Bloom there all the time while these negotiations were going on? A. He was there partly when they called at my office; it took about fifteen or twenty minutes until they agreed, and then called in Mr. Bloom and said, "Prepare the papers," and Mr. Bloom drew the check and it all took place.

Q. Did he draw the deed? A. Yes.

Q. Who gave the instructions to Mr. Bloom to prepare the deed? A. Everybody; they come in and said, "Mr. Bloom, draw up \$100 to Mr. Bagnole, and this is the consideration for the transaction," and we closed it.

40 Q. As to the form of the deed, the recitals in the deed, who gave him the instructions? A. We told

Samuel Schechner—Direct

him what mortgages were there and he drew the deed.

Q. Was Montefusco there? A. Yes.

Q. Are you sure of that? A. Absolutely.

Q. Was DiGeronimo there? A. Yes, sir.

Q. Mr. Montefusco says that he called at your 10
office subsequently for the deed; what have you to
say with reference to that? A. He called at my
office and asked for the deed; I went in to see Mr.
Bloom and also asked you several times for the
deed, and the deed was—it was this way; the deed
was given to me by Mr. Roessler or Mr. Bloom,
one of the two, and always it is a rule, the moment
I get it, we send it to the parties, and my best
recollection is that I sent this original deed over
to the Seventh Avenue address; it must have been 20
about four or five weeks after the transaction was
closed. About six months later Mr. Montefusco
came and saw me and said he hasn't the deed; I
said, "I haven't got the deed, it must have been
sent to you; we always send them, because we
have no use for them." I consulted either Mr.
Roessler or Mr. Bloom, and he said, "If you can-
not find it, look for it," and they suggested we
should write up for a certified copy and get it for
him, and he brought down whatever amount it 30
was, whether two or three dollars, and they got
for him another deed and he got it.

Q. Is that the certified copy of the deed? (Wit-
ness shown deed). A. I cannot tell; I suppose so.

Q. Mr. Montefusco says that he called at your
office almost every day for a whole year trying to
get that deed? A. He called several times and I
said I was busy, and I said I would have to speak
to you. He first called at my office about six or 40

Samuel Schechner—Direct

seven months after the transaction was closed, and then it took about a month or so until I got it. Pretty near the end of the year he called at the office.

10 Q. Mr. Montefusco charges and it has been testified to that Charles Bagnole acted as your agent in this transaction for the purpose of defrauding Montefusco.

Mr. Belfatto: Objected to.

Q. What have you to say to that? A. It is absolutely not true.

Q. Was Charles Bagnole ever in your employ? A. Never.

20 Q. Was there any secret arrangement between you and Charles Bagnole and Daniel Crecca and Samuel Berger, or any or either of them, to defraud Montefusco with reference to the third mortgage of \$1,500? A. Never; he never questioned the mortgage until about a year.

Q. Was there any secret arrangement?

Mr. Peirce: He never questioned it until a year ago.

30 A. He called at my office and said to me, "Schechner, how about the taxes of 1908, and I took possession late in the year and it is not paid." I said, "Montefusco, this is all your arrangement with Mr. Bagnole and for this he gave you 400 back shares which was reduced on the first mortgage."

Q. The value of the Building and Loan Association stock? A. Yes, I said—about a year ago he started in when Mr. Baker asked for his money.

40 Q. When did Montefusco first approach you with reference to this mortgage and question the validity of it? A. He never before did.

Samuel Schechner—Direct

Q. What happened about a year ago? A. When the attorney, Mr. Gottlieb, came in, I explained it to Mr. Gottlieb, and he said the explanation is satisfactory.

Q. When did Baker first make demands upon Montefusco? A. He has always made demands upon me. 10

Objected to.

Witness: I do know.

Mr. Peirce: How do you know.

Mr. Belfatto: I object.

Court: If he says Mr. Baker told him so, I will strike it out.

Q. How? A. Mr. Baker called at my office; he used to call me on the 'phone, and said, "Schechner—

Mr. Peirce: Don't tell what Mr. Baker said. 20

Q. After Mr. Baker saw you did you see Montefusco? A. Yes.

Q. What did you say to him? A. I said, "Mr. Baker wants his interest."

Q. When was that? A. This was the latter part of 1912 or 1913; every time, at various times.

Q. What did Montefusco say to you? A. Mr. Montefusco said to me, he said, "Schechner, I am a little short, have patience; I am paying the Building and Loan, and that mortgage is getting better every day; tell Mr. Baker to have patience," and I used to tell Mr. Baker the same thing, "Have patience; times are a little hard, and by reducing the Building and Loan your mortgage is getting better every day, so what difference does it make?" 30

Q. Did either of these defendants ever give you \$45 to pay Mr. Baker's interest? A. Yes, sir.

Mr. Belfatto: Objected to. 40

Samuel Schechner—Direct

Q. Did you pay that to Mr. Baker? A. Yes.

Q. I show you the letter dated September 23, 1912, on the letterhead of Samuel Schechner, and ask you if that is your signature? A. Yes.

Q. Did you send that to Mr. Baker? A. Yes.

10 Q. With \$45? A. Yes.

Q. Where did you get it? A. Mr. Montefusco called at my office and said, "Please take this on account and please tell Mr. Baker not to bother me. Let him accept this \$45;" and I delivered the same. "I cannot spare any more."

Q. Who gave you the \$45? A. Mr. Montefusco.

Q. And I understand that you then sent the \$45 to Mr. Baker? A. Yes, sir.

20 Q. What, if anything, did Mr. Montefusco at that time ask you to request Mr. Baker; did he ask for delay in the matter of the mortgage? A. He said—all the time the cry was he has got to pay \$95 Building and Loan and I should ask Baker to have patience, that his mortgage is getting better every day.

30 Q. Read that letter to yourself; does that refresh your mind? A. Yes; now I remember it; in 1912 he was in arrears of interest and Mr. Baker asked me to see Mr. Montefusco. Mr. Montefusco called at my office with Mr. Cassese; Mr. Cassese said, "Schechner, tell Baker to have a little patience; I am going to Italy and I will get a deed from him."

40 Q. A deed from whom? A. Probably Mr. DiGeronimo, and "I can pay you up all interest, because Mr. Montefusco cannot pay himself, because he has only a half share;" then I wrote this letter and explained to him and Mr. Baker said, "I will have a little patience."

Samuel Schechner—Direct

Q. You wrote to Baker the letter of September 23, 1912? A. Yes, sir.

Mr. Peirce: The letter is offered in evidence.

Mr. Belfatto: I object.

Court: Where did you get that letter from? 10

Mr. Peirce: I produced it a moment ago; it has been in my possession ever since Mr. Baker gave it to me.

Court: I will admit that letter only as to its date—for that purpose, and that purpose only, at present; I haven't seen the letter, but it refers to the date when this transaction as to the payment of the \$45 in this case was made by this man to Baker, and for that purpose only I admit it; I do not think the transaction between Mr. Baker and this witness not brought to the attention of Mr. Montefusco is permissible as to anything that may be in the letter beyond the fact, so far as is legitimate, to couple it up with the payment; that I think he has a right to do, to show the time when he made that payment, and also to show, possibly, that he notified Mr. Baker on that date and sent the money and had a conversation with your client. 20 30

Letter marked Exhibit C-5 for identification.

Mr. Peirce: There is endorsed on Exhibit C-2 payments of interest as follows:

“Date paid.

April 24/09 received \$45, six months' interest due April 17, 1909. 40

Samuel Schechner—Direct

- Nov. 10/09 received \$45, six months' interest due October 17, 1909.
- May 20/10 received \$45, six months' interest due April 17, 1910.
- Dec. 3/10 received \$45, six months' interest due October 17, 1910.
- 10 June 3/11 received \$45, six months' interest due April 17, 1911.
- Sep. 23/12 received \$45, six months' interest due October 17, 1911."

Q. Did you personally pay any of that, except the payment of \$45 shown in your letter of September 23, which is marked Exhibit C-5 for identification? A. I never did, except this is the only occasion.

20 Q. Do you know who made the other payments set out there? A. I don't know anything about it.

Q. Can you tell me whether or not Montefusco at the time the papers were drawn in Bloom's office produced a check on the West Side Trust Company which was filled up? A. Yes, he had a little check book in his pocket and pulled it out.

Q. Did Montefusco see you about buying the property? A. No, he came with Mr. Bagnole.

30 Q. William A. Baker's name appears in the mortgage; why was that? A. He was a partner in the property?

Q. How did he have that interest? A. This property was bought; I was interested with Mr. Baker, even today, we have a realty company, there is some money laying in the bank yet; this property was bought by Berger and Schechner, Mr. Daniel Crecca and William A. Baker, four part-
40 ners, and then when the property was sold we

Samuel Schechner—Direct

took a mortgage, four of us together, and we assigned the interest together and he paid us; Berger and Schechner got \$700.

Q. You assigned the mortgage to Mr. Baker?

A. Yes.

Q. By assignment marked Exhibit C-3 to Mr. Baker? A. Yes. 10

Q. That is your signature, together with Mr. Berger and Mr. Crecca, on Exhibit C-3? A. Yes.

Q. You say Mr. Baker paid you the full amount of that mortgage? A. Not the full amount; Berger and Schechner got \$700; Mr. Crecca got \$350. He got it by note, and \$350 was a share of Mr. Baker's and \$100 we allowed for the accommodation; he advanced the money before it was matured. 20

Q. Mr. Baker was not present at the time the papers were passed in Bloom's office? A. No, sir.

Q. Did he know anything about the transaction? A. No, he left it entirely to me, all the buying and everything he always left to me.

Q. Mr. Baker had money invested with you? A. All the time.

Q. And trusted to your judgment in buying and selling real estate? A. Absolutely.

Q. He trusted in your honor and honesty? A. 30
All the time; I had thousands of dollars of Mr. Baker's in my hands.

Q. You never had any trouble with Mr. Baker? A. Never; in fact, in 1907 I needed money and he let me have several thousand dollars.

Q. There is some statement that this mortgage was a fake mortgage, a mortgage that was fraudulent; what have you to say to that? A. It is 40

Samuel Schechner—Direct

absolutely a lie, it is not true at all; my business is run always on the level and straight.

Q. You said that Montefusco did not complain of the deal whatever until Mr. Baker started to press for the money? A. Until Mr. Baker started to press for the money.

10 Q. Did he ask you at any other time to intercede with Mr. Baker? A. He did and I interceded for him, and he always considered the Building and Loan, and Mr. Baker said, "See if they pay promptly; watch it," and I followed it up.

Q. Did Mr. Montefusco have a conversation with you at any time, in which he offered if you would pay certain taxes, that he would square up the interest? A. He always complained about the one year's taxes.

20 Q. What year? A. 1908, when he took title in November, and he claimed that the year wasn't paid, and I explained several times.

Mr. Belfatto: When was it?

Witness: He met me right along; pretty near every time he met me he spoke about the taxes, and I said, "Montefusco, you assumed all the arrears; there was about sity odd dollars in arrears on the Building and Loan and also the taxes, and you got \$400 credit on the first mortgage," but he never questioned the mortgage, and I said, "You didn't buy it from me, you bought it from Bagnole, and all I did, you knew me and ask me if it was all right."

30 Q. Did DiGeronimo see you about this? A. No.

Q. Did Mr. Montefusco tell you about paying Mr. Richard's interest? A. Mr. Richards was after me right along, and always called him up

40

Samuel Schechner—Direct

to pay Mr. Richard's interest. I met him yesterday; he didn't pay him last August interest.

Q. How about the other interests paid to Mr. Baker that are endorsed on the bond, as to whether Montefusco said anything to you about them? A. I used to remind him why he didn't pay it, and he always complained and said, "Have patience." 10

By the Court: Q. Did you have any conversation with Montefusco where he said or mentioned the fact that he had paid other interest to Baker, except the \$45 which he gave you? A. Yes. I knew that he paid; every time he paid, he said, "I paid a few dollars." Several times he told me he paid.

Q. Who said that? A. And Mr. Baker used to tell me, and said, "Schechner, he paid me so much." He always talked about the mortgage because he was always in arrears. 20

Court: Is there any way in this case for counsel to agree on the chain of title of this property, not the Cutler Street property, as to who made the conveyance to Schechner and others.

Mr. Belfatto: On October 29, 1907, Patrick Foy and Elizabeth, his wife, made warranty deed to Samuel Berger and Daniel Crecca—two tracts in Newark, being this particular property Seventh Avenue and Mt. Prospect Avenue, for the sum of one dollar and other good and valuable consideration; at this time there were no mortgages. Then on October 29, the same day, Daniel Crecca and Mary, his wife, and Samuel Berger and Fannie, his wife, mortgages the premises to the Mutual 30 40

Samuel Schechner—Direct

Building and Loan Association for \$9500, dated November 7, 1907, covering the first and second tract on Seventh Avenue and Mt. Prospect Avenue.

10 It is agreed between counsel that none of the mortgages in question were on the property at the time of the conveyance from Foy to Berger and Crecca.

20 A mortgage was executed by Daniel Crecca and Mary, his wife, and Samuel Berger and Fannie his wife, to Gustave A. Richards, bearing date February 13, 1908, for \$1200, on the two tracts above mentioned, on the first and second tract. This mortgage was payable as follows: \$200 on August 13, 1908; \$200 on the 13th of February and August of each year until said principal is paid.

Mr. Peirce: We agree to that.

30 Mr. Belfatto: On October 17, 1908, Samuel Berger and Fannie, his wife, Daniel Crecca and Mary J., his wife, sold to Charles Bagnole, in consideration of one dollar, by deed of warranty, the two tracts above mentioned, the first and second, subject to mortgages aggregating \$10,700.

On October 17, 1908, Charles Bagnole mortgaged the first and second tracts which was contained in the deed to him, and also the third tract which appears in this mortgage and known as the Cutler Street property.

40 Q. Did you ever go to Mr. Baker's with Mr. Montefusco? A. I think I was there once or twice with him.

Samuel Schechner—Cross

Q. For what purpose? A. To ask for delay not to foreclose, to have patience with the interest.

Q. Montefusco was with you? A. Yes, sir.

Q. At the time that Montefusco called to see you as to getting the deed or a copy of the deed, did he at that time complain of the bargain in any fashion? A. No, never. This thing came up

a year ago, the first time Mr. Gottlieb came to the office; he wasn't the first man who spoke to me about it.

CROSS-EXAMINATION by Mr. Belfatto:

Q. You are a partner of Samuel Berger? A. I was in 1907.

Q. Was the partnership continued in 1908? A. It was dissolved around that time; I got the paper in the office.

Q. Was it 1908 or 1909? A. 1908.

Q. Before or after this particular transaction? A. It was after this transaction.

Q. And was Daniel Crecca also a partner of yours? A. No partner; he is only at times; we buy properties together.

Q. You do business together? A. Yes, even today.

Q. For how long? A. With Mr. Crecca for about ten years.

Q. Are you simply partners or members of a corporation? A. We are members of a company we have together.

Q. What is the name of the company? A. People's Investment and Realty Company.

Q. When was this company incorporated? A. About nine or ten years ago.

Samuel Schechner—Cross

10 Q. Who were the officers? A. There were ten or twelve members. And the organization was for the purpose of buying mortgages and real estate, and we did a little business in 1907. Then we withdrew our interest and we got our money and paid off the company and did business since that time.

Q. The purpose was to buy real estate and second mortgages? A. Yes.

Q. Is Mr. William A. Baker a member of that company? A. No.

Q. Was he connected with any corporation at that time in which you were also connected? A. Yes.

20 Q. What was the name of it, in 1908? A. I might have to look—yes, he was.

Q. Is he still connected with that company? A. Oh, yes; the company is not doing any business, but we have an account yet.

Q. You are not dissolved? A. No, Mr. Baker is still a member of that concern.

Q. Is Mr. Crecca a member? A. No.

Q. Mr. Berger? A. No, I have two interests.

Q. You have been doing business under two corporations? A. Yes; several of them.

30 Q. And in those two corporations Mr. Baker is interested in one and Samuel Berger— A. I was.

Q. And in another corporation Mr. Samuel Berger is interested? A. Yes.

Q. Is that latter company still in existence, in which Mr. Berger is interested? A. Not doing any business in four years.

Q. Don't you consider the interests of the two corporations the same?

40 Objected to.

Samuel Schechner—Cross

Q. Is there any interlocking relationship between those two corporations? A. No relation whatsoever now.

Q. Do you know the meaning of it? A. They have an interest in one another—no, absolutely not.

Q. When this property was purchased from Patrick Foy, do you know whether or not Samuel Berger or Daniel Crecca were acting for themselves or for the corporation in which they were shareholders or interested in it? A. For themselves. 10

Q. You have testified that Mr. Baker was interested in that particular transaction; will you tell us in what respect he was so interested? A. This property was purchased, and then I met Mr. Baker on the corner—"Do you want to come in?" and we took him in. 20

Q. You were also interested in this transaction? A. Yes.

Q. Will you tell me why your name and Mr. Baker's name did not appear as purchasers of the particular property? A. I had full confidence in my partners, and in many cases it is taken in my name, and sometimes, others.

Q. You have full confidence in them? A. It required too many women to bring to the office; we were all married. 30

Q. You had an undisclosed interest in this property—you and Mr. Baker? A. Yes.

Q. To what extent were you interested in that deal? A. One-quarter share.

Q. What was the value of the share?

Mr. Roessler: I object.

Court: It would be one-fourth of the whole share. 40

Samuel Schechner—Cross

Q. How much money did you pay to Patrick Foy for that deed?

Objected to. Objection sustained.

Q. When you trusted Berger and Crecca in purchasing that property, did you receive any documents in writing to that effect?

10 Objected to. Objection sustained.

Q. You say you have been in the Union Building for ten years? A. Nine or ten years; real estate fourteen years.

Q. And you appraised property? A. Yes, quite some.

Q. Have you ever received any fee for appraising property? A. That is all I do, for money.

Q. Will you state some of the instances where money has been paid to you? A. I got it from 20 various concerns—United Security Life Insurance Company, I got various amounts, sometimes \$10, sometimes \$5; I got as high as \$50 for a case; I received from Mr. Berry \$50; Mr. Leo Stein gave us the check—some party in New York—I think his name is Holzman.

Q. Have you ever filed a certificate as a real estate broker? Mention has been made that you have been acting for the Howard Savings Bank.

30 A. This is a secret between myself and I cannot give out a secret.

Q. You say you knew Mr. Montefusco at the time he came to your office with Charles Bagnole? A. I knew him at least ten or twelve years.

Q. You knew him before that time? A. Four or five years more than that; I lived in the neighborhood; I used to meet him—everybody knows me on Fourteenth Avenue, he lived on 40 Hayes Street near Fourteenth Avenue.

Samuel Schechner—Cross

Q. Did you ever call at his office? A. We were friendly all the time; he calls me by the first name, "Sam" all the time, as long as I can remember.

Q. You say when you sold the property to Charles Bagnole—did you act as an intermediary in conducting this transaction from Samuel Berger and Daniel Crecca to Charles Bagnole? A. I was the owner at that time when I sold to him. 10

Q. A secret owner? A. I am always above-board.

Q. The title was not in your name? A. Because I didn't want to bring my wife down.

Q. By secret arrangement you were a partner? A. I trust my partner until I find him different.

Q. You conducted the sale yourself? A. Yes. 20

Q. Without Mr. Berger being there and without Mr. Daniel Crecca being there? A. I consulted Mr. Baker; he said, "Sam, go ahead and do it."

Q. You knew Charles Bagnole some time? A. Yes, I know him as long as I am in Newark.

Q. You say you knew the financial condition of Mr. Charles Bagnole? A. I considered him a pretty good man; he had quite some real estate.

Q. He was trustworthy? A. At that time I never found him wrong as far as my dealings went. 30

Q. Did you ever loan him any money? A. Yes.

Q. How much?

Objected to. Objection sustained.

Q. In your estimation Charles Bagnole was a solvent debtor? A. Absolutely.

Q. And that is why you accepted his bond and mortgage covering the property? A. Yes. 40

Samuel Schechner—Cross

Q. Why did you require from him the additional security consisting of the property on Cutler Street, when you knew that he was perfectly responsible?

Mr. Peirce: Objected to.

10 Court: He may give his reason.

A. I am never too careful; I ask for more security, and that is all he can give, he said, and I took the best he had.

Q. You would not trust Charles Bagnole to the extent of \$200?

Objected to. Objection sustained.

Q. Did you make an agreement with Charles Bagnole for the sale of the property to him from Berger and Crecca? A. It was made by the attorneys, yes, sir.

20 Q. Who signed the agreement?

Mr. Roessler: I object.

A. The proper parties at that time, whether one signed or two signed.

Q. Did you sign that particular agreement? A. Maybe I did or didn't; everything was done regular by our attorneys.

30 Q. Was an agreement signed between you? William A. Baker, Samuel Berger and Daniel Crecca to Charles Bagnole, selling this particular property? A. I don't think Baker signed, because he left it all to me.

Q. You don't know whether an agreement was signed? A. We always do business proper.

Q. Was that agreement ever delivered to Charles Bagnole? A. Absolutely.

40 Q. How long after the execution of the agreement did you convey the property to Charles Bagnole? A. I don't know, I suppose shortly after, it didn't take long.

Samuel Schechner—Cross

Q. What was the consideration; did you mention any consideration in that agreement?

Objected to.

Court: I thought you were confining it to the transaction on the ninth of November; even this evidence I have admitted in view of that. You mean consideration as between Bagnole and these people to whom they sold? 10

Mr. Belfatto: Yes.

Court: Was there any agreement to sell?

Witness: Yes.

Court: How was it made, in writing?

Witness: It was not made in writing.

Court: Your transaction with Bagnole, you made that agreement with him in writing? 20

Mr. Peirce: We enter a formal objection to this line of testimony.

Court: Mr. Belfatto is bound by what the witness may swear to as to this.

Q. Who paid the interest on the \$1200 mortgage held by Gustave Richards?

Mr. Roessler: I object.

A. I don't remember.

Q. Did you ever pay any interest to Mr. Richards yourself? A. No, sir, I don't remember paying any, unless he brought down some money for me to send down. I don't remember; I never paid, as far as I was concerned. 30

Q. When was he in arrears? A. The last time before the mortgage was foreclosed. He said "Mr. Schechner, Montefusco is in arrears again; interest was due August last."

Q. You said that Mr. Bloom had charge of all your affairs? A. Mr. Roessler was actually my counsel; he was away. 40

Samuel Schechner—Cross

Q. Was Mr. Roessler and Mr. Bloom in your office at the time? A. We had adjoining offices.

Q. For how long had he been in your office? A. About three or four years before 1908.

10 Q. You say that there was a memorandum drawn up by you, I suppose? A. Yes.

Q. There was an agreement for the sale of this property by Montefusco and Anotnio DiGeronimo? A. Yes.

Q. And this agreement was signed by all parties interested, including yourself? A. I had nothing to do with it; I did it as a favor; I wanted to see the property—

Q. You didn't sign the agreement? A. No.

Q. But Bagnole signed it? A. Yes, absolutely.

20 Q. You are positive that Mr. Montefusco signed the agreement and also positive that the other gentleman, Antonio DiGeronimo, signed? A. Everything was done in a proper way.

Q. Do you remember that a check for \$100 was paid? A. Yes, sir.

Q. At the same time when this agreement was executed? A. I don't know whether it was the same time or day later; I know we had to look up some records to see if there was any mortgage.

30 Q. Was any money paid to bind the bargain at that time? A. I don't think anything was paid, more than \$100. That was to buy the property.

Q. Isn't that the custom, to receive something on account?

Objected to. Objection sustained.

Q. When was this \$100 paid? A. When the deed was signed.

40 Q. What became of the agreement? A. I turned them over, I had no interest in them.

Samuel Schechner—Cross

Q. To whom did you give them? A. To the proper parties.

Q. Who were they? A. Mr. Montefusco and his partner, Mr. Bagnole, the parties who were in the transaction.

Q. Did you give one agreement to the three parties? A. No, each got one; them two were one and Mr. Bagnole got one. 10

Q. Did this agreement contain any printed words? A. I wasn't supposed to take up my time to come up there, being he was a friend of mine, I said this, "Montefusco, the mortgages are there and Mr. Richards holds one," and explained them all; I didn't make any money.

Q. What did Montefusco say to you? A. He said, "You hold a mortgage for \$1500; you won't bother me if I don't come up just on the day with the payment;" I said, "Richards is a good man, you pay your Building and Loan and you will be all right." 20

Q. His mind was not in a normal state at that time, Mr. Montefusco, he was worried? A. He was worried.

Q. You say that Mr. Montefusco was talking about mortgages? A. Yes.

Q. At the time? A. Yes.

Q. First, second and third mortgage? A. Yes. 30

Q. Did you explain to him that there were three mortgages on the property? A. Yes.

Q. Didn't he say to you, "I don't want to have anything to do with Charles Bagnole"? A. He said, "Schechner, I come up to see you; I want to find out about the mortgages," and explained to him.

Q. Was Bagnole present? A. Yes. 40

Samuel Schechner—Cross

Q. Didn't he say to you in his presence, "I don't want to have anything to do with this man here," meaning Bagnole? A. No, he said, "As soon as I found you had the agreement, Sam, I came up to see you."

10 Q. Didn't you say, "Mr. Montefusco, trust me, I will take care of your interest"? A. I said, "You buy the property and the interest is paid to us, and that is all; you have nothing to do with Charles Bagnole."

Q. You stated that this was one transaction; the drawing of the agreement and drawing of the deed and payment of \$100 was one transaction, is that right? A. It is pretty near.

20 Q. The same date? A. I wouldn't say; maybe it was the following day. I know they drew up a little agreement and Mr. Bloom was to look up a little mortgages since Charles Bagnole had it.

Q. If the deed was executed at that time and \$100 was paid as a consideration by Montefusco and Cassese, where was the necessity of having an agreement also executed? A. They come in one time and had a memorandum what the transaction was, and then went in to Mr. Bloom and he went ahead and must have held the check one day until he looked matters over.

30 Q. You drew the agreement? A. Yes, and gave it to Mr. Bloom.

Q. On the ninth of November? A. Maybe it was the eighth.

Q. The check bears date the ninth? A. Yes.

Q. You testified that the agreement and deed were executed on the same day? A. It must have lapsed one day.

40 Q. Why did you have an agreement executed

Samuel Schechner—Cross

if there was a deed already for signature? A. I drew up a memorandum for Mr. Bloom to know how to fix it up. I understand a deed was drawn up and check was left for Mr. Bloom to investigate, and he finds the property as he states and turns over the check to Mr. Bagnole. I remember the check was certified the same day. 10

Q. Didn't Mr. Montefusco say to you that he wanted to hire a lawyer to look after his interest and make a search? A. No, sir, he told me, "Sam, is there a search necessary?" I said, "You can do anything you want; Mr. Bloom can look it up," but he didn't want to spend any money; he left it to my office and I took it to Mr. Bloom.

Q. And the deed was delivered the same day? A. Maybe the next day; the money wasn't turned over until he investigated the records; it took a couple of hours to find out. 20

Q. You told him he should hire a lawyer? A. I said he could do as he pleases; I explained the mortgages, and that is all against it, unless it happened since he took it; I understood Mr. Bloom held this for a little time.

Q. You were talking about mortgages; how did you know that Mr. Montefusco knew of the existence of these mortgages, unless you told him? A. He come in to my office. 30

Q. You told him how many mortgages there were? A. Yes.

Q. And he told you that he didn't want to buy from Charles Bagnole? A. He said he wanted to hear from me and I explained it to him.

Q. Didn't he tell you that you were the party with whom he wanted to deal and not Charles Bagnole? A. I said I was satisfied to tell him. 40

Samuel Schechner—Cross

10 Q. Did he say he would trust you and not Charles Bagnole? A. He said, "I come up about who hold the mortgage," and I explained it and went over the matter; I was surprised when Charles Bagnole only accepted \$100; I knew he was a business man and would take care of the property.

Q. Was there any necessity of drawing an agreement on the same day?

Objected to.

Q. You have testified that you have handled thousands of dollars belonging to Mr. Baker? A. Yes.

Q. And Mr. Baker paid a consideration for that mortgage to you? A. Absolutely.

20 Q. How much? A. Seven hundred dollars to Berger and Schechner.

Q. Did Crecca receive any money? A. Three hundred and fifty dollars in cash. Three hundred and fifty dollars was his own share and \$100 we allowed because he advanced the money.

Q. How did you receive the \$700 by check? A. Yes.

30 Q. And the \$300 to Berger? A. No, \$700 represented Berger and Schechner; we were a firm at that time.

Q. Three hundred and fifty dollars went to Daniel Crecca? A. He was entitled to \$350 himself, Mr. Baker, and \$400 we allowed for the discount of the mortgage.

Q. Did you execute any security for the payment of the money when it would become due? A. We guaranteed our share to Mr. Baker.

40 Q. What kind of guarantee did you give him? Mr. Roessler: It is in evidence.

Samuel Schechner—Direct

Q. Besides this paper is there any collateral security for the payment of the mortgage?

Paper dated November 19, 1908, produced and read.

Recess. 10

After recess.

A SAMUEL SCHECHNER, being duly sworn, was examined and testified as follows:

By Mr. Belfatto: Q. Mr. Schechner, who collected the rent from this property? 20

Mr. Roessler: I object.

The Court: What is the object?

Mr. Belfatto: To show the rental value of that property at that time.

The Court: You mean to show what the value of the property was?

Mr. Belfatto: The property was almost useless.

The Court: You know. Did you see it?

Mr. Belfatto: Sir?

The Court: You know, did you see it? 30

Mr. Belfatto: I want to show the consideration which was exchanged between the parties—

The Court: It isn't what the property was worth if he did not know a mortgage was on it.

(Argument here follows.)

Mr. Belfatto: I will withdraw the question. 40

Samuel Schechner—Direct

Q. After the execution of the deed to Montefusco, did Montefusco call at your office for the deed? A. No sir, oh, for the deed? Called at my office about six or seven months later.

Q. Not before? A. No, sir.

10 Q. Did he ever call at your office to get a copy of the agreement? A. No, sir. He never called until about a year ago with his attorney Mr. Gottlieb.

Q. And do you remember you said to Mr. Gottlieb that you could not find the mortgage because it was lost? A. I told him—I said, “I haven’t anything.” Everything was turned over to them when it was sold. I looked in my safe.

20 Q. Did you look into the safe? A. Only to satisfy Mr. Gottlieb. I said, “There are some old papers, but my recollection is, everything was turned over to the parties. I have no interest in it.”

Q. Well, now, if you have given the agreement to Montefusco—and the deed, why didn’t you say so at the time he called at your office with Mr. Gottlieb? A. I told him he got all that was coming. In fact, there was no such agreement, only the memorandum.

30 Q. Did you tell Mr. Gottlieb that the agreement and deed had been delivered to Montefusco? A. The memorandum and everything was taken care of right there. I told Mr. Gottlieb nothing was in my possession. Mr. Gottlieb wanted me to look in my safe.

Q. What did you look in the safe for? A. I looked in the safe to satisfy Mr. Gottlieb. I looked in the safe, I said, “The deed was made four or five weeks after the transaction was
40 closed.”

Samuel Schechner—Direct

Q. Didn't you tell him the deed had been lost?

A. No. How lost?

Q. Did you? A. No, sir, I didn't lose any papers.

Q. Did you? A. No, sir. The safe is there. I always give my papers by mail, to the proper parties by mail. I mail them direct. 10

Q. You say that after that Mr. Baker asked for the interest in 1912? A. All the time. Various times.

Q. In 1913? A. I don't know. Right along.

Q. Where would Mr. Baker demand the interest? Did you see Mr. Montefusco? A. Every time he called my attention and he called up Mr. Montefusco.

Q. Where did you see him? A. Sometimes Fourteenth Avenue, sometimes Seventh Avenue. 20

Q. Did you ask— A. Every time.

Q. What did he say? A. He pelad with me, I should have Baker—

Q. Do you remember a certain conversation between you and Montefusco at which he said, you don't worry about the fifteen hundred dollar mortgage, but only about who should pay the building loan?

The Court: That is what he has testified. 30

Mr. Belfatto: Mr. Montefusco has testified to that.

The Court: I think this witness said he told him two or three times if he would only keep on paying the mortgage—told Mr. Baker if he kept on paying the mortgage—his mortgage was getting better all the time.

Mr. Belfatto: Mr. Montefusco, not Mr. Baker. 40

Samuel Schechner—Direct

The Court: He can answer your question.

Mr. Roessler: He ought to fix the time, your Honor.

Mr. Belfatto: Yes, I will fix the time.

10 Q. Did you ever tell him? A. I told Mr. Montefusco if he paid the interest, and also told him various times he must pay the building loan to Mr. Richards. Mr. Richards was there just as much as Mr. Baker.

Q. Did you tell him not to worry about the mortgage? A. I told him Mr. Baker will never foreclose provided he pays the interest.

20 Q. When was the last conversation about this particular matter, when was the last time you spoke to him? A. Mr. Montefusco?

Q. Yes? A. About a year and a half ago.

Q. A year and a half ago. Now, you stated you paid forty-five dollars in the month of—in nineteen hundred and twelve?

The Court: What was the date of that letter, September?

Mr. Roessler: September twenty-third, your Honor.

30 The Court: That is the time he said he paid?

Mr. Belfatto: When did you get that fourth five hundred dollars there?

A. Mr. Montefusco paid it in my office.

Q. Personally, himself? A. Mr. Montefusco paid it in my office.

40 Q. What did he say, when he came there with the money? A. He says, "Sam, send them forty-five dollars, and tell them to have patience. That I am paying the building interest promptly."

Samuel Schechner—Direct

Also he told me he can't pay because the property is being sold. Mr. Cassese, he is going to Italy—

Q. Who collected the interest from Mr. Montefusco? A. I don't remember, maybe he did pay me once or twice.

Q. Don't you remember whether this forty-five dollars should be applied to the payment of the interest of Mr. Richards? A. Mr. Richards' mortgage was only thirty-five dollars interest for six months. 10

Q. Is that the reason? A. The check was made out.

Q. Now, how many times did you collect money from Mr. Montefusco on account of the second mortgage? A. I tell you, honestly, I don't remember. It was many times. Maybe he did pay it once. 20

Q. Is it true Mr. Richards gave orders to Mr. Montefusco not to pay you any more interest, the interest having been paid directly? A. It isn't so, I am collecting interest today for Mr. Richards on various mortgages.

Q. For how many years did you collect interest from Mr. Montefusco on the Richards mortgage? A. I don't remember. Once or twice. I don't remember. I am giving Mr. Richards checks every month in collecting various interest. 30

Q. How do you know this forty-five dollars was given to you to pay the interest of Mr. Baker? A. Check was made out to Mr. Baker.

Q. Check was made out to Mr. Baker by yourself? A. No he brought the check in all made out.

Q. Did he collect any interest prior to that?

The Court: Did I understand this forty-five dollars was paid in check? 40

Witness: Yes, sir.

Samuel Schechner—Direct

The Court: You didn't send money?

Witness: No, I never sent him money.

By Mr. Peirce: Q. How do you know that was a check? A. I know it. He always paid by check.

Q. Did you see the check? A. Naturally, he brought it in. He brought his check, sure.

10 Q. He brought the check to you so that you might give it to Mr. Baker? A. Yes, sir.

Q. That was in nineteen twelve? A. The letter speaks for itself, I don't remember the date. There is the letter.

Q. Why didn't you tell him to go to Mr. Baker himself? A. He asked me to plead for him. I had to use my influence with Baker.

20 Q. Do you remember when Mr. Montefusco received the copy of the deed? Do you remember that time? A. I don't know the time. I know he got it.

Q. You can't say yes or no? A. Yes. I don't remember the time.

The Court: You remember the fact?

Witness: Yes, sir.

By Mr. Belfatto: Q. Did you give him the deed or did you mail it? A. He got it direct from my office. Turned it over to him.

30 Q. You did personally? A. Yes, sir.

Q. You mailed the original deed, when did you mail him the memorandum, or copy?

Mr. Roessler: I object.

Q. Why didn't you use the mail to deliver the deed? A. I didn't want to have it lost. I was more careful the second time.

Q. Why didn't you give the deed to him personally, the original deed you mailed to Mr. Monte-
40 fusco?

Samuel Schechner—Direct

Mr. Roessler: I object. He can't tell what he did.

The Court: He can't tell what he did. It is quite immaterial how he sent the deed, if he did send it.

By Mr. Belfatto: Q. Is it customary with you to send papers by mail? A. Yes, sir. 10

Q. You don't care to meet them personally? A. Yes, I am always glad to meet the people.

Q. You are looking for business? A. Every day.

Q. You don't care about the post office? A. I care.

Q. Now, did Mr. Montefusco, about a year after the execution of the deed, call at your office and say that the third mortgage must be cancelled? A. I never knew Mr. Cassese in this transaction until Mr. Montefusco came and says that he is going to Italy the moment he gets it. He can't pay up, otherwise he can't pay on this transaction. 20

Q. Do you remember the time Mr. Cassese, Mr. Montefusco and Mr. Bagnoli called at your office about a year ago? A. I never saw Mr. Bagnoli with Mr. Montefusco.

Q. Do you remember on a certain occasion when you met Mr. Bagnoli and Mr. Montefusco in the elevator of the Prudential Building? A. Absolutely not. 30

Q. Don't remember that circumstance? A. I never met them together.

Q. Have a conversation with Mr. Bagnoli? A. Several times.

Q. With reference to this third mortgage? A. Never discuss business in elevators. 40

Daniel Crecca—Direct

Q. Don't remember that conversation? A. I never had one.

Q. He testified you met him in the elevator and Mr. Bagnoli was there and he told Mr. Bagnoli he paid this fifteen hundred dollar third mortgage and Mr. Bagnoli said this was a benefit to Baker and you smiled. A. If Mr. Bagnoli said it in the elevator, I would have punched him there. That is absolutely a lie. He never would have gotten out of the elevator alive, I assure you.

Mr. Peirce: Had you any authority of W. A. Baker to let the principal lie as long as they wanted it, or something to that effect?

Witness: Never had.

Mr. Peirce: Why did you make that statement then?

Witness: I always knew Mr. Baker would do it as I said. He always looked to me. I always protect his interest as well as my own.

Q. Did you ever tell Mr. Montefusco that Mr. Baker wanted his money, the principal of the mortgage? A. No, sir, never told him.

Q. Did you ever demand the payment of the principal? A. No, sir, only interest. I always spoke to Mr. Baker not to be hard. I says, "Only get interest." It was nineteen seven and nineteen eight. I says let him pay the building loan and get six per cent and he perfectly agreed with me because he knew I knew something about real estate.

DANIEL CRECCA, being first duly sworn, was examined and testified as follows:

By Mr. Roessler: Q. What is your business? A. Life insurance.

Daniel Crecca—Direct

Q. Also real estate business? A. Yes, sir.

Q. Acquainted with Mr. Schechner? A. Yes, sir.

Q. How long have you known him? A. About twelve years.

Q. What have your relations been with him? A. Real estate business. 10

Q. Have you had various transactions with him in the real estate business? A. Yes, sir.

Q. Do you recall this particular transaction on this Seventh Avenue property? A. Well, I recall I sold the property to Mr. Bagnoli.

Q. Do you recall the conditions of the sale of that property to Mr. Bagnoli?

Mr. Roessler: I withdraw that question.

Q. You remember the sale of that property to Mr. Bagnoli? A. Yes, sir. 20

Q. When you sold this property to Mr. Bagnoli, what mortgages were there against the property?

A. There was ninety-five hundred dollars and twelve hundred dollars.

Q. Who held the ninety-five hundred dollars? A. Mutual Building and Loan.

Q. And the twelve hundred? A. Richards.

Q. And did Mr. Bagnoli take the property subject to those mortgages? A. Yes, sir.

Q. What else did he do? A. Gave us a mortgage for fifteen hundred dollars. 30

Q. What was that mortgage for? A. Our equity in the property.

Q. Purchase price? A. Yes, sir.

Q. What property did that mortgage cover? A. Seventh Avenue and Mr. Prospect Avenue, and also Cutler property.

Q. It has been charged here that you and Mr. 40

Daniel Crecca—Direct

Schechner and Mr. Bagnoli entered into a conspiracy to defraud Mr. Montefusco by placing a fake mortgage. A. That is absolutely a lie, because I never knew Mr. Montefusco at all, we sold the property to Mr. Bagnoli.

10 Q. And that mortgage was given as part payment of the purchase price? A. Yes, sir.

Q. Was Mr. Baker ever in your employ? A. No.

Q. Ever in Schechner's employ? A. I don't think so.

Q. You never knew of him being in his employ? A. No.

Q. You were present when this transaction with Montefusco was consumated? A. I don't know
20 anything about that.

Q. Don't you know anything about that at all? A. Not a thing of that.

Q. Mr. Montefusco, I believe, testified he spoke to you some time ago. Do you remember the conversation you had with Mr. Montefusco? A. He spoke—

Q. Just answer my question. A. About a year ago, I met him.

Q. Where? A. On Market Street and he told
30 me—

Q. Did he approach you or you him? A. He spoke to me.

Q. What did he say with reference to this matter? A. He was going to pay the taxes.

Q. What taxes? A. When he bought the property he claims the taxes wasn't paid.

Q. What did you say? A. I didn't know anything about it. I couldn't give him any information. I haven't—I wasn't interested as far as he
40 was concerned.

Daniel Crecca—Cross

Q. Did you say anything about the mortgage?

A. I believe he mentioned about the mortgage. He says there is fifteen hundred dollars mortgage due.

Q. What did he say? A. He said a whole lot. I don't remember now. I couldn't relate to you. 10

Q. He did speak about the 1908 taxes? A. Yes, he was going to pay the taxes.

CROSS-EXAMINATION, by Mr. Belfatto:

Q. When did you deliver the deed from you to Mr. Bagnoli, when did you send that out—when and where did you send it, the deed from you to Bagnoli? A. In Mr. Schechner's office.

Q. In whose presence? A. I believe he was there. 20

Q. Try to recollect. A. Must have been in his presence. Mr. Schechner must have been there at the time.

Q. Did you see Mr. Blum there? A. Mr. Blum? I don't remember.

Q. Are you sure that Mr. Blum wasn't there when you signed the deed, he, you, and Mr. Berger? A. Often times I go there. I go in, I sign it, and go about my business.

Q. You remember he signed a deed? A. Posi- 30
tively.

Q. And you don't know whether it was in the presence of Mr. Schechner and Mr. Blum? A. I don't know where Mr. Blum was, and Mr. Roesler took the acknowledgement.

Q. Do you remember about a year after Mr. Montefusco paid the mortgage he came to see you? A. He came to see me? 40

Daniel Crecca—Cross

Q. And he spoke to you about the third mortgage? A. No.

Q. Never spoke about the third mortgage? A. Never, until a year ago.

10 Q. Tell me, did you state to him about a year ago, about the existence of the third mortgage?
A. I said there is a third mortgage.

Q. Didn't you say you knew nothing about this mortgage? A. I didn't say that I positively knew, but for that mortgage I received \$350 from Mr. Baker, certainly I knew about that mortgage.

Q. Wasn't that in cash? A. He gave me a note and I had it discounted in the National Newark Banking Company.

20 By the Court: Q. Was it paid? A. Yes, sir, paid when due.

Mr. Belfatto: We will produce the note.

Q. Did you at any time see Mr. Baker pay the third mortgage? A. I didn't see Mr. Baker pay his mortgage.

Q. When was that conversation. A. A year or so ago.

30 Q. What did you say to Baker, if anything? A. I didn't say anything. He wanted the property released and asked me if I couldn't use my influence to have the property released on the payment of \$200.

Q. What did you say to him? A. I didn't say anything. I said the mortgage is there, that is all.

Q. Did you ever speak to your brother that you knew nothing about this mortgage? A. My brother?

Q. You and your brother—

Mr. Belfatto: Just answer.

40 The Witness: No.

Daniel Crecca—Cross

Q. You didn't speak to him about it? A. No.

By Mr. Roessler: Q. I show you this note dated November 5, 1908, signed by W. A. Baker.

Mr. Belfatto: I object.

Q. And ask you whether this is the note you received from Mr. Baker? A. Yes, sir. 10

Mr. Peirce: Not received from Mr. Baker, you mean note he gave Mr. Baker.

The Court: Entirely right.

By Mr. Roessler: Q. Is that the writing you received? A. Yes, sir.

Q. What was this note given to you for? A. For payment of my interest on that mortgage.

Q. This note is for \$4,330. A. Yes, sir, some other charges.

Q. And I show you an endorsement on this note, stamped February 20, 1909, National Newark Banking Company, and stamped paid. A. Yes, sir. 20

Q. Was this note paid? A. Yes, sir.

By Mr. Pierce: Q. By Mr. Baker? A. Yes, sir.

Mr. Roessler: I now offer this note in evidence.

Mr. Belfatto: I object to the note.

The Court: Why?

Mr. Belfatto: I think Mr. Baker could come here. 30

The Court: How many months was that for?

Mr. Roessler: Three months note, your Honor.

The Court: When is it due, November 13?

Mr. Belfatto: November 19, is the date and it is for three months, payable not to 40

Daniel Crecca—Cross

the order of Daniel Crecca, but to Daniel Crecca, in other words there is no evidence to discount.

10 The Court: He couldn't pass that away. He could collect it himself. He said that was paid to him by Baker. I think I will admit that.

Mr. Roessler. I show you excerpts of the assignment to Mr. Baker. What is the date of this assignment?

A. Nineteenth day of November.

Q. Nineteenth day of what? A. Nineteenth day of November, 1908.

Q. Same day as the note? A. Yes, sir.

Mr. Belfatto: When did you accept the note in
20 payment of your interest in the mortgage?

The Court: I will let it go.

Q. Did you ever receive the note from Mr. Baker, then? A. No.

Q. Is there another note? A. That is the only note.

Q. That is this particular transaction? A. Yes, sir, that is all.

Q. You are still in company with Mr. Schechner? A. Yes, sir.

30 Q. Doing business of buying and selling of second mortgages and real estate? A. Yes, sir.

Q. Discounting notes? A. Sometimes.

Q. You received notes and you discount them in banks for persons applying to you for that purpose? A. Never, or not many.

Q. You accomodate many persons, don't you?

Mr. Belfatto: I object.

40 The Court: I don't see that that is relevant.

Samuel Berger—Direct

By Mr. Roessler: Q. Mr. Belfatto asked when you took this note did you know of Mr. Baker's standing in the community, when you took that note? A. Yes, sir.

Q. You knew of Mr. Baker's standing? A. Yes, sir.

By Mr. Belfatto: Q. Didn't you personally state to Mr. Bagnoli—A. Yes, sir. 10

Q. What your opinion was? A. Very good.

Q. Did you know whether he had any property? A. Twenty-five, or twenty-three, one, Cutler Street, I don't know now.

The Court: Is that all?

Mr. Roessler: Yes, sir.

20

 SAMUEL BERGER, sworn:

Direct-examination by Mr. Roessler:

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

Q. You are acquainted with Mr. Schechner? A. Yes.

Q. With Mr. Crecca? A. Yes.

Q. Mr. Montefusco? A. I don't know him.

Q. Are you acquainted with Mr. Bagnole? A. Yes. 30

Q. Do you recall the purchase of this Seventh Avenue property by yourself? A. Yes.

Q. When was that? A. The latter part of the year 1907.

Q. Whom did you buy that from? A. From Mr. and Mrs. Patrick Foy.

Q. Did you sell that property? A. I did, to Charles Bagnole. 40

Samuel Berger—Direct

Q. After you purchased this property did you place a mortgage thereon? A. Yes.

Q. To whom? A. We procured a mortgage from the Mutual Building and Loan Association.

10 Q. For how much money? A. Ninety-five hundred dollars.

Q. Did you procure any other mortgage? A. Second mortgage from Gustavus Richards.

Q. You sold this property to Bagnole? A. Yes.

Q. Were there two mortgages on it when you sold it to him? A. Yes.

Q. Did he take the property subject to those two mortgages? A. Yes,

20 Q. Did he do anything else? A. Yes, he gave us a third mortgage in the sum of \$1500, which was part of the purchase price, which was the consideration; we included the back shares that was paid off by us for the ensuing year.

Q. Did that mortgage cover any other property? A. Yes, sir, it covered as collateral security a property on Cutler Street.

30 Q. It has been charged her that you and Schechner and Mr. Creca entered into a conspiracy to defraud Sabino Montefusco, one of the defendants, and that you withheld from him the information with reference to this mortgage? A. That is not true, sir.

Q. Did you ever meet Montefusco before today? A. I have no recollection; I might have passed the gentleman coming into the office of Mr. Schechner, and that is about all; just merely a passing recollection.

40 Q. It has been said by Montefusco that this is what he calls a fake mortgage given for the purpose of defrauding Montefusco, is that true? A.

Samuel Berger—Cross

No, sir, it is not true; it was not given—to enlighten the gentleman—

Q. Answer the questions; was this a *bona fide* mortgage? A. Yes, it was absolutely a *bona fide* mortgage; it was a purchase money mortgage given by Charles Bagnole.

Q. What did you do subsequently with it? A. We eventually sold it to William A. Baker on Market Street. 10

Q. Did you receive a consideration? A. Yes.

Q. What was it? A. Seven hundred dollars between Schechner and myself, who were partners at that time.

Q. Did you receive the \$700? A. Yes.

Q. Was it actually paid to you? A. Yes, sir.

CROSS-EXAMINATION, by Mr. Peirce: 20

Q. You did allow Mr. Baker \$100, did you not? A. Yes.

Q. Your share would have been what? A. It would have been just one-quarter.

Q. The firm allowed \$100 to Mr. Baker? A. Yes it was divided equally.

CROSS-EXAMINATION by Mr. Belfatto:

Q. Was this payment made in cash? A. I cannot recollect. 30

Q. Did you receive cash or check? A. I cannot recollect. I would have to go up and look up the books of Berger and Schechner, but I know it was paid.

Q. Did you personally receive any check or cash from Mr. Baker for your share? A. We were a firm at that time, Berger & Schechner; there is no question in my mind that the check 40

Samuel Berger—Cross

was made out to the firm of Berger & Schechner, and I allowed all funds to pass through Mr. Schechner's hands as a partner; we trusted each other.

Q. How do you say you received the \$350? A. That was my quarter share.

10 Q. Did you receive it in cash from Mr. Schechner? A. No, it came from Mr. Baker to the firm of Berger & Schechner as the proceeds of the mortgage.

Q. Did you ever see a check for \$700? A. I cannot say whether it was check or cash; I would have to go to the books and see.

Q. Were you ever told that there was a check given by Mr. William A. Baker to the firm of Berger & Schechner? A. Yes, I believe there was a check.

20 Q. Could the check be produced? A. I believe it could; no doubt the check would go back to him.

Q. Who endorsed it? A. The firm.

Q. Who cashed it? A. Our firm did, I suppose; I know it was paid.

Q. You said you received your share, but was your share recorded in the books or in some memorandum made about your right to that half interest? A. Mr. Schechner and I were partners equally in the firm of Berger & Schechner, and any proceeds that would come to the firm, come in as to firm; naturally I wouldn't withdraw my share until we dissolved our partnership, which was in the latter part of 1908, by the first day of the year 1909.

30 Q. But you are not positive about it? A. I am 40 positive that the mortgage was paid off and we

Samuel Berger—Cross

received that sum of money \$700, and Mr. Crecca received his \$350 and the balance went to Mr. Baker for his quarter interest, and \$100 was allowed for the purchase of the mortgage as a premium.

Q. Where did you meet Mr. Bagnole before you sold the property? A. I have seen him for the last ten or twelve years off and on, and at that time he was considered in our minds as a good— 10

Q. Answer the question. A. On the street I met him.

Q. How long before the deed was executed to him? A. I guess it was several weeks.

Q. A month? A. Probably a month.

Q. Did you speak to him personally, yourself? A. I have to, also Mr. Schechner. 20

Q. Was Mr. Schechner there at the time you put the proposition to Mr. Bagnole that you would sell him the house? A. Yes; I think Mr. Crecca was there.

Q. Was an agreement drawn up to bind the bargain? A. We struck a bargain; the matter was detailed in a verbal way, and the matter of drawing up the papers was left to our counsel.

Q. Do you remember the consideration that was to be paid to Bagnole? 30

Objected to.

Court: He already testified the only consideration was this \$1500; didn't you say that?

Witness: That is correct.

Q. You took a collateral from Mr. Bagnole for \$200? A. The collateral was covering a property on Cutler Street; being that it was a third mort- 40

Samuel Roessler—Direct

gage we felt justified in having a little more security, and Mr. Bagnole suggested that he owned one-half interest on Cutler Street, and we asked him if he could put that in also as security, and he said yes he could, so we accepted it.

10 Q. Did you ever pay any interest to Mr. Baker on account of this \$1500 mortgage? A. I personally cannot recollect that.

Q. Did you personally? A. No, sir, not personally.

Q. Do you know if interest was ever paid by the others? A. I don't know that; I personally have not paid any interest.

20 SAMUEL ROESSLER, sworn:

Direct-examination by Mr. Peirce:

Q. You are a member of the New Jersey Bar?

A. Yes.

Q. You have been practicing how many years?

A. Ten years this month.

Q. Tell what you know of any papers connected with the transfer of the property to Mr. Montefusco. A. I had absolutely no connection with the transaction back in 1908; it appears that I
30 was busy in Court that day and Mr. Bloom, in my absence, took charge of the transaction, but I since then—in fact, today as well as other days this week, I have made diligent search through my old files, in an endeavor to find some memorandum, agreement or any other paper which might throw light on the transaction, and although I have gone over my papers very carefully, I cannot find anything at all—no papers of
40 any kind.

Sabino Montefusco—Cross

No cross-examination.

Mr. Peirce: We rest.

Certified copy of deed offered in evidence and marked Exhibit D-1.

Mr. Peirce: I have the letter marked C 10
5 for identification, which I offer in evidence.

Marked Exhibit C-5.

SABINO MONTEFUSCO, re-called:

Direct-examination by Mr. Belfatto:

Mr. Peirce: He is re-called subject to our objection.

Court: He said that was Mr. DiGeronimo's signature. 20

Q. Look at the signature; is that the signature of Antonio DiGeronimo? A. I don't think that is.

Court: The question is whether that is the signature of Antonio DiGeronimo?

Witness: I cannot say that; I think it is his writing; I am not sure.

Q. Are you sure that this is Antonio DiGeronimo's writing? A. No, I have nothing to do with this man. 30

Q. He was your partner at that time? A. Antonio DiGeronimo was in Italy at that time and this man wrote it.

Q. But this is Gerolamo DiGeronimo? A. Yes.

CROSS-EXAMINATION, by Mr. Peirce:

Q. Gerolamo DiGeronimo is the brother of Antonio DiGeronimo? A. Yes.

Q. And Antonio was in Italy and Gerolamo 40

Sabino Montefusco—Re-direct

DiGeronimo wrote this particular letter? A. No, I don't say that.

Court: I will allow that in evidence: it is by the firm's name.

10 Mr. Belfatto: Under my objection on the ground that Gerolamo DiGeronimo is not Antonio DiGeronimo.

By the Court: Q. This other Geronimo was a member of the firm, both of the DiGeronimos? A. Both were members of the firm.

RE-DIRECT:

Q. Was Gerolamo DiGeronimo your partner? A. Antonio DiGeronimo.

20 Q. Was Gerolama DiGeronimo at any time your partner? A. Yes.

Q. What did he do in that business? A. Antonio DiGeronimo was partner in Italy; Gerolamo DiGeronimo was in partner in the business, not on the house.

Q. They were in your business? A. Yes.

Q. Have you paid all your bills through your business? A. Yes.

Q. If you paid anybody you paid checks of the firm? A. Yes.

30 Q. Did you keep any personal account? A. I got my personal account.

Q. Did you have at that time? A. Yes.

Q. Besides the firm account? A. Yes.

Q. Antonio was never your partner? A. Not in business.

Q. You considered him partner of the purchase of the property? A. Yes, Antonio DiGeronimo.

40 Q. And Gerolamo DiGeronimo was your partner in the business? A. Yes.

Complainant's Exhibit 1

THIS INDENTURE, made the Seventeenth day of October, in the year of our Lord One Thousand Nine Hundred and eight, between Charles Bagnole, of the City of Newark, in the County of Essex and State of New Jersey of the First Part; And Samuel Schechner, Samuel Berger, William A. Baker, and Daniel Crecca, of the City of Newark in the County of Essex and State of New Jersey of the Second Part; Witnesseth, That the said party of the first part, for and in consideration of the sum of Fifteen hundred (\$1500.00) Dollars money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever All those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the county of Essex and State of New Jersey;

First Tract:

BEGINNING at the Northwesterly corner of Seventh Avenue and Mount Prospect Avenue; thence running Northerly along the Westerly side of Mount Prospect Avenue ninety-seven feet more or less to land of Charles W. Stickney; thence Westerly along said land twenty-nine feet more

Complainant's Exhibit 1

or less to land now or formerly belonging to Bridget Farrell; thence Southerly along the Easterly side of said land ninety-seven feet to Seventh Avenue; thence Easterly along the line of Seventh Avenue fourteen feet more or less to the place of

10 BEGINNING.

Second Tract:

BEGINNING on the North side of Mill Street (now known as Seventh Avenue) at a point distant South sixty-nine degrees and forty-five minutes East thirty-five feet from the corner of lands of James Davis, deceased; thence running along Mill Street south sixty-nine degrees and forty-five minutes East twenty-five feet to the corner of lot No. 8, said point being about four-

20 teen feet Westerly from the street now known as Mount Prospect Avenue; thence along the same North sixteen degrees East ninety-seven feet and eight inches more or less to lot No. 49; thence along the same North sixty-nine degrees and forty-five minutes West twenty-five feet; thence running South sixteen degrees West ninety-three feet more or less to the place of BEGINNING.

Third Tract:

BEGINNING in the Westerly line of Cutler Street

30 at a point therein distant Northerly four hundred and fifty-three feet and ninety-five one-hundredths of a foot from the Northerly line of Seventh Avenue; thence running Northerly along said line of Seventh Avenue thirty-one feet and six inches; thence North sixty-one degrees forty-six minutes West one hundred feet; thence South twenty-eight degrees fifteen minutes West thirty-one feet and six inches; thence South sixty-one degrees forty-

40 six minutes East one hundred feet to the West-

Complainant's Exhibit 1

erly line of Cutler Street and place of BEGINNING.

It is hereby agreed and understood by and between the parties to this Indenture that the said party of the second part will upon the payment to them of Two hundred dollars, release to the said party of the first part from the operation and lien of this mortgage the premises herein described as the Third Tract. 10

It is further understood and agreed between the parties hereto that should default be made in the payment of any installment which may hereafter become due to the Building and Loan Association now holding the mortgage upon the said premises above described, and should said installment remain unpaid and in arrears for the space of thirty days, then and from thenceforth the aforesaid sum of Fifteen hundred dollars shall immediately become due and payable, at the option of the said party of the second part. 20

Together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof: To have and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever. 30

PROVIDED ALWAYS, and it is agreed by and between the parties to these presents, that if the 40

Complainant's Exhibit 1

10 said party of the first part, his heirs, executors,
or administrators, do and shall well and truly
pay or cause to be paid, to the said party of the
second part, or to their certain attorney or attor-
neys, heirs, executors, administrators or assigns,
the sum of Fifteen hundred (\$1500.00) Dollars
in three (3) years from the date hereof, with law-
ful interest for the same, at the rate of six per
centum per annum, payable semi-annually, ac-
cording to the condition of a certain bond bearing
even date herewith, in the penal sum of Three
thousand (\$3,000.00) Dollars without any deduc-
tion or defalcation for taxes, assessments, or any
imposition whatsoever; then and from thence-
forth, these presents and said obligation, and
20 everything herein and therein contained, shall
cease and be void; anything herein and therein
contained, to the contrary in anywise notwith-
standing.

AND the said party of the first part for him-
self, his heirs, executors and administrators, does
covenant and grant to and with the said party
of the second part, their heirs and assigns, that
the said party of the first part his heirs and as-
signs, shall not nor will claim or demand or be
30 entitled to receive any credit or credits on the
interest payable hereon or on the moneys to se-
cure payment of which this mortgage is made,
for so much of the taxes assessed against said
lands as is equal to the tax rate applied to the
amount due on this mortgage or any part there-
of; and that the said party of the second part,
their heirs and assigns, shall and may, from
time to time, and at all times after default shall
40 be made in the performance of the proviso or

Complainant's Exhibit 1

condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part, his heirs or assigns, 10
or of any other person or persons whatsoever.

AND it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies, to an amount not less than Fifteen hundred (\$1500.00) dollars, and assign the policy and certificate thereof to the said party of the 20
second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof it shall be lawful for the said party of the second part, to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest.

IN WITNESS WHEREOF, the said party of the first 30
part has hereunto set his hand and seal the day and year first above written.

CHARLES BAGNOLE. (L. S.)

Signed, Sealed and delivered

in the presence of

Joseph B. Bloom.

Complainant's Exhibit 2

State of New Jersey, }
 County of Essex. } ss:

BE IT REMEMBERED, That on this seventeenth day of October in the year of our Lord One Thousand Nine Hundred and eight before me, a
 10 Master in Chancery of New Jersey personally appeared Charles Bagnole, who, I am satisfied, is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOSEPH B. BLOOM,
 M. C. C. of N. J.

20

RECEIVED in the Register's Office of the County of Essex, N. J., on the 21st day of October A. D., 1908, at 3:36 o'clock in the afternoon, and Registered in Book C 23 of Mortgages for said County, on pages 202-203.

EDWARD S. PERRY,
 Register.

30

Complainant's Exhibit 2

KNOW ALL MEN BY THESE PRESENTS, THAT I, Charles Bagnole, of the City of Newark, in the County of Essex and State of New Jersey, am held and firmly bound unto Samuel Schechner, Samuel Berger, William A. Baker, and Daniel Crecca in the sum of Three thousand (\$3,000.00) Dollars, lawful money of the United States of
 40 America, to be paid to the said Samuel Schechner,

Complainant's Exhibit 2

Samuel Berger, William A. Baker and Daniel Crecca, their heirs, executors, administrators and assigns, To which payment well and truly to be made, I bind myself, my heirs, executors and administrators jointly and severally, firmly by these presents. Sealed with my Seal and Dated the Seventeenth day of October One Thousand Nine Hundred and eight. 10

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bounden Charles Bagnole, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid unto the above named Samuel Schechner, Samuel Berger, William A. Baker and Daniel Crecca, their heirs, executors, administrators and assigns, the just and full sum of Fifteen hundred (\$1500.00) Dollars, on the Seventeenth day of October which will be in the year One Thousand Nine Hundred and eleven, and the interest thereon to be computed from the Seventeenth day of October, Nineteen hundred and eight, at the rate of six per cent per annum and to be paid semi-annually, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue. 20

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable, and should the said interest remain unpaid 30 40

Complainant's Exhibit 2

and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then and from thence-
 10 forth, that is to say, after the lapse or expiration of either of the said periods as the case may be the aforesaid principal sum of Fifteen hundred (\$1500.00) Dollars with all arrearages of interest thereon, shall at the option of the said Samuel Schechner, Samuel Berger, William A. Baker and Daniel Crecca, their heirs, executors, administrators and assigns, or their legal representa-
 20 tives become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

CHARLES BAGNOLE. (L. S.)

Signed, Sealed and Delivered
 in the presence of
 Joseph B. Bloom.

Date paid	Date due
April 24, 1909	
30 Rec'd \$45.00 six mos. int. due	April 17, 1909.
Nov. 10, 1909	
Rec'd 45.00 " " " "	Oct. 17, "
May 20, 1910	
Rec'd 45.00 " " " "	April 17, 1910.
Dec. 3	
Rec'd 45.00 " " " "	Oct. 17, "
June 3, 1911	
Rec'd 45.00 " " " "	April 17, 1911.
Sept. 23, 1912	
40 Rec'd 45.00 " " " "	Oct. 17, "

Complainant's Exhibit 3

KNOW ALL MEN BY THESE PRESENTS, THAT we, Samuel Schechner, Samuel Berger and Daniel Crecca, all of Newark, Essex County, New Jersey, party of the first part, in consideration of the sum of One dollar and other good and valuable considerations, lawful money of the United States of America, to them in hand paid by William A. Baker, of the same place, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, his executors, administrators or assigns, our interest or share in a certain Indenture of mortgage bearing date the Seventeenth day of October One Thousand Nine Hundred and eight, made by Charles Bagnole to the parties hereto on lands in the City of Newark, Essex County, to secure the payment of the sum of Fifteen hundred Dollars which mortgage is registered in the Register's office of the County of Essex in Book C23 of Mortgages, pages 202-3 TOGETHER with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To HAVE AND TO HOLD, the same unto the said party of the second part his executors, administrators or assigns for his and their use forever subject to the proviso in the said indenture of mortgage mentioned: AND we do hereby make, constitute and appoint the said party of the second part our true and lawful attorney, irrevocable, in our name, or otherwise, but at his proper costs and charges to

Complainant's Exhibit 3

10 have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as lawful as we might or could do if these presents were not made: AND we do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of Fifteen hundred Dollars, besides interest from October 17, 1908.

IN WITNESS WHEREOF, we have hereunto set our Hands and Seals the nineteenth day of November in the year of our Lord One Thousand and eight.

SAMUEL SCHECHNER (L. S.)

SAMUEL BERGER (L. S.)

DANIEL CRECCA (L. S.)

20 Signed, Sealed and Delivered
in the presence of
Samuel Roessler.

Newark, N. J., November 19, 1908.

30 In consideration of one Dollars and other good and valuable considerations, to us in hand paid, we do hereby guarantee to William A. Baker the payment of the principal and interest of the within assigned mortgage at the maturity of the same respectively, to the extent only, of our interest or share in said mortgage, to wit, a three fourths interest; it being understood, however, that resort shall first be had to the premises embraced by within assigned mortgage, before we are called upon to pay our said share of principal and interest, and that we shall have notice of a sale of said premises, if the same be sold for the satisfaction of the mortgage debt.

40

Complainant's Exhibit 3

Witness our hands and seals this 19th day of November, Nineteen hundred and eight.

SAMUEL SCHECHNER (L. S.)
DANIEL CRECCA (L. S.)
SAMUEL BERGER (L. S.)

Signed in the presence of Samuel Roessler. 10

State of New Jersey, }
County of Essex. } ss:

BE IT REMEMBERED, That on this nineteenth day of November in the year of our Lord One Thousand Nine Hundred and eight before me the subscriber, an attorney at Law of the State of New Jersey personally appeared Samuel Schechner, Samuel Berger and Daniel Crecca, who, I am satisfied are the assignors in the within Deed of Assignment named; and I, having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 20

SAMUEL ROESSLER,
An Attorney at Law of the
State of New Jersey. 30

RECEIVED in the Register's Office of the County of Essex, N. J. on the 20th day of November A. D., 1908, at 2:02 o'clock in the afternoon, and recorded in Book No. 87 of Assignments of Mortgages for said County, on pages 88-90.

EDWARD S. PERRY,
Register.

Complainant's Exhibit 4

G. & A. Di Geronimo S. Montefusco

DI GERONIMO BROS. & MONTEFUSCO
Importers and Commission merchants

10 159-161 7th Avenue Cas Propria
Cor Mt Prospect Ave
Cable address Digeronimo
Phone 611 W Branch B
Newark, N. J. 190

Baker Printing Co.,
Newark, N. J.

Enclosed you find our check \$45.00 for interest
due on your mortgage.

20 Kindly don't deposit the above check in your
bank before next Monday June 5th, as we are
short in money since to that date.

Excuse us for this delay and oblige.

Very truly yours,

DI GERONIMO BROS. & MONTEFUSCO

Defendants' Exhibit 1

30

CHARLES BAGNOLE
To
SABINO MONTE FUSCO & al.

This Indenture made the ninth day of Novem-
ber in the year of our Lord, one thousand nine
40 hundred and eight, Between Charles Bagnole

Defendants' Exhibit 1

(widower) of the City of Newark, in the County of Essex and State of New Jersey of the first part; and Sabino Monte Fusco and Antonio Di Geromino, of the City of Newark, in the County of Essex and State of New Jersey of the second part; Witnesseth, that the said party of the first part, for and in consideration of one dollar and other good and valuable considerations, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the first part therewith fully satisfied, contented, and paid has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever, all those lots, tracts or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

FIRST TRACT: Beginning at the northwesterly corner of Seventh Avenue and Mount Prospect Avenue, thence running northerly along the westerly side of Mount Prospect Avenue ninety seven feet more or less to land of Charles W. Stickney; thence westerly along said land twenty nine feet more or less to land now or formerly belonging to Bridget Farrell; thence southerly along the easterly side of said land ninety seven feet to Seventh Avenue; thence easterly along the line of Seventh Avenue fourteen feet more or less to the place of Beginning.

Defendants' Exhibit 1

SECOND TRACT: Beginning on the north side of
 Mill Street (now known as Seventh Avenue) at
 a point distant south sixty nine degrees and forty
 five minutes east thirty five feet from the corner
 of land of James Davis, deceased; thence running
 10 along Mill Street south sixty nine degrees and
 forty five minutes east twenty five feet to the
 corner of lot No. 8, said point being about four-
 teen feet westerly from the street known as
 Mount Prospect Avenue; thence along the same
 north sixteen degrees east ninety seven feet and
 eight inches more or less to lot No. 49; thence
 along the same north sixty nine degrees and forty
 five minutes west twenty five feet; thence running
 south sixteen degrees west ninety three feet more
 20 or less to the place of Beginning. "This convey-
 ance is made subject to three mortgages, one for
 ninety five hundred dollars, which has been re-
 duced to nine thousand dollars, another for twelve
 hundred dollars, and the third for Fifteen hun-
 dred dollars, the payment of which is hereby as-
 sumed by the parties of the second part. This
 conveyance is also made subject to water rents,
 taxes and assessments which may be due upon the
 property."
 30 Together with all and singular the houses build-
 ings, trees, ways, waters, profits, privileges and
 advantages, with the appurtenances to the same
 belonging or in anywise appertaining, also, all the
 estate, right, title, interest, property, claim and
 demand whatsoever, of the said party of the first
 part, of, in and to the same, and of in and to every
 part and parcel thereof: To Have and To Hold,
 all and singular the above described land and
 40 premises with the appurtenances unto the said

Defendants' Exhibit 1

party of the second part, their heirs and assigns,
to the only proper use, benefit and behoof of the
said party of the second part, their heirs and as-
signs forever; and the said Charles Bagnole, does
for himself, his heirs, executors and admin-
istrators covenant and grant to and with the said 10
party of the second part, their heirs and assigns,
that he the said Charles Bagnole is the true,
lawful and right owner of all and singular, the
above described land and premises and of every
part and parcel thereof, with the appurtenances
thereunto belonging; and that the said land and
premises, or any part thereof, at the time of the
sealing and delivery of these presents, are not en-
cumbered by any mortgage, judgment or limita-
tion or by any encumbrance whatsoever, by which 20
the title of the said party of the second part, here-
by made or intended to be made for the above
described land and premises can or may be
changed, charged, altered or defeated in any way
whatsoever, except as aforesaid, and also, that
the said party of the first part now has good right
full power and lawful authority to grant, bargain,
sell and convey the said land and premises in
manner aforesaid; and also, that he, the said
Charles Bagnole will warrant, secure and forever 30
defend the said land and premises unto the said
party of the second part, their heirs and assigns
forever, against the lawful claims and demands of
all and every person or persons, freely and
clearly freed and discharged of and from all
manner of encumbrances whatsoever, except as
aforesaid.

IN WITNESS WHEREOF, the said party of the first 40

Defendants' Exhibit 1

part has hereunto set his hand and seal the day
and year first above written.

CHARLES BAGNOLE (L. S.)

Signed sealed and delivered
in the presence of

10 Joseph B. Bloom.

State of New Jersey, } ss:
County of Essex.

Be it Remembered, That on this Ninth day of
November, in the year of our Lord, one thousand
nine hundred and eight, before me, the subscriber
a Master in Chancery of New Jersey, personally
appeared, Charles Bagnole, (widower) who, I am
satisfied is the grantor mentioned in the within
20 Indenture, and to whom I first made known the
contents thereof, and thereupon he acknowledged
that he signed, sealed and delivered the same as
his voluntary act and deed, for the uses and pur-
poses therein expressed.

JOSEPH B. BLOOM,
M. C. C. of N. J.

Received in the office November 10, A. D., 1908
at 11:55 a. m.

30 ESSEX COUNTY REGISTER'S OFFICE

State of New Jersey, } ss:
County of Essex,

I, EDWARD S. PERRY, Register of the County of
Essex, do hereby certify that the foregoing is a
true and correct copy of the record of a certain
Deed made by Charles Bagnole To Sabino Monte
40 Fusco & al and also the certificate of acknowl-

Defendants' Exhibit 1

edgment thereto annexed, as the same may be found recorded in my office in book Z43 of Deeds for said County on pages 528-530.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 5th day of November A. D. 1909.

EDWARD S. PERRY, 10
Register.

(Seal)

The original deed, of which this is a copy, was received in the Register's Office of the County of Essex, State of New Jersey, on the 10th day of November A. D., 1908 at 11:55 o'clock in the forenoon and recorded in Book Z43 of deeds for said County on pages 528, 530. 20

EDWARD S. PERRY,
Register.

