

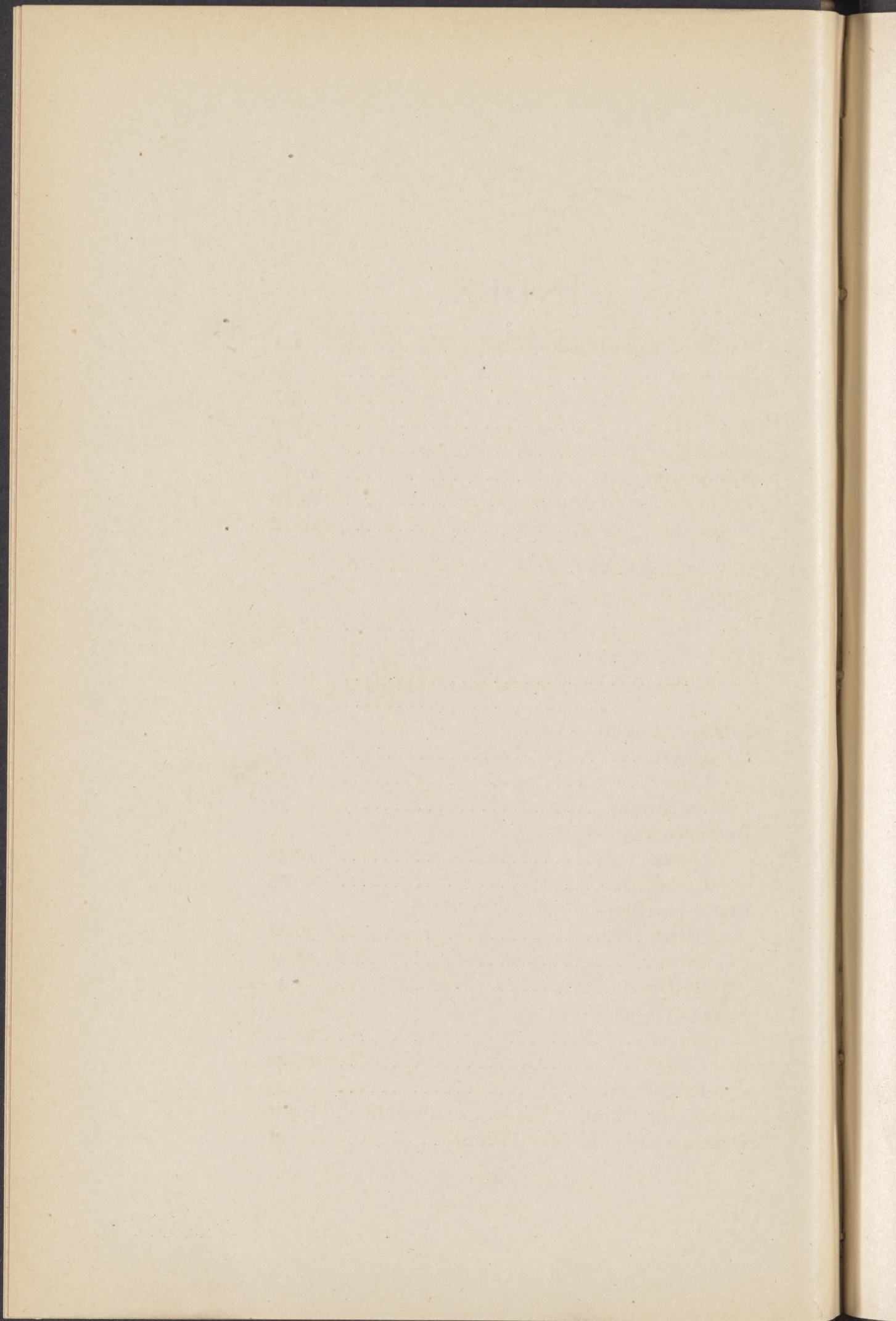
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New Jersey Supreme Court

HENRY KOCH, trading as
H. KOCH & Co.,

Plaintiff,

vs.

STEFANO COSTELLO and
DOMENICO BOTTI,

Defendants.

Action at Law.

10

Notice of Appeal and Grounds

TO MR. WM. GREENFIELD,

Attorney for Appellees:

20

TAKE NOTICE, that the appellants, Stefano Costello and Domenico Botti, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds:

1. Because the Court refused to non-suit the plaintiff, although a non-suit should have been granted.

2. Because the trial judge, upon the trial of said cause, directed a verdict in favor of plaintiff and against the defendants over the objection of said defendants, whereas said trial judge should have directed a verdict in favor of defendants.

30

3. Because the trial judge, upon the trial of said cause, directed a verdict in favor of plaintiff and

Notice of Appeal.

against the defendants over the objection of said defendants, whereas said trial judge should have submitted the case to the jury for its verdict.

4. Because the judgment rendered in the above cause, at the aforesaid Court, in favor of the plaintiff and against the defendants, was contrary to law.

5. Because the evidence in the trial of the said cause, did not warrant a judgment in favor of the plaintiff and against the defendants.

10 6. Because the evidence adduced in the trial of the above cause warranted a judgment in favor of the defendants and against the plaintiff.

7. Because the verdict was contrary to the weight of the evidence.

ISADORE KLENERT,

Attorney of Appellant.

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Summons.

ESSEX COUNTY, SS.

THE STATE OF NEW JERSEY TO

STEFANO COSTELLO and DOMENICO .
BOTTI:

YOU ARE SUMMONED to answer the annexed complaint of Henry Koch, trading as H. Koch & Co., in an action at law in the New Jersey Supreme Court.

10

AND TAKE NOTICE that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within TWENTY days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness: WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this Twenty-fifth Day of March, Nineteen Hundred and Eighteen.

20

WM. GREENFIELD,
Attorney of Plaintiff.

ENOCH L. JOHNSON,
Clerk.

30

Complaint.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY CIRCUIT.

	HENRY KOCH, trading as H. KOCH & Co.,	} <i>Plaintiff,</i>	} <i>Action at Law.</i>
	vs.		
10	STEFANO COSTELLO and DOMENICO BOTTI,	} <i>Defendants.</i>	

Complaint

The plaintiff, residing in the City of Newark, in the County of Essex and State of New Jersey, complains:

- 20 1. That on or about September 1, 1915, the said Stefano Costello was taken into custody on a Capias Ad Satisfaciendum, issued out of the District Court of the City of Passaic, County of Passaic and State of New Jersey, against him, at the suit of the plaintiff herein, in an action upon contract, in which judgment was entered against the said defendant, Stefano Costello, et al., for the sum of \$500 damages, besides taxed costs of suit, and he, the said Stefano Costello, was delivered to Amos H. Radcliffe, then Sheriff of the County of Passaic, and was then and there confined in the custody of the said Sheriff.
- 30 2. That the said Stefano Costello did then and there, on December 2, 1915, petition the Court of Common Pleas of the County of Passaic, to be released as an insolvent debtor, and after hearing was had thereon, the said Stefano Costello was refused a

Complaint.

discharge and was then and there on the said 2d day of December, 1915, remanded to jail and was then and there surrendered to the custody of the Sheriff of the County of Passaic.

3. That thereafter, on December 2, 1915, the said Stefano Costello, being in the custody of William B. Burpo, then Sheriff of the County of Passaic, did make and deliver to the said Sheriff, a bond conditioned for him, the said Stefano Costello to appear and petition the Passaic County Court of Common Pleas, to be discharged as an Insolvent Debtor, and that the Honorable Abram S. Klenert, Judge of the said Court, did thereafter on petition of the said Stefano Costello, fix and appoint the 27th day of January, 1916, at ten o'clock in the forenoon, at the County Court House of the County of Passaic, as the time and place of the said hearing, what could be alleged against the discharge of the said Stefano Costello, as an Insolvent Debtor, and that the said hearing was continued to February 10th, 1916.

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4. That on the 10th day of February, 1916, a hearing was had thereon, and after hearing and examination of the said Stefano Costello, a discharge was refused by the Honorable Abram S. Klenert, then presiding Judge of the said Court, and the said Stefano Costello was again remanded to the County Jail, there to remain until discharged by the order of the said Court.

5. That thereafter, on or about the 15th day of February, 1916, the said Stefano Costello did then and there deliver a bond executed by the said Stefano Costello and Domenico Botti, in the penal sum of \$1,121.00, of which bond a true copy is hereto annexed and made part of this Complaint, conditioned.

30

Complaint.

that if the said Stefano Costello shall appear before the next term of Court of Common Pleas to be held at Paterson, on the Fourth Tuesday of April, 1916, and shall in all things remaining, fully and honestly comply with all requirements of the Insolvent Laws of this State, and shall appear in person before the Court according to law, and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the jail of the County of Passaic, and there to remain until discharged by due course of law, then the said obligation to be void, otherwise to remain in full force and virtue.

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20
6. That the said Stefano Costello did not appear on the said Fourth Tuesday of April, 1916, being the next term of Court of the Passaic County Court of Common Pleas, after the date of the execution of the said bond, of which bond a true copy is hereto annexed and made part hereof, as aforesaid, and that the said Stefano Costello did not petition the said Court for his discharge under the Insolvent Laws and did not comply, fully and honestly, with all the requirements of the Insolvent Laws of this State, but made default thereof.

30
7. And this plaintiff further avers that the said judgment has not been paid by the said Stefano Costello or any other person or persons for him or in his behalf, but that the same still remains unsatisfied, although this plaintiff has demanded payment thereof, which payment was refused.

8. That the full amount of the said judgment, to wit: the sum of \$500, with all costs and interest to the date hereof, is still due and owing to this plaintiff.

Complaint.

9. And the plaintiff further avers, that by reason of the breach of the conditions of the said bond, the plaintiff is entitled to judgment against the said Stefano Costello and Domenico Botti, in the sum of \$500, with all costs and interest thereon, to the date of entry of judgment, the said bond being entered into by the said Stefano Costello and Domenico Botti jointly and severally, each in the whole sum.

10. That the said defendants did not appear before the next term of the Court of Common Pleas of the County of Passaic, after the making and entry of the said bond, and have failed and neglected to make application for the discharge of the said Stefano Costello, as an insolvent debtor, according to the requirements of the Insolvent Laws of this State, and the said Stefano Costello has failed and neglected to surrender himself to the Sheriff or Keeper of the jail of Passaic County, as required in the said bond. 10

11. By reason of all of the aforesaid premises the plaintiff saith that he has sustained damages, and will claim judgment against the defendants for the sum of \$560.11, with all interest and costs to the day and date of entry of judgment. 20

WM. GREENFIELD,

Attorney of Plaintiff.

Bond.

KNOW ALL MEN BY THESE PRESENTS, that we, STEFANO COSTELLO and DOMENICO BOTTI, of the City of Passaic, in the County of Passaic and State of New Jersey, are held and firmly bound unto Henry Koch, trading and doing business under the firm name of H. Koch & Co., of the City of Newark, County of Essex and State of New Jersey, in the sum of Eleven Hundred and Twenty-one Dollars (\$1,121), lawful money of the United States of America, to be paid to the said Henry Koch, trading as H. Koch & Co., his executors, administrators or assigns. To which payment well and truly to be made, we bind ourselves, and each of us for himself in the whole, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the Fifteenth Day of February, Nineteen Hundred and Sixteen.

THE CONDITION of the above obligation is such, that whereas the said Stefano Costello made application to the Court of Common Pleas of Passaic County to be discharged, pursuant to thirteenth section of the act, entitled "An Act for the relief of persons imprisoned on civil process," and WHEREAS, on the 10th day of February, 1916, the said Stefano Costello was remanded to the Passaic County jail upon the Court not being satisfied with the truth and honesty of the declaration of the confession of the said Stefano Costello, nor with the truth and fairness of the account and inventory exhibited in this cause.

NOW, THEREFORE, if the said Stefano Costello shall appear before the next Court of Common Pleas to be holden at Paterson, on the Fourth Tuesday of April, 1916, shall in all things remaining, fully and honestly

Bond.

comply with all requirements of the Insolvent Laws of this State, and shall appear before the Court according to law, and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the jail of the County of Passaic, and thereto remain until discharged by due course of law, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, Sealed and Delivered in the presence of HARRY L. SCHOEN.	}	COSTELLO, STEFANO. (L. S.) DOMENICO BOTTI. (L. S.)	10
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STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } ss.

DOMENICO BOTTI, being duly sworn on his oath according to law, deposes and says, that he is the surety named in the foregoing bond; that he is a freeholder and resident of the County of Passaic and is worth the sum of Five Thousand Dollars (\$5,000) in real estate situate in the City of Passaic, County and State aforesaid, over and above all his debts and liabilities, and such property exempt by law.

Sworn to and sub- scribed before me this 15th day of February, 1916.	}	DOMENICO BOTTI.	30
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HARRY L. SCHOEN,
Attorney-at-Law of N. J.

*Affidavit of Merits.***Affidavit of Merits**

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

10 STEFANO COSTELLO *and* DOMENICO BOTTI, the de-
 fendants in the foregoing answer mentioned, being
 duly sworn according to law, on their oath say that
 the foregoing answer is not intended for the pur-
 pose of delay, and that they verily believe that the
 said defendants have a just and legal defense to the
 action on the merits of the case.

Sworn and sub- }
 scribed before me }
 at Paterson, the } STEFANO COSTELLO.
 14th day of April, } DOMENICO BOTTI.
 1919. }

20 ISADORE KLENERT,
Master in Chancery of N. J.

Answer.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY CIRCUIT.

HENRY KOCH, trading as
H. KOCH & Co.,

Plaintiff,

vs.

STEFANO COSTELLO and
DOMENICO BOTTI,

Defendants.

Action at Law.

10

Answer

Defendant, STEFANO COSTELLO.

1. He admits the first paragraph.
2. He admits the second paragraph.
3. He admits the third paragraph.
4. He admits the fourth paragraph.
5. He admits the fifth paragraph.
6. He denies the sixth paragraph and says that he did appear on the said Fourth Tuesday of April, 1916, being the next term of the Court of the Passaic County Common Pleas after the date of the execution of the said bond and that he did petition the said Court for his discharge under the Insolvent Laws and did comply fully and honestly with all the requirements of the Insolvent Laws of this State.
7. He admits the seventh paragraph.
8. He admits the eighth paragraph.
9. He denies the ninth paragraph.
10. He denies the tenth paragraph, and says that he did appear before the next term of the Court of

20

30

Answer.

the Common Pleas of Passaic County, after the entering and making of the said bond, and that he did make application for his discharge as an insolvent debtor, according to the requirements of the Insolvent Laws of this State.

11. He denies the eleventh paragraph.

ISADORE KLENERT,

Attorney of Defendant.

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20

30

New Jersey Supreme Court

HENRY KOCH, trading as
H. KOCH & Co.,

Plaintiff,

vs.

STEFANO COSTELLO and
DOMENICO BOTTI,

Defendants.

Action at Law. 10

Testimony

Before Hon. Nelson Y. Dungan, Judge and a Jury.

William Greenfield, Esq., for plaintiff. 20

Isadore Klenert, Esq., for defendant.

Mr. Greenfield opens for the plaintiff.

Mr. Klenert opens for the defendant.

Mr. Klenert.—In order to have it on the record, I think, from the plaintiff's opening, I am entitled to a non-suit. 30

The Court.—I cannot grant your motion to non-suit on the opening.

Mr. Klenert.—Then I will reserve my motion until a little later on.

Testimony.

Mr. Greenfield.—If the court please, the pleading admits that the judgment was not paid and still remains unpaid, therefore, it will not be necessary to prove that part.

10

I now desire to offer, if the court please, a complete certified copy of the record of the Passaic County Court of Common Pleas, in the matter of Stefano Costello, Insolvent Debtor. The certification is up to and inclusive of March 20, 1918.

Mr. Klenert.—I have no objection provided the record shows the proceeding that took place in the Court of Common Pleas, in the County of Passaic, on May 18th, 1916. I suppose it ought to go on record just as the proceedings appear on this certified record.

20

The Court.—Are not these matters set out in your complaint?

Mr. Greenfield.—Yes, they are. I offer this in evidence.

Mr. Klenert.—I think Mr. Greenfield is mistaken. I do not think the proceedings are set out in the complaint.

The Court.—I suppose he might state a synopsis of the chain of events.

Said paper marked Exhibit P-1.

30

Mr. Klenert.—The execution of the bond is admitted in the pleading. The certified record shows the execution of the bond. The last proceeding, if the Court please, is an order dated on the 10th day of February, 1916,

Testimony.

signed by Abram Klenert, Presiding Judge, remanding the defendant, Stefano Costello, to jail, "to prison and there to remain until discharged by order of this Court."—Signed "Abram Klenert, P. J." The case is upon a bond based in the sum of \$1,121—"Know ye all men by these presents that we, Stefano Costello and Domenico Botti, of the City of Passaic, in the County of Passaic and State of New Jersey, are held and firmly bound 10
unto Henry Koch, trading and doing business under the firm name of H. Koch & Co., of the City of Newark, County of Essex and State of New Jersey, in the sum of \$1,121, lawful money of the United States of America, to be paid to the said Henry Koch, trading as H. Koch & Co., his executors, administrators or assigns. To which payment well and truly to be made we bind ourselves, and each of us for himself, in the whole, our 20
and each of our heirs, executors and administrators, jointly, and severally, firmly by these presents"—pursuant to the 13th section. Then it goes on further, "Whereas, on the 10th day of February, 1916, the said Stefano Costello was remanded to the Passaic County Jail upon the Court not being satisfied with the truth and honesty of the declaration of the confession of said Stefano Costello, nor with the truth and fairness of the account and inventory exhibited in this cause, now, therefore, 30
if the said Stefano Costello shall appear before the next Court of Common Pleas to be holden at Paterson, on the Fourth Tuesday of

*Testimony.**Motion for Non-Suit.*

10 April, 1916, shall in all things remaining, fully and honestly comply with all requirements of the Insolvent Laws of this State and shall appear before the Court according to law, and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the jail of the County of Passaic, and there to remain until discharged by due course of law." That is the last point. The next proceeding shows that there was an application made in the court at Paterson, May 18, 1916, "In the matter of the application of Stefano Costello to be discharged as an insolvent debtor." "Mr. William Greenfield, attorney, appearing for creditors. Mr. Harry Schoen, attorney, appearing for applicant. At this time Mr. William Greenfield, attorney, asks for an order on clerk to deliver bond to creditors. Motion opposed by Mr. Harry Schoen, attorney. This motion is denied." That is the last proceeding. If the Court please, we rest.

(PLAINTIFF RESTS.)

Motion for Non-Suit

30 *Mr. Klenert.*—Now, if the Court please, I desire to move for a non-suit. I think the plaintiff has failed to make out his case. I cannot see where the defendants, or either of them, have failed to comply with the conditions of the bond. The suit is brought on this bond.

Motion for Non-Suit.

Mr. Greenfield.—Has it been discharged?

Mr. Klenert.—Why ask me that?

The Court.—I think we may assume that the certified record of the court shows all proceedings.

Mr. Klenert.—That is the trouble. It does not show. Your Honor knows that everything that is done in the Court of Common Pleas is not entered on the record. It says that application is made there by Mr. Greenfield. There is nothing said as to why it is made. 10

Mr. Greenfield.—(After argument).—The trouble was this. Judge Klenert approved the bond.

Mr. Klenert.—Now, you are going to decide on the record, too?

Mr. Greenfield.—The court approved the bond under section 13. 20

The Court.—What is this which I have before me?

Mr. Greenfield.—Possibly the judge approved the wrong bond.

The Court.—Then I will say to you the same as I did to Mr. Klenert, this bond is not the bond that ought to have been given. (After consulting book.) Well, while the 13th section is not mentioned in this case, it seems to relate to a proceeding similar to the proceeding mentioned in the 13th section. The case holds just what the syllabus indicates. The motion for a non-suit will be denied. 30

William B. Burpo.—Direct.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Mr. Klenert.—Another point I desire to raise at this time is that this bond is of no validity. The plaintiff cannot recover on this bond.

10

The Court.—Have you reserved that question of law in your answer?

Mr. Greenfield.—No, sir.

The Court.—There is no such issue raised in the pleadings, Mr. Klenert.

20

Evidence of Defendants

WILLIAM B. BURPO, sworn in behalf of defendant.

Direct Examination by Mr. Klenert.

Q. Mr. Burpo, where do you live? A. City of Paterson.

30

Q. Were you Sheriff of the County of Passaic in —when was your term, Sheriff? A. From 1915 to November, 1918.

Q. And as such Sheriff, did you receive from the defendant in this case, Costello, the bond, under the Insolvent Debtors Act? This particular bond that is in question?

William B. Burpo.—Direct.

Mr. Greenfield.—I object. The record speaks for itself.

The Court.—I think so.

Q. Do you remember the 18th of May, 1916?

Mr. Greenfield.—I object. The record speaks for itself.

The Court.—Objection overruled.

Q. Do you remember that time and that year?

A. I do.

Q. Were you present in court, at the Court of Common Pleas, at Passaic County, on the 18th day of May, 1916? A. I was.

Q. Were you Sheriff at that time? A. I was.

Q. Can you say whether or not on that day you saw the defendant, Stefano Costello, in court, before Judge Klenert?

10

Mr. Greenfield.—I object to that as immaterial, whether he saw him. The record speaks for itself, what proceedings were had. This is an attempt to contradict the record of a court of record.

20

Mr. Klenert.—I think if your Honor please, in the case of Koch, the same plaintiff, against this same witness, argued before the Supreme Court, this same question arose. He at that time said he had the right to offer in evidence anything the Court of Common Pleas said. The question arose is the prosecution of one of the witnesses, Mr. Cunningham.

30

William B. Burpo.—Direct.

The Court.—You say this was decided by the Supreme Court?

Mr. Klenert.—Yes, sir.

Mr. Greenfield.—But not on that question.

The Court.—(After argument).—Do you desire to say anything further?

10

Mr. Greenfield.—Yes, sir. The trouble is, counsel does not distinguish between this case at bar and the case tried before Judge Adams without a jury. It was not on the question of this bond. It was a question of escape and nothing else. Now we are suing on the bond and we have the right to rely on what the record shows.

20

The Court.—The court would not permit the contradiction of the record. But what do you say as to the suggestion that if there are things upon which the record is silent? That may be receivable in evidence?

Mr. Greenfield.—Then I say that it is not to be proven by this man. Then he is not a proper witness.

The Court.—Who is?

30

Mr. Greenfield.—The clerk of the court, who keeps the records. I say no one can come along and attempt to contradict where we produce a record.

The Court.—I am inclined to permit the testimony.

William B. Burpo.—Direct.

Plaintiff's counsel prays an exception and same is allowed.

Q. Now, Mr. Burpo, I understood you to say that you were present at the Court of Common Pleas, Passaic County, before Judge Klenert, May 18, 1916?

A. I was.

Mr. Greenfield.—I object to that, May 18th. The bond required him on the Fourth Tuesday of April—not on May 18th.

10

The Court.—I think there is nothing objectionable in this question.

Mr. Klenert.—I intend to show that on that date there was nothing done by all the parties. I intend to show that by consent of counsel and the court, the matter went over until May 18th, 1916, as the record shows, on that day.

20

The Court.—With the promise to show that, you may proceed. If it is not proven, of course all this will be stricken out.

Q. Did you see Stefano Costello, on May 18, 1916, in the Court of Common Pleas, when you were there, that day? A. I did.

Q. Did you see that day, in Court, Mr. Greenfield?

Mr. Greenfield.—I admit I was there on that day.

30

Q. Did you see Mr. Greenfield in court that day, Mr. Burpo? A. I did.

Q. And you saw Mr. Costello, did you? A. I did.

Harry L. Schoen.—Direct.

Q. Did you see Mr. Botti there, the bondsman for Mr. Costello? A. Yes, sir.

Q. Did you see Mr. Schoen there that time, the counsel? The former counsel? A. Yes.

Q. Did you see Mr. Costello's brother, Frank Costello, there? A. I don't know.

10 Q. You were there on the Fourth Tuesday in April, 1916, in Court? A. Yes, I must have been there some time that day. That was the opening day in Court. I don't remember anything about this case.

Q. You don't remember anything about this case at that time? A. (No response).

Mr. Klenert.—That is all.

(Cross Examination waived.)

20 HARRY L. SCHOEN, sworn in behalf of defendant.

Direct Examination by Mr. Klenert.

Q. Where do you live, Mr. Schoen? A. Paterson, New Jersey.

Q. How long have you been living in Paterson? A. All my life.

30 Q. Born there? A. Yes, sir.

Q. What is your business? A. Lawyer.

Q. Where do you practice? A. Paterson.

Q. How long have you practiced in Paterson? A. Six and a half years.

Q. Where is your office? A. Paterson.

Harry L. Schoen.—Direct.

Q. Do you know Stefano Costello? A. Yes, sir.

Q. One of the defendants in this case? A. Yes, sir.

Q. Do you know Mr. Domenico Botti, his bondsman? A. Yes, sir.

Q. Do you know Frank Costello, his brother? A. Yes, sir.

Q. Do you know Mr. Fulfaro, who is in court here? A. Yes, sir.

10

Q. Were you counsel for Stefano Costello, one of the defendants in this case? A. Yes, sir.

Q. Some time in February, 1916? A. Yes, sir, at the time of the other application.

Q. Can you tell us if you were present in court on the Fourth Tuesday in April, 1916, with Mr. Stefano Costello, the defendant in this case? A. I was there on the Fourth Tuesday of April; Mr. Costello was there with his brother; Mr. Botti, and a man named Mr. Fulfaro, and a friend of his who kept a grocery store in Passaic, at that time.

20

Q. Was Mr. Greenfield there? A. I believe he was.

Q. Can you tell us what took place there at that time? A. To the best of my recollection, which is not clear to me at this time, but I believe the case was called.

Q. (*By the Court*). Now, do not guess about this? A. No, I am not. I am trying to say as fair as my recollection will recall. The matter was called and set down for a hearing and the court set it during the month of May. I do not remember, now, what the day was, the following month, 1916.

30

Harry L. Schoen.—Direct.

Q. (*By Mr. Klenert*). What did you do with Mr. Costello, your client? A. I told Mr. Costello that the matter had been laid off——

Mr. Greenfield.—I object.

The Court.—Objection sustained.

10 Q. What did you do after that? A. I telephoned to Mr. Fulfaro, in Passaic, a few days before the hearing and stated that he should be present.

Q. I don't care what you told him; but after your telephone conversation, what? A. The hearing was several days after that.

Q. What was said, as near as you can——. A. I wouldn't want to state.

Q. What happened on the day in May? A. Mr. Greenfield made an application.

20 Q. Who was there at that time, in court, with you? A. Mr. Costello and his brother, Frank.

Q. (*By the Court*). What day do you speak of now? A. The day in May, 1916. Mr. Costello and his brother, Frank, and the bondsman, Mr. Botti, Mr. Fulfaro, and Mr. Greenfield appeared for the plaintiff and made an application to the court.

30 Q. (*By Mr. Klenert*). Who did? A. Mr. Greenfield made an application to the court to have the bond turned over to the plaintiff, if I remember rightly, and the motion was denied. Then the court, I believe, stated that it would be set down for another day or the matter would be laid off indefinitely, or something of that kind. The matter was never moved from that time until the present time.

Harry L. Schoen.—Cross.

Q. In your recollection was there any day set by the court subsequent to that? A. No, I cannot recall any other day. I was never notified.

Q. I mean that day in court? A. No; I am quite sure there was not.

Cross Examination by Mr. Greenfield.

Q. Mr. Schoen, you are in the office of Mr. Klenert? A. No, sir. 10

Q. Where is your office? A. Citizen's Trust Building, 140 Market Street, Paterson, New Jersey.

Q. How long has it been there? A. Since September, 1916.

Q. And in May, 1916, your office was in the same building, on the same floor with Judge Klenert? A. Yes, sir; the same building.

Q. Mr. Schoen, are you sure I was there on the Fourth Tuesday in April? A. As I said before——. 20

Q. (*By the Court*). The question is, are you sure? A. No, I would never be sure. I wouldn't answer any question that way.

Q. Suppose I should prove to you that I was not in court that day? A. I thought you were there on account of a day being set for a further time.

Q. Was there any notice, after the bond was filed, upon any of the creditors, fixing a day? A. No, sir; not by me. 30

Q. You are not answering the question. Did you serve any notice upon any of the creditors, or upon

Harry L. Schoen.—Cross.

any of the creditor's attorneys for the date of May 18th?

Mr. Klenert.—I object.

A. No, sir.

Mr. Klenert.—I object on the ground that it is irrelevant and immaterial.

The Court.—The question may be answered.

10

Witness.—No, sir.

Q. Did you notify any of the creditors immediately, or shortly, or any time after the bond was filed?

Mr. Klenert.—I object.

Q. A bond was filed, and Stefano Costello released from jail?

Mr. Klenert.—I object to that as immaterial. Under the conditions of that bond, as this bond reads, under section 13, it did not require the defendant to notify any of the creditors.

20

The Court.—The question may be answered.

Q. (Continuing). Did you? A. No, sir.

Q. Did you take any proceedings at all outside of the filing of the bond, and getting the defendant, Costello, out of jail? A. I appeared in court.

Q. Did you? A. Yes.

30

Q. What? A. I appeared in court in furtherance of the bond.

Q. Where is Mr. Costello now? A. In New York City.

Q. Is he here? A. We expect him here.

Harry L. Schoen.—Cross.

Q. Don't you know that you have not known for the past two years where this man is? A. I don't know.

Q. Where did you see him last? A. I have not seen him for some time.

Q. For how long? A. I don't know; I am not in a position to answer that.

Q. You received notice of the application that—that on May 18th I would move to have the County Clerk deliver the bond to me? A. I wouldn't answer that. 10

Q. You appeared in opposition to that motion? A. I appeared on May 18th, yes, sir; but it seems to me the Court set a day on the opening day of the Court, as I stated before.

Q. You are sure you didn't acknowledge service on it? A. I may have; I don't know.

Q. Have you taken any action to this date to any of the terms of the bond since you filed the bond? A. I have done nothing because——. 20

The Court.—You are an attorney. You know that upon cross examination the attorney is entitled to a direct answer, and that you should not volunteer anything.

Witness.—Yes, sir.

Mr. Greenfield.—May I ask that Mr. Schoen be here tomorrow morning. 30

Q. (*By the Court*). Do you expect to be here tomorrow morning, Mr. Schoen? A. No, I do not.

The Court.—Then you had better ask it now.

Salvatore Fulfaro.—Direct.

Mr. Greenfield.—I wanted to get a document, if the court please.

The Court.—I will not ask Mr. Schoen to return tomorrow morning, because you are not prepared to ask the question.

Mr. Greenfield.—Very well, if he does not want to return.

10

Adjourned to Friday, March 7th, 1919, at ten o'clock A. M.

20

SECOND DAY.

FRIDAY, MARCH 7TH, 1919.

Met pursuant to adjournment.

Counsel as before stated present.

30

SALVATORE FULFARO, sworn in behalf of defendant.

Direct Examination by Mr. Klenert.

Q. Mr. Fulfaro, where do you live? A. I live 39 Park Place.

Salvatore Fulfaro.—Direct.

Q. Where? A. Passaic.

Q. How long have you lived in Passaic? A. Thirteen years.

Q. What is your business? A. Well, at the present time it is life insurance business.

Q. What insurance company do you represent? A. Colonial.

Q. How long have you been with them? A. Three years.

Q. Prior to that what had been your business? **10**
A. Before, a grocery store I had.

Q. Do you know the defendant, Stefano Costello? A. Yes, sir.

Q. Do you know his brother, Frank Costello? A. Yes.

Q. Do you know Mr. Botti, one of the defendants in this case and bondsman? A. Yes, sir.

Q. How long have you known Mr. Stefano Costello? A. I know Mr. Costello about twelve years.

Q. How long have you known Mr. Botti? A. **20**
The same.

Q. Are you any relation of this gentleman? A. No, sir.

Q. Do you remember being in the Court of Common Pleas of Passaic County on the Fourth Tuesday in April, 1916? A. Yes.

Q. Will you tell the court and jury who you were there with? A. Yes, sir. On the 14th of April, 1916, I was in the court, we, the two Costello brothers, and Mr. Botti. Before going into court I was **30**
in the lawyer's office.

Q. Who was the lawyer? A. Mr. Schoen. I was in the court and Mr. Schoen told me the court is adjourned.

Salvatore Fulfaro.—Direct.

Mr. Greenfield.—I object to what Mr. Schoen told this witness.

The Court.—Don't tell what anybody said to you.

Q. Where, if any place, did you meet before going to court on that day, on the 14th of April?

A. *In Mr. Schoen's office.

Q. Who was present at the time, in his office?

10 A. Mr. Botti, the two brothers Costello, and me.

Q. Where did you go? A. To the Court House.

Q. With Mr. Schoen? A. Yes.

Q. Did you sit in the Court House? A. Yes.

Q. In the court room? A. Yes.

Q. What court room? A. On the criminal court.

Q. Who was sitting, do you remember, at that time? What judge? A. Klenert.

20 Q. (*By the Court*). Who? A. By name of Klenert.

Q. (*By Mr. Klenert*). What time of day was it, do you remember? A. I think the time was half-past nine, I think.

Q. Could you tell us what took place there at that time, after you were there? How long did you remain? A. I stayed there about half an hour.

Q. An hour? A. Yes.

30 Q. All of you? A. Yes.

Q. What happened? A. After come the lawyer and said to me—.

Mr. Greenfield.—I object to what the lawyer said.

Salvatore Fulfaro.—Direct—Cross.

Q. After what the lawyer had said to you what did you and Mr. Costello, and the rest of you do?

A. I go home because the lawyer say—.

Q. Don't tell us what he said. Did you go home?

A. Yes.

Q. Did Mr. Costello go home? A. Yes.

Q. Do you remember at any time after the Fourth Tuesday here in April, 1916, that you were in the same court with Mr. Stefano Costello, his brother, Mr. Botti and his lawyer? A. Yes, on the 18th of May.

10

Q. What year? A. 1916.

Q. What time of the day did you folks go there?

A. At the same time.

Q. At the same time? A. Yes.

Q. How long did you remain there, all of you?

A. About an hour or an hour and a half.

Q. Was there anything done after you got there? What happened after you remained there an hour and a half? A. The case was adjourned. The lawyer said when he was ready with the case he would let me know.

20

Mr. Greenfield.—I object.

Cross Examination by Mr. Greenfield.

30

Q. Mr. Fulfaro, what date was the Fourth Tuesday of April, 1916? A. The fourteenth of April.

Q. You are sure it was the fourteenth day of April? A. Yes, sir.

Salvatore Fulfaro.—Re-Direct.

Domenico Botti.—Direct.

Q. That is the time you were there? Do you remember that it was the fourteenth day of April?

A. (No response).

Mr. Greenfield.—That is all.

Re-Direct Examination by Mr. Klenert.

10

Q. Now, are you sure, or are you guessing?

A. Well, that is three years ago.

Q. Counsel asked you to give the date. A. I remember the last time, on the 18th of May.

Q. No. He asked you about the Fourth Tuesday of April. Are you sure that is the date, the 14th of April, or are you just guessing at it? A. Well, I think so.

20

DOMENICO BOTTI, sworn in behalf of defendant.

Direct Examination by Mr. Klenert.

Q. Mr. Botti, you are one of the defendants in this case?

30

Mr. Greenfield.—I admit he is one of the defendants and he signed the bond.

Q. Where do you live?

Mr. Greenfield.—I admit that he lives in Passaic.

Domenico Botti.—Direct.

Q. Where do you live? A. I live, 407 Harrison Street.

Q. Passaic? A. Passaic.

Q. How long have you lived in Passaic? A. Eight years.

Q. Do you know Mr. Stefano Costello? A. I do.

Q. How long have you known him? A. Well, four or five years.

Q. Are you any relation of his? A. No, sir. 10

Q. Any connection by marriage, or anything of that kind? A. No, just a friend; only a few years, a friend of mine.

Q. Do you remember, in December, 1915, when you first went on the bond for Mr. Costello, who was arrested at that time for debt? A. Yes, sir.

Q. You do? A. Yes, sir.

Q. Do you remember some time in February, 1916, that he was again arrested, in this same case, and you went on the bond again? A. Yes, sir. 20

The Court.—I think he was only on one bond.

Q. Do you understand? You say you were only on this bond? A. Yes, sir.

Q. This bond that was given some time in February, 1916? A. Yes, sir.

Q. Do you remember being in the court on April 24, 1916, or on the Fourth Tuesday of April, rather, in Paterson, with Mr. Costello? A. Yes, sir. 30

Q. Who was with you that day? A. Mr. Costello, Mr. Fulfaro, and a brother of Costello.

Q. Who else? A. And a lawyer.

Domenico Botti.—Direct.

Q. What lawyer? A. I forget his name, what is the name; I don't know.

Q. The gentleman who was here yesterday? A. Yes, sir.

Q. Before you went in court that morning, where had you been? Where did you go? A. Went to the Court House.

Q. I don't hear you. I mean that morning. Before you went to the Court House, on April 24th, 1916, where did you go—before you went to the court, you, Mr. Costello and his brother. A. I go to the office of the lawyer before I went to court.

Q. Where did you go, after you went to the lawyer's office? A. I go home.

Q. No. After you went to the lawyer's office in the morning—what time did you get there in the morning, in April? A. Half-past eight or nine o'clock.

Q. After you went to the lawyer's office, where did you go with the lawyer? A. Go in the court.

Q. In Paterson? A. Yes.

Q. Was Mr. Costello with you? A. Yes.

Q. And his brother? A. And his brother.

Q. And Fulfaro? A. And Fulfaro.

Q. How long did you stay in the court? A. An hour and a half. I don't know how long I sat.

Q. Then did you go away after that? A. After that I go home right away because I got business, to attend to my business.

Q. You remember being in court, with Mr. Costello and his brother, any time besides April? A. Yes.

Q. When? A. I think it is the 18th of May.

Q. The same year? A. The 18th of May.

Domenico Botti.—Cross.

- Q. In the same court? A. In the same court.
 Q. The same judge? A. The same judge.
 Q. How long did you stay there? A. Well, I cannot tell you that.
 Q. Well, about? A. About.

Cross Examination by Mr. Greenfield.

Q. There were lots of other people in court, weren't there? A. Sure, there were a lot. 10

Q. What day of the week was May 18th? A. Well, I don't know the day.

Q. Don't know that? What day was it in April that you were in court? What date? A. I didn't keep track of that, at the time I go by the lawyer; I go down there; I don't keep track of that.

Q. Where is Mr. Stefano Costello now? A. Down there now. (Indicating.)

Q. Where is he living? A. In New York, now. 20

Q. How long has he been living in New York? A. I don't know that—two years—I don't know how long.

Q. Doesn't he live there about three years? A. (No response).

Q. He moved away at night with all his goods, didn't he?

30

Mr. Klenert.—I object to that as not cross-examination.

Objection sustained.

Frank Costello.—Direct.

FRANK COSTELLO sworn in behalf of defendant.

Direct Examination by Mr. Klenert.

Q. Mr. Costello, are you a brother of Stefano Costello, the defendant in this case? A. I am, sir.

Q. You are the man who owed the money to Botti? A. Yes, sir.

10 Q. Where do you live? A. Live New York at the present time.

Q. Are you married? A. Yes.

Q. With your family? A. Yes.

Q. Where is your brother living now? A. In New York.

Q. How old a man is he? A. Steve is about forty-eight or forty-nine.

Q. A married man? A. Yes, sir; very much.

Q. How many children? A. Three.

20 Q. What does he do in New York? A. At the present time, through the Charity Society there he got a job at the dock there somewheres, doing duty for the incoming soldiers, as I understand; I never was at his place of business, where he works.

Mr. Greenfield.—I object. What is the use of getting the history of his family?

The Court.—It will be stricken out.

30 Q. Was your brother living in Passaic in 1915? A. I believe he was.

Q. (*By the Court*). Do you know? A. Yes, he was.

Frank Costello.—Direct.

Q. (By Mr. Klenert). Did he have a business in Passaic? A. Yes, sir.

Q. What kind of business? A. Macaroni.

Q. Do you remember the Fourth Tuesday of April, 1916? Being at——.

Mr. Greenfield.—I object.

The Court.—Objection sustained. This is an important thing and that is very leading.

10

Q. Do you remember being in Paterson some time in April, 1916? A. I do, yes, sir.

Q. On what occasion did you go there? A. I was in Providence at the time, and heard that my brother was in trouble. I took a run down and went over to a lawyer, and in the presence—before I get Mr. Botti, Mr. Fulfaro with me and we went over and seen the lawyer.

Q. What time in the morning did you go to the lawyer, in April, 1916? A. I was early in Passaic, but we didn't go to Paterson until nine o'clock or half-past nine.

20

Q. Who was at the lawyer's office that morning at nine o'clock. A. I, my brother, Mr. Fulfaro and Mr. Botti.

Q. Where did you go, at what place, after the lawyer? A. We went to court.

Q. What court? A. The Court House. I don't remember what Court House.

30

Q. But you went to the Court House? A. We went to the Court House, yes, sir.

Q. How long did you folks remain in court that morning? A. I think it was about an hour.

Frank Costello.—Direct—Cross.

Q. What made you leave after the hour? A. Because, from the instructions from the lawyer; it was the case that was dismissed.

Q. You were told you were dismissed. A. Yes; we were told that we were dismissed.

Q. Do you remember being in that same Court House with your brother, Mr. Botti and Mr. Fulfaro? A. I had a notice with the lawyer when I was in Providence, to come down.

10 Q. No. I say, do you remember being in this same Court House, after April? A. Yes, sir; sometime in May.

Q. What time in the morning? A. About half-past nine.

Q. How long did you remain there with your brother and the gentlemen you mentioned? A. We remained there a little while; then we were told to go home.

20 Q. Who told you to go home? A. The lawyer.

Cross Examination by Mr. Greenfield.

Q. When, in April, were you in the Court House in Paterson? A. Sometime in the early part of April, sir.

Q. The 10th? A. I make no statement because I am not sure.

30 Q. The 15th? A. No, not the 15th; it was before the middle, before the 15th.

Q. You are sure of that? A. Yes.

Q. How do you know it was before the 15th of April? Because you remember the day that you left Providence, is that right? A. No, I do not.

Frank Costello.—Cross.

Mr. Klenert.—I object to the question; it is misleading; the question is not a fair question.

The Court.—Objection overruled. This is cross examination.

Witness.—If you want me to remember I will answer it.

The Court.—Tell us how you remember. 10

Witness.—Because we get paid twice a month in our business, and I was not paid.

Q. You were not paid the first part of the month?
A. No. I didn't get paid until the 15th. I was short of money. That is why I remember so well.

Q. (*By Mr. Greenfield*). Are you sure that it was before the 15th because you were not paid? Is that right? A. Because I had to go and borrow money to go down there, to make my trip, yes, sir. 20

Q. When was it, in May, that you were over there? Was that before the 15th, too? A. No, sir.

Q. When? A. It was a day or two after I got paid.

Q. When did you get paid, in May? A. The 15th.

Q. What day of the week was it? A. What day of the week? I don't remember. 30

Q. Wasn't it on Sunday? A. No; we don't pay on Sunday.

Q. Is your brother Stefano here? A. Yes.

Q. In court? A. Yes.

Frank Costello.—Cross—Re-Direct.

Q. Where does he live? A. 502 East Sixteenth Street.

Q. New York? A. New York, yes, sir.

Q. How long has he been living there? A. He has been living there for the past year.

Q. Where did he live before? A. 252 Avenue A, just around the corner.

Q. In New York? A. Yes, in New York.

10 Q. How long did he live there? A. For two years.

Q. You are sure of that? A. Yes, sir.

Q. Where did he live before? A. In Passaic.

Q. Were you there when he lived over in Passaic?
A. I was not, no, sir.

Q. How long have you lived in Providence? A. The last time I lived in Providence was in 1916.

Q. Where do you live now? A. Living in New York City, sir.

20 Q. How long have you been living in New York?
A. A year and a half.

Q. When did you move from Providence? A. I moved in Providence.

Q. From Providence? A. I moved from Providence in the Fall of 1916, when I went to Pittsburgh.

Re-Direct Examination by Mr. Klenert.

30 Q. Who are you employed by? A. I was employed by the Narragansett Hotel Company, in Providence, managed by Mr. Fletcher.

Q. What are you doing at the present time?
A. Head waiter, at the present time, at the Marseilles, 103rd Street and Broadway.

Stefano Costello.—Direct.

STEFANO COSTELLO, defendant, sworn in his own behalf.

Direct Examination by Mr. Klenert.

Q. You are one of the defendants in this case?

Mr. Greenfield.—I will admit that he is one of the defendants, the principal one.

Q. Do you remember being arrested sometime in February, 1916? A. When you bring me to jail? **10**

Q. Yes. A. Yes.

Q. Mr. Botti went on your bail, didn't he, your bond, to come in court, in April, 1916? Is that right?

A. Yes.

Q. You were in court, in April, 1916? A. Well, I go to the lawyer; the lawyer called me on the 18th of April, 1916.

Q. Do you remember about when it was in April?

A. About the 15th or 16th of April. **20**

Q. You are not sure? A. Sure.

Q. You are not sure just the day? A. No; I cannot—just about the 16th, I think.

Q. Could it be a few days later?

Mr. Greenfield.—I object.

The Court.—Objection sustained.

Q. But you were there, were you, in the court? Who was with you? A. Me, my brother, Mr. Ful- **30**
faro and Mr. Botti.

Q. And the lawyer? A. And the lawyer, yes, sir.

Stefano Costello.—Direct.

Q. Who notified you, if anyone, to be in court that day? A. Who?

Q. Who told you to go there that day? A. He had come, Mr. Fulfaro come, and called me up to the lawyer, Mr. Schoen, the skinny fellow.

Q. They sent for you? A. Yes, sir; they sent for the court.

Q. They sent for you? A. Yes, sir; they sent for the court.

10 Q. You went to the court? A. Yes.

Q. How long did you stay there? A. About two hours or an hour and a half.

Q. And you went home? A. Yes, sir, after he was go home.

Q. Did you go after, some other time? A. Yes, the next month, March.

Q. May, you mean? A. May.

Q. Not March, May? A. No, May.

20 Q. Who was with you that time, in May? A. Me, my brother, Mr. Fulfaro, Mr. Botti.

Q. How long did you stay there that day. A. About an hour.

Q. Then you went home? A. Yes.

Q. Who told you to go home? A. What?

Q. You told you to go home? A. The lawyer.

Q. Had you been arrested before, February, 1916?

30 *Mr. Greenfield.*—I object to that as immaterial. We are not concerned with anything previous.

The Court.—But this is your witness.

(Question withdrawn.)

Stefano Costello.—Cross—Re-Direct.

Q. How much do you owe Mr. Koch or the Koch Company?

Mr. Greenfield.—I object.

The Court.—Objection sustained.

Mr. Klenert.—The bond is for double the amount.

Mr. Greenfield.—We will release the bond 10
when they pay us the principal.

Cross Examination by Mr. Greenfield.

Q. Where do you live, Mr. Costello? A. 502
East Sixteenth Street, New York.

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

Q. Three years? A. Two years. 20

Q. Where did you live before? A. 16 Henry
Street, Passaic, New Jersey.

Re-Direct Examination by Mr. Klenert.

Q. How long did you live in Passaic? A. About
twelve years.

Q. What was your business in Passaic at the time
that you contracted this debt? A. Macaroni busi- 30
ness.

(DEFENDANT RESTS.)

*Motion for Direction in Favor
of Plaintiff.*

Mr. Greenfield.—I move to overrule the defense and ask the court to direct a verdict in this case. Taking the testimony, if your Honor please, at best we must reply upon the bond. The bond says we must comply with the Insolvency Law under section 13 of the Insolvency Act.

10 *The Court.*—Is that what the bond says?

Mr. Greenfield.—Yes, sir.

The Court.—(After argument).—My view is that the argument on behalf of the defendant proceeds from the erroneous assumption that the proceedings and bond in this case were given under proceedings described in detail in the 13th section of the Insolvent Debtors' Act.

20 It is true that this bond says, in the recital, that "The condition of the above obligation is such that whereas the above Stefano Costello made application to the Court of Common Pleas of Passaic County to be discharged, pursuant to the 13th section of the act entitled 'An Act for the Relief of Persons in Prison.'" That seems to relate to the second proceeding. That this bond, however, was not given under that section, appears by the determination of the Supreme Court in Koch vs. Burpo, reported in 91 N. J. L., at page 116; and it further appears by a reading of the 13th section of the act itself and by a reading of Section 17-B, which is the section under which, according to the determination of the Supreme Court, this bond was given. The purpose of

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*Motion for Direction in Favor
of Plaintiff.*

this section, 17-B, was to give the debtor not only a second but a third and any number of chances to relieve himself from imprisonment and from the debt itself, by doing certain things.

In this case all that the defendant did was to file a bond to be discharged from custody, which effected his discharge from custody, and then did absolutely nothing, unless he did appear in court on the return day or on the day fixed in the bond. In answer to direct questions by counsel one or two of the witnesses say they did appear on the Fourth Tuesday of April; but he himself has said that it was the fifteenth or sixteenth of April, and his brother has fixed very definitely a time before the fifteenth of April, so definitely that there would seem to be no reasonable probability of their being a mistake about it. The Fourth Tuesday in April was certainly after the fifteenth day of April. 10 20

But I think that makes no difference. The appearance contemplated by this bond and by the act is not a mere going to court and sitting there. Something is required besides merely appearing in court. He has done nothing; he has not appeared and fully and honestly complied with the Insolvent Laws of this State. That being the view of the Court, the motion for the direction of a verdict in behalf of the plaintiff, for the amount of the plaintiff's debt, 30

Direction of Verdict for Plaintiff.

which is \$683.14, will be granted and the jury is directed to render their verdict for that amount, and an exception to that ruling on behalf of the defendant, as ground of appeal will be noted in the minutes.

(Verdict rendered accordingly.)

Exception noted as ground of appeal.

10

NELSON Y. DUNGAN,
Judge.

[SEAL]

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30

EXHIBIT P-1

PASSAIC COUNTY COURT OF COMMON PLEAS.

In the matter of STEFANO COSTELLO, as an insolvent
debtor.

Petition

10

TO HIS HONOR, ABRAM KLENERT,

Judge of the Court of Common Pleas.

The petition of STEFANO COSTELLO, of the City of Passaic, County of Passaic and State of New Jersey, respectfully shows:

That your petitioner, on the first day of September, 1915, was arrested by Domenick De Muro, Sergeant-at-Arms of the District Court of the City of Passaic, aforesaid, upon a body execution issued against him, at the suit of Henry Koch, trading under the firm name of H. Koch and Company, in an action on contract, by the District Court of the City of Passaic, and is now in the custody of Amos H. Radcliffe, Sheriff of Passaic County; And your petitioner being so arrested and in custody, did make out and deliver to the said Sheriff an inventory, under oath, and did give bond to the said Henry Koch with sufficient security, pursuant to the second section of an act entitled: "An Act for the relief of persons imprisoned on civil process," and is willing to deliver up to his creditors all his estate, both real and personal, toward the payment of said creditors; and your

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Exhibit P-1

petitioner shows that the following is a just and true account of all his real and personal estate, a full and true inventory of all his deeds, bonds, notes, books of account, vouchers and securities whatsoever, together also with a list of all his creditors with monies due and owing to each of them, to the best of his knowledge, to wit:

INVENTORY.

10	6 Wooden Chairs	\$ 1.95
	1 Kitchen Table	1.00
	Dishes, Cooking Utensils, etc.	6.00
	1 Brass Bed, Bedding & Coverings, etc.	20.00
	1 Iron Bed, Bedding & Coverings, etc.	10.00
	1 Dark Suit of Clothes	5.00
	1 Nickel Watch	1.00
	1 Gold-plated Chain	1.00
	4 Shirts	2.00
20	3 Pair Socks25
	1 Pair Shoes	2.00
	1 Hat	1.00
	2 Caps	1.00
	Collars, Cuffs, etc.	1.00
		<hr/>
		\$ 53.20

LIST OF CREDITORS.

30	H. Koch & Co., Newark	\$560.11
	Van Iderstine & Howling, Passaic.....	3.57
	David Kleckner, Brooklyn	3.50
	Levine & Sons, Passaic	8.09
	The Herrman Company, Paterson.....	17.00
	Littner Oil Company, Guttenberg, N. J.	14.00

Exhibit P-1

Parodi Erminio & Co., New York	95.02
Platt & Washburn Refining Company ..	14.65
M. Sobo, Paterson	30.60
New Jersey Flour Company, Passaic ..	210.00
	<hr/>
	\$956.54

Your petitioner, therefore, prays for the benefit of the insolvent laws of this State and that the Court will name the time and place at which they will attend, to hear what can be alleged for or against his liberation, according to the form of the statute in such case made and provided. 10

STEFANO COSTELLO.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

20

In the matter of the application of STEFANO COSTELLO, as an insolvent debtor.

Order

The petition of Stefano Costello, insolvent debtor, having been presented to the Court of Common Pleas, of the County of Passaic, according to the form of the statute in such case made and provided for the benefit of the insolvent laws of this State: 30

It is, on this 11th day of October, 1915, directed and ordered that the 2d day of December, next, at ten o'clock in the forenoon or as soon thereafter as the court can attend to the same, at the Court House,

Exhibit P-1

in the City of Paterson, be the time and place appointed at which the creditors of the said Stefano Costello shall attend to hear what may be alleged for or against his liberation.

ABRAM KLENERT,
Judge.

10 PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, Insolvent Debtor.

**Order Dismissing Petition and
Remanding the Petitioner**

20 It appearing to the Court that Stefano Costello, having presented a petition under an act entitled: "An Act for the relief of persons imprisoned on civil process," and the Court having granted an order fixing and appointing as the Second day of December, 1915, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson, County of Passaic, State of New Jersey, to hear and determine what can be alleged for or against his liberation, the said Stefano Costello, under the Insolvent Laws of the State of New Jersey:

30 And the said petitioner, having appeared before this Court on the day and date fixed and appointed by this Court, and the said petitioner having been sworn in his own behalf and having been examined by George H. Dalrymple, Attorney for said petitioner, and in the presence of William Greenfield, Esquire, Attorney for Henry Koch, trading as H. Koch & Co.,

Exhibit P-1

one of the creditors of the said petitioner, at whose suit the said petitioner having been arrested under civil process by virtue of an order granted by W. Carington Cabel, Judge of the District Court of the City of Passaic, in the State of New Jersey:

And it further appearing to this Court that the said petitioner has not complied with his petition, and the act for the relief of the persons imprisoned under civil process, and the several supplements thereto and amendments thereof:

10

It is, therefore, on this Second day of December, 1915, on motion of William Greenfield, Esquire, of counsel for Henry Koch, trading as H. Koch & Co., ORDERED and ADJUDGED that the said petition of the said Stefano Costello be and is hereby dismissed, and that his discharge be and is hereby refused, and that the said petitioner, Stefano Costello, is hereby remanded to prison and there to remain until discharged by order of this Court.

20

Let the above rule be entered in the minutes.

ABRAM KLENERT,
P. J.

KNOW ALL MEN BY THESE PRESENTS, That we, STEFANO COSTELLO and George H. Dalrymple, of the City of Passaic, County of Passaic and State of New Jersey, are held and firmly bound unto HENRY KOCH, trading under the firm name of H. Koch & Co., of the City of Newark, in the County of Essex and State of New Jersey, in the penal sum of ELEVEN HUNDRED AND TWENTY-ONE (\$1,121.00) DOLLARS, lawful money of the United States of America, to be paid to the said HENRY KOCH, trading under the firm

30

Exhibit P-1

name of H. KOCH & Co., his executors, administrators or assigns. To which payment well and truly to be made we bind ourselves, and each of us for himself, in the whole, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

SEALED with our seals, and dated the second day of December, in the year of Our Lord One Thousand Nine Hundred and Fifteen.

10 The condition of this bond is such that whereas the above bounden STEFANO COSTELLO is now under arrest and in custody of WILLIAM B. BURPO, Sheriff of Passaic County, by virtue of a certain execution issued against him by W. CARRINGTON CABEL, Judge of the District Court of the City of Passaic, in the County of Passaic, at the suit of the above named HENRY KOCH, and is taken in execution of the sum of FIVE HUNDRED SIXTY DOLLARS AND ELEVEN CENTS (\$560.11) and has been committed to the
20 County Jail of the County aforesaid. And, whereas, the said STEFANO COSTELLO hath made out and delivered to the said WILLIAM B. BURPO, Sheriff aforesaid, an inventory, under oath, pursuant to the second section of the act entitled, "An Act for the relief of persons imprisoned on civil process," and the several supplements thereto and amendments thereof.

30 Now, therefore, if the said STEFANO COSTELLO shall appear before the next Court of Common Pleas to be holden in the County aforesaid, and petition said Court for the benefit of the Insolvent Laws of this State and shall in all things comply with the requirements of said insolvent laws and shall appear in person at every subsequent Court until he shall be

Exhibit P-1

duly discharged as an insolvent debtor; and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the Jail of said County, there to remain until discharged by due course of law, then this obligation to be void, otherwise to remain in full force.

Signed, Sealed and Delivered in the Presence of	}	STEFANO CASTELLA	(L.S.)	10
		GEORGE H. DALRYMPLE	(L.S.)	

STATE OF NEW JERSEY,	}	SS.
COUNTY OF PASSAIC.		

BE IT REMEMBERED that on this Second day of December, 1915, before me, the subscriber, personally appeared STEFANO COSTELLO and George H. Dalrymple, who, I am satisfied, are the persons named in and who executed the within bond, and I, having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

CHARLES K. BARTON,
Attorney-at-Law of N. J.

STATE OF NEW JERSEY,	}	SS.
COUNTY OF PASSAIC.		

GEORGE H. DALRYMPLE, being duly sworn on his oath, says that he is the surety in the within named bond, that he is a freeholder in the County of Passaic, and has property subject to execution worth the

Exhibit P-1

sum of Eleven Hundred and Twenty-one (\$1,121.00) Dollars over and above all just liabilities.

Sworn and subscribed to before me this 2d day of December, 1915. } GEORGE H. DALRYMPLE (L.S.)

10 CHARLES K. BARTON, Attorney-at-Law of N. J.

WILLIAM B. BURPO, Sheriff of Passaic County.

20 STEFANO COSTELLO, who is now held in custody by you upon a process of execution, issued in an action on contract in the District Court of the City of Passaic, in the County of Passaic, at the suit of HENRY KOCH, trading as H. KOCH & Co., makes out and delivers to you the following true and perfect inventory, under oath, of all the goods and chattels, rights, credits, lands, tenements, hereditaments and real estate, to wit:

INVENTORY.

Table with 2 columns: Item description and Price. Items include 6 Wooden Chairs (\$1.95), 1 Kitchen Table (1.00), Dishes, Cooking Utensils, etc. (6.00), 1 Brass Bed, Bedding and Coverings, etc. (20.00), 1 Iron Bed, Bedding and Coverings, etc. (10.00), 1 Dark Suit of Clothes (5.00), 1 Nickel Watch (1.00), 1 Gold-plated Chain (1.00), 4 Shirts (2.00), 3 Pairs of Socks (.25).

Exhibit P-1

1 Pair of Shoes	2.00
1 Hat	1.00
2 Caps	1.00
Collars, Cuffs, etc.	1.00
	\$53.20
TOTAL	

And the said STEFANO COSTELLO herewith tenders to you a bond given to the said plaintiff, with sufficient security, being a freeholder and resident of the County of Passaic, in double the sum for which he was taken in execution, and he demands his discharge according to the statute in such case made and provided. 10

STEFANO COSTELLO,
Debtor.

Dated, December 2nd, 1915.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } ss. 20

STEFANO COSTELLO, the above named, being duly sworn, upon his oath, according to law, deposes and saith:

That the foregoing is a true and perfect inventory of all his goods, chattels, rights, credits, lands, tenements and hereditaments.

Sworn and subscribed to before me this 2nd day of December, 1915. } STEFANO COSTELLO. 30

CHARLES K. BARTON,
Attorney-at-Law of N. J.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an Insolvent
Debtor.

Petition

TO HIS HONOR, ABRAM KLENERT,
Judge of the Court of Common Pleas.

10

The petition of STEFANO COSTELLO, of the City of
Passaic, County of Passaic and State of New Jer-
sey, respectfully shows:

20

Your petitioner, on the first day of September,
1915, was arrested by Domenick De Muro, Sergeant-
at-Arms of the District Court of the City of Passaic,
upon a body execution issued out of said Court
against him, at the suit of Henry Koch, trading un-
der the firm name of H. Koch & Co., in an action on
contract by the District Court of the City of Passaic,
and is now in the custody of William B. Burpo,
Sheriff of the County of Passaic; and your peti-
tioner being so arrested and in custody of said
Sheriff, did make out and deliver to said Sheriff an
inventory, under oath, and did give bond to the said
Henry Koch, trading under the firm name of H.
Koch & Co., with sufficient security, pursuant to the
second section of an act entitled, "An Act for the
relief of persons imprisoned on civil process," and is
willing to deliver up to his creditors all his estate,
both real and personal, toward the payment of said
creditors; and your petitioner shows that the follow-

30

Exhibit P-1

ing is a just and true account of all his real and personal estate, a full and true inventory of all his property, vouchers and securities whatsoever, together with a list of all his creditors with monies due and owing to each of them, to the best of his knowledge, to wit:

INVENTORY.

6 Wooden Chairs	\$ 1.95	10
1 Kitchen Table	1.00	
Dishes, Cooking Utensils, etc.	6.00	
1 Brass Bed, Bedding & Coverings, etc.	20.00	
1 Iron Bed, Bedding & Coverings, etc.	10.00	
1 Dark Suit of Clothes	5.00	
1 Nickel Watch.....	1.00	
1 Gold-plated Chain	1.00	
4 Shirts	2.00	
3 Pairs of Socks25	
1 Pair of Shoes	2.00	20
1 Hat	1.00	
2 Caps	1.00	
Collars, Cuffs, etc.	1.00	
TOTAL	\$ 53.20	

LIST OF CREDITORS.

H. Koch & Co., Newark, N. J.	\$560.11	30
Van Iderstine & Howling, Passaic, N. J.	3.57	
David Kleckner, Brooklyn, N. Y.	3.50	
Levine & Sons, Passaic, N. J.	8.09	
The Herrman Company, Paterson, N. J.	17.00	
Littauer Oil Company, Guttenberg, N. J.	14.00	
Parodi Erminio & Co., New York, N. Y.	95.02	

Exhibit P-1

Platt & Washburn Refining Co., New York, N. Y.	14.65
M. Sobo, Paterson, N. J.	30.60
New Jersey Flour Co., Passaic, N. J. ..	210.00
	<hr/>
TOTAL	\$956.54

10 Your petitioner, therefore, prays for the benefit of the Insolvent Laws of this State and that the Court will name the time and place at which they will attend, to hear what can be alleged for or against his liberation, according to the form of the statute in such case made and provided.

STEFANO COSTELLO.

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

20 STEFANO COSTELLO, of full age, being duly sworn on his oath, according to law, saith that he is the petitioner named in the above petition; that the matters and things therein set forth are true to the best of his knowledge and belief.

Sworn to and sub-
scribed before me }
this 8th day of } STEFANO COSTELLO.
December, 1915. }

30 SAMUEL HILFMAN,
Master in Chancery of N. J.

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Exhibit P-1

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of the application of STEFANO COSTELLO,
an insolvent debtor.

Order

The petition of STEFANO COSTELLO, an insolvent
debtor, having been presented to the Court of Common
Pleas of the County of Passaic, according to the form
of the statute in such case, made and provided for the
benefit of the insolvent laws of this State:

10

It is on this Tenth day of December, 1915, directed
and ordered that the 27th day of January, next, at ten
o'clock in the forenoon, or as soon thereafter as the
court can attend to the same, at the Court House in
the City of Paterson, be the time and place appointed
at which the creditors of the said Stefano Costello
shall attend to hear what may be alleged for or against
his liberation.

20

ABRAM KLENERT,
Judge.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, to be discharged
as an insolvent debtor.

Notice

30

TO WHOM IT MAY CONCERN:

You are hereby notified that I have presented a peti-
tion to the Court of Common Pleas of the County of
Passaic, according to the form of the statute in such

Exhibit P-1

case, made and provided for the benefit of the insolvent laws of this State; and the said court has appointed Thursday, January 27th, 1916, at the hour of ten o'clock in the forenoon, at the Court House of Paterson, New Jersey, as the time and place at which it will attend, to hear what can be alleged for or against my liberation.

STEFANO COSTELLO.

10 Dated, December 10th, 1915.

STATE OF NEW JERSEY,
CITY AND COUNTY OF PASSAIC. } ss.

20 George W. Doggrell, of full age, being duly sworn according to law, on his oath, says that he is book-keeper of the News Publishing Company, that a notice, of which the annexed is a true copy, was published in the *Passaic Daily News*, a public newspaper, printed, published and circulated at Passaic, in said County, on the following dates: December 16, 23 and 30, 1915, and January 6, 1916.

Subscribed and sworn to before me this 6th day of January, 1916, at Passaic, New Jersey. } GEORGE W. DOGGRELL.

30 JAMES T. BARKER,
Notary Public of New Jersey.

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PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent
debtor.

Notice

TO DAVID KLECKNER,

46 Montrose Street, Brooklyn, N. Y.

You are hereby notified that I have presented a
petition to the Court of Common Pleas of the County
of Passaic, according to the form of the statute in
such case, made and provided for the benefit of the
insolvent laws of this State and the said Court has
appointed Thursday, January 27th, 1916, at the hour
of ten o'clock in the forenoon, at the Court House of
Paterson, New Jersey, as the time and place at which
it will attend, to hear what can be alleged for or
against my liberation. 10

STEFANO COSTELLO.
DAVID KLECKNER.

20

Dated, December 10th, 1915.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent
debtor.

Notice

TO VAN IDERSTINE & HOWLING,

173 Main Avenue, Passaic, N. J.

You are hereby notified that I have presented a
petition to the Court of Common Pleas of the County
of Passaic, according to the form of the statute in 30

Exhibit P-1

such case, made and provided for the benefit of the insolvent laws of this State; and the said Court has appointed Thursday, January 27th, 1916, at the hour of ten o'clock in the forenoon at the Court House of Paterson, New Jersey, as the time and place at which it will attend, to hear what can be alleged for or against my liberation.

STEFANO COSTELLO.

10 Dated, December 10th, 1915.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent debtor.

Notice

20 TO THE HERRMAN COMPANY,
237 Ellison Street, Paterson, N. J.

You are hereby notified that I have presented a petition to the Court of Common Pleas of the County of Passaic, according to the form of the statute in such case, made and provided for the benefit of the insolvent laws of this State; and the said Court has appointed Thursday, January 27th, 1916, at the hour of ten o'clock in the forenoon at the Court House of Paterson, New Jersey, as the time and place at which it will attend, to hear what can be alleged for or against my liberation.

30

STEFANO COSTELLO

Dated, December 10th, 1915.

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PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent
debtor.

Notice

To H. KOCH & Co.,
40 Wickliff Street, Newark, N. J.

You are hereby notified that I have presented a
petition to the Court of Common Pleas of the County 10
of Passaic, according to the form of the statute in
such case, made and provided for the benefit of the
insolvent laws of this State; and the said Court has
appointed Thursday, January 27th, 1916, at the hour
of ten o'clock in the forenoon, at the Court House of
Paterson, New Jersey, as the time and place at which
it will attend, to hear what can be alleged for or
against my liberation.

STEFANO COSTELLO.

Dated, December 10th, 1915. 20

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent
debtor.

Notice

To PARODI ERMINIO & COMPANY,
161 Perry Street, New York City.

You are hereby notified that I have presented a 30
petition to the Court of Common Pleas of the County
of Passaic, according to the form of the statute in
such case, made and provided for the benefit of the
insolvent laws of this State; and the said Court has
appointed Thursday, January 27th, 1916, at the hour

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Exhibit P-1

of ten o'clock in the forenoon, at the Court House of Paterson, New Jersey, as the time and place at which it will attend, to hear what can be alleged for or against my liberation.

STEFANO COSTELLO

Dated, December 10th, 1915.

10 PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent debtor.

Notice

TO NEW JERSEY FLOUR COMPANY,
369 Harrison Street, Passaic, N. J.

20 You are hereby notified that I have presented a petition to the Court of Common Pleas of the County of Passaic, according to the form of the statute in such case, made and provided for the benefit of the insolvent laws of this State; and the said Court has appointed Thursday, January 27th, 1916, at the hour of ten o'clock in the forenoon at the Court House of Paterson, New Jersey, as the time and place at which it will attend, to hear what can be alleged for or against my liberation.

STEFANO COSTELLO.

30

Dated, December 10th, 1915.

*Exhibit P-1*PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent
debtor.

Inventory and Account

TO ABRAM KLENERT,

Judge of the Court of Common Pleas of the 10
County of Passaic.

A just and true account of all the estate of Stefano Costello, both real and personal, either in possession, reversion or remainder, together with a just and true inventory of all his deeds, bonds, notes, books of account, vouchers, and specialties. Whatsoever, with the sums due thereon, as near as may be, and a list of all his creditors, with the amount of debts due to them and owing, to wit:

20

ACCOUNT OF PROPERTY.

6 Wooden Chairs	\$ 1.95	
1 Kitchen Table	1.00	
Dishes, Cooking Utensils, Etc.....	6.00	
1 Brass Bed, Bedding, and Coverings....	20.00	
1 Iron Bed, Bedding and Coverings.....	10.00	
1 Dark Suit of Clothes.....	5.00	
1 Nickel Watch	1.00	30
1 Gold-plated Chain	1.00	
4 Shirts	2.00	
3 Pair of Socks.....	.25	
1 Pair of Shoes.....	2.00	

Exhibit P-1

1 Hat	1.00
2 Caps	1.00
Collars, Cuffs, etc.	1.00
	<hr/>
Total.....	\$53.20

LIST OF CREDITORS.

	H. Koch & Co., Newark, N. J.....	\$560.11
	Van Iderstine & Howling, Passaic, N. J.	3.57
10	David Kleckner, Brooklyn, N. Y.....	3.50
	Levine & Sons, Passaic, N. J.....	8.09
	The Herrman Co., Paterson, N. J.....	17.00
	Littuer Oil Co., Guttenburg, N. J.....	14.00
	Parodi Erminio & Co., New York, N. Y.	95.02
	Platt & Washburn Refining Co., N. Y...	14.65
	M. Sobo, Paterson, N. J.....	30.60
	N. J. Flour Co., Passaic, N. J.....	210.00
		<hr/>
	Total.....	\$956.54

20 STEFANO COSTELLO.

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

STEFANO COSTELLO, being duly sworn, upon his oath, according to law, saith that the foregoing is a true inventory of his estate, real and personal, and a true list of his creditors and the amount of their respective claims, according to the best of his knowledge.

30 Sworn to and sub-
 scribed before me }
 this 8th day of } STEFANO COSTELLO.
 December, 1915. }

SAMUEL HILFMAN,
Master in Chancery of N. J.

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Exhibit P-1

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In the matter of STEFANO COSTELLO, an insolvent
debtor.

Notice

To A. LEVINE & SONS,
26 First Street, Passaic, N. J.

You are hereby notified that I have presented a
petition to the Court of Common Pleas of the County
of Passaic, according to the form of the statute in
such case, made and provided for the benefit of the
insolvent laws of this State; and the said Court has
appointed Thursday, January 27th, 1916, at the hour
of ten o'clock in the forenoon, at the Court House of
Paterson, New Jersey, as the time and place at which
it will attend, to hear what can be alleged for or
against my liberation.

10

20

STEFANO COSTELLO.

Dated, December 10th, 1915.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

In re application of STEFANO COSTELLO, an insolvent
debtor.

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

30

JAMES A. GREEN, being duly sworn, according to
law, upon his oath, says that he is employed as clerk

Exhibit P-1

in the office of George H. Dalrymple, the Attorney for the petitioner in the above entitled matter, and that on the 23d day of December, 1915, in the City of Passaic, he served upon A. Levine & Sons a notice, of which a true copy is hereto annexed, by giving the same to a clerk employed in their office at 26 First Street, making known to her the contents thereof.

10 And that on the 14th day of December, 1915, he deposited in the Post Office at Passaic, a letter addressed to the following persons and corporations:

Littauer Oil Co., Old Ferry Road, Guttenburg,
N. J.

Platt & Washburn Refining Co., 11 Broadway,
New York City.

M. Sobo, 96-98 Paterson Street, Paterson, N. J.

20 with postage prepaid thereon, each letter containing a notice to the creditors of Stefano Costello, the petitioner in the above cause, the form of which is the same as the copy hereto annexed with the addition of the name of the party addressed.

Sworn to and sub-
scribed before me
this 20th day of } JAMES A. GREEN.
January, 1916. }

NICHOLAS O. BEERY,
Notary Public of N. J.

30

At a Court of Common Pleas, holden at Paterson, in and for the County of Passaic, of the Term of January, A. D. Nineteen Hundred and Sixteen, the following proceedings were had, to wit:

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Thursday, January 27th, 1916.

The Court Met,

Present,

HON. ABRAM KLENERT,

PASSAIC COMMON PLEAS.

No. 1739

In the matter of the application of STEFANO COSTELLO,
an insolvent debtor. 10

This matter is continued until February 10th, 1916.

Thursday, February 10th, 1916.

The Court Met,

Present,

HON. ABRAM KLENERT.

20

No. 1739

In the matter of the application of STEFANO COSTELLO,
an insolvent debtor.

Mr. George H. Dalrymple, Attorney, appearing for
Applicant.

Mr. William Greenfield, Attorney, opposed to dis-
charge.

Hearing moved by Mr. George H. Dalrymple, 30
Attorney.

Evidence sworn on behalf of the Applicant: Stefano
Costello.

Frank Romano sworn as Interpreter.

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Mr. George H. Dalrymple, Attorney, rests.

At this time Mr. William Greenfield, Attorney, asks that application be dismissed. Motion to dismiss is granted and application for discharge is denied.

PASSAIC COUNTY COURT OF COMMON
PLEAS.

10 In the matter of STEFANO COSTELLO, insolvent debtor.

**Order Dismissing Petition and Remanding
the Petitioner**

20 It appearing to the Court that Stefano Costello having presented his second petition on the Second day of December, Nineteen Hundred and Fifteen, under an act entitled: "An act for the relief of persons imprisoned on civil process," and the court having granted an Order fixing and appointing the Twenty-seventh day of January; Nineteen Hundred and Sixteen, at ten o'clock in the forenoon, at the Passaic County Court House, in the City of Paterson, County of Passaic, State of New Jersey, to hear and determine what can be alleged for or against his liberation, the said Stefano Costello, under the insolvent laws of the State of New Jersey;

30 And the said cause having been adjourned to the Tenth day of February, Nineteen Hundred and Sixteen, with the consent of the respective counsel in the above cause at the hour of ten o'clock in the forenoon at the Passaic County Court House, in the City of Paterson, County of Passaic, and State aforesaid;

And the said petitioner appeared before this Court on the adjourned day and date, and the petitioner having been sworn in his own behalf and having been

Exhibit P-1

examined by George H. Dalrymple, Esquire, Attorney for the said petitioner, and cross-examined by William Greenfield, Esquire, Attorney for Henry Koch, trading as H. Koch & Co., one of the creditors of the said petitioner at whose suit the said petitioner having been arrested under civil process by virtue of an Order granted by W. Carrington Cabel, Esquire, Judge of the District Court of the City of Passaic, in the State of New Jersey;

And it further appearing to this Court that the said petitioner has not complied with his petition and the act for the relief of the persons imprisoned under civil process, and the several supplements thereto and amendments thereof, and that he has not made out a true, perfect and complete inventory of all of his assets and liabilities, and that he has fraudently removed goods and chattels from the State of New Jersey and from within the jurisdiction of this Court, and that he has fraudently concealed the assets outstanding, accounts, books and papers;

It is, therefore, on this Tenth day of February, Nineteen Hundred and Sixteen, on motion of William Greenfield, Esquire, of counsel for Henry Koch, trading as H. Koch & Co., ORDERED and ADJUDGED that the said petition of Stefano Costello be and is hereby dismissed, with costs to be taxed, and that his discharge be and is hereby refused, and that the said petitioner, Stefano Costello, is hereby remanded to prison and there to remain until discharged by order of this court.

ABRAM KLENERT,
P. J.

(Let the above rule be entered in the minutes.)

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Exhibit P-1

KNOW ALL MEN BY THESE PRESENTS, That we, STEFANO COSTELLO and DOMENICO BOTTI, of the City of Passaic, in the County of Passaic and State of New Jersey, are held and firmly bound unto Henry Koch, trading and doing business under the firm name of H. Koch & Co., of the City of Newark, County of Essex and State of New Jersey, in the sum of Eleven Hundred and Twenty-one Dollars (\$1,121) lawful money of the United States of America, to be paid to the said
10 Henry Koch, trading as H. Koch & Co., his executors, administrators or assigns. To which payment well and truly to be made, we bind ourselves, and each of us for himself in the whole, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the Fifteenth day of February, Nineteen Hundred and Sixteen.

20 THE CONDITION of the above obligation is such that whereas the above Stefano Costello made application to the Court of Common Pleas of Passaic County to be discharged, pursuant to thirteenth section of the act, entitled: "An act for the relief of persons imprisoned on civil process," and WHEREAS, on the 10th day of February, 1916, the said Stefano Costello was remanded to the Passaic County jail upon the Court not being satisfied with the truth and honesty of the declaration of the confession of said Stefano Costello,
30 nor with the truth and fairness of the account and inventory exhibited in this cause.

NOW, THEREFORE, if the said Stefano Costello shall appear before the next Court of Common Pleas to be holden at Paterson, on the Fourth Tuesday of April,

Exhibit P-1

1916, shall in all things remaining, fully and honestly comply with all requirements of the insolvent laws of this State, and shall appear before the Court according to law, and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the Jail of the County of Passaic, and thereto remain until discharged by due course of law, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and } 10
delivered in the }
presence of } CASTELLA, STEFANO. (L.S.)
HARRY L. SCHOEN. } DOMENICO BOTTI. (L.S.)

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

DOMENICO BOTTI, being duly sworn, on his oath, according to law, deposes and says that he is the surety named in the foregoing bond; that he is a freeholder and resident of the County of Passaic, and is worth the sum of over Five Thousand Dollars (\$5,000), in real estate situate in the City of Passaic, County and State aforesaid, over and above all his debts and liabilities, and such property exempt by law. 20

Sworn to and sub- }
scribed before me } DOMENICO BOTTI. 30
this 15th day of }
February, 1916. }

HARRY L. SCHOEN,
Attorney-at-Law of N. J.

B-15

Exhibit P-1

At a Court of Common Pleas, holden at Paterson, in and for the County of Passaic, of the term of April, A. D., Nineteen Hundred and Sixteen, the following proceedings were had, to wit:

Thursday, May 18, 1916.

The Court Met,

Present,

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HON. ABRAM KLENERT,

PASSAIC COMMON PLEAS.

No. 1739

In the matter of the application of STEFANO COSTELLO, to be discharged as an insolvent debtor.

Mr. William Greenfield, Attorney, appearing for Creditors.

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Mr. Harry Schoen appearing for Applicant.

At this time Mr. William Greenfield, Attorney, asks for an order on Clerk to deliver bond to creditors.

Motion opposed by Mr. Harry Schoen, Attorney.

This motion is denied.

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Exhibit P-1

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

I, JOHN J. SLATER, Clerk of the County of Passaic, and also Clerk of the Court of Common Pleas, in and for said County, DO HEREBY CERTIFY, That the foregoing is a true copy of the Petition, filed October Nineteenth, A. D., Nineteen Hundred and Fifteen; Order, filed and entered October Nineteenth, A. D., Nineteen Hundred and Fifteen; Order Dismissing Petition and Remanding Petitioner, filed and entered December Third, A. D., Nineteen Hundred and Fifteen; Bond, Inventory, and Affidavit with Endorsement thereon, filed December Fourth, A. D. Nineteen Hundred and Fifteen; Petition, Inventory, List of Creditors and Affidavit filed December Tenth, A. D., Nineteen Hundred and Fifteen; Order filed and entered December Tenth, A. D., Nineteen Hundred and Fifteen; Proof of Publication, Seven Notices, Inventory and Account and Affidavit filed January Twenty-first, A. D., Nineteen Hundred and Sixteen; Minutes of the Court of Common Pleas entered January Twenty-seventh, A. D., Nineteen Hundred and Sixteen; Minutes of the Court of Common Pleas entered February Tenth, A. D., Nineteen Hundred and Sixteen; Order Dismissing Petition and Remanding Petitioner filed and entered February Fourteenth, A. D., Nineteen Hundred and Sixteen; Bond, with Endorsements thereon filed February Seventeenth, A. D., Nineteen Hundred and Sixteen; and Minutes of the Court of Common Pleas entered May Eighteenth, A. D., Nineteen Hundred and Sixteen; In the matter of Stefano Castella, Stefano Castello, or Stefano Costello, as an Insolvent Debtor, as the same is taken from and compared with the record now remaining in my Office.

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D-15

Exhibit P-1

[SEAL] IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the seal of the
said Court and County, at Paterson, this
Twentieth day of March, A. D., Nineteen
Hundred and Eighteen.

JOHN J. SLATER,
Clerk.

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New Jersey Court of Errors and Appeals

HENRY KOCH, trading as H. KOCH & Co.,
Plaintiff-Respondent,

vs.

STEFANO COSTELLO and DOMENICO BOTTI,
Defendants-Appellants.

Action at Law.

*On Appeal from
New Jersey
Supreme Court.*

BRIEF FOR PLAINTIFF-RESPONDENT.

Facts.

This is an appeal from a judgment recovered by the plaintiff, in the New Jersey Supreme Court, Essex County Circuit, in an action instituted against the defendants, to recover on a certain bond given by the defendants, Stefano Costello, as principal, and Domenico Botti, as surety, for the use and benefit of the plaintiff, in the insolvency proceedings then pending in the Passaic County Court of Common Pleas, which bond was in the penal sum of \$1,121. Judgment was recovered by the direction of the Court for the sum of \$683, which included all interest and costs accrued to the date of said judgment.

The said bond was given under the following circumstances: Stefano Costello was arrested on a *capias* issued out of the District Court of the City of Passaic, on a certain judgment recovered by the plaintiff against the said Stefano Costello, on May 26, 1915, for the sum of \$500 damages and costs, and by virtue of the said *capias* he was delivered to the Sheriff of the County of Passaic, and thereafter he entered into an insolvency bond (see Bond Exhibit P. 1, p. 14 E of the printed state of the case). He then filed his inventory and petitioned to be discharged as an insolvent debtor. An order was made by the Court fixing the second day of December, 1915, at the Court House of Passaic County, as the time and place for hearing. On that day the creditors appeared and objected to the debtor's discharge, and thereafter the Court made an order dismissing the petition and remanding the debtor to prison (see order on p. 14 D, Exhibit P. 1, of the printed state of the case). The defendant, Stefano Costello, then entered into a second bond with the same terms and conditions, and again petitioned the

Court for his discharge. And the Court then fixed and appointed the 27th day of January, 1916, at the said Passaic County Court of Common Pleas, as the time and place for the hearing. The debtor served due notice upon the creditors, of the time and place of hearing, and the creditors appeared and again objected to his discharge. After the hearing in open court, a second order was entered dismissing the second petition and remanding the debtor to jail (see order on p. 14 X, Exhibit P. 1. of the printed state of the case). After the debtor remained in jail until the 15th day of February, 1916, he then entered into a third bond (see p. 14 Z, Exhibit P. 1, of the printed state of the case), which bond was adjudicated to be a proper bond by our Supreme Court (see case of *Koch v. Burpo*, 91 N. J. L., p. 116, and on which bond the present suit was instituted and judgment recovered by the plaintiff.

POINT ONE.

The plaintiff's complaint in this suit alleges breach of the following condition of the bond:

“That if the said Stefano Costello shall appear before the next Court of Common Pleas to be holden at Paterson, on the fourth Tuesday of April, 1916, and shall in all things remaining, fully and honestly comply with all requirements of the insolvent laws of this State, and shall appear before the Court according to law, and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the Jail of the County of Passaic, and there to remain until discharged by due course of law, then this obligation to be void, otherwise to remain in full force and virtue.”

Almost the precise language of the insolvency laws of this State. The defendant in answering the complaint (see pp. 5, 6, 7 of the printed state of the case), denies the allegations set forth in the complaint, and avers that he did comply with the insolvency laws of this State; that he did appear and petition the Court for his discharge under the insolvency laws, in accordance with the requirements and condition of the bond, in that he did fully and honestly comply with all the requirements of the insolvency laws of this State. That being the issue before the Court, and the only issue raised, the burden was upon the plaintiff to establish the fact, whether or not there was a breach of the condition of the bond, and whether or not the insolvent

debtor did appear before the Court and did petition for his discharge in accordance with the terms and condition of the bond in question.

The plaintiff offered in evidence the entire record (certified) of the Passaic County Court of Common Pleas from the very inception of the insolvency proceedings of the said Stefano Costello, to the date of the trial of this suit (see record marked Exhibit P. 1, pp. 14 A to 15 D inclusive). Upon examination of the record, nowhere does it appear that the debtor petitioned the Court to be discharged as an insolvent debtor under his last bond, on which judgment was recovered by the direction of the Trial Court (see p. 44 of the printed state of the case), for the very reason that the defendant did not comply with the terms of the bond. In addition to the record, counsel for the defendant, one Lawyer Schoen, who represented the alleged insolvent debtor in the insolvency proceedings, testified as follows (see p. 25 of the printed state of the case, folio 30):

“Q Was there any notice, after the bond was filed, upon any of the creditors, fixing a day? A No, sir, not by me.

Q You are not answering the question. Did you serve any notice upon any of the creditors or upon any of the creditor's attorneys for the date of May 18th? A No, sir.”

Again, on page 26:

“Q Did you notify any of the creditors immediately or shortly, or at any time after the bond was filed? A No, sir.”

On page 27, folio 20:

“Q Have you taken any action to this date to any of the terms of the bond since you filed the same? A I have done nothing.”

As to the bond in question, requiring that the said Stefano Costello should appear and petition the said Court at the next term thereof, which was on the fourth Tuesday of April, 1916, there is no question but that the defendant failed to do so and that they have done nothing to the present date, is a matter of record of the Court and as appears by the facts testified to by the insolvent debtor's own counsel. Can it be said that the creditor has no rights at all or that the creditor can be defeated by any such schemes or manoeuvres on the part of the defendants, who, when suit is instituted, hold that there is no liability

on a bond, prepared and filed by their own counsel, on the mere fact that the phraseology of the bond may not be in the precise language of the statute?

That, *that is not necessary is a well established principle of law*, in our own courts and in other courts.

See case of

McEachron et al. v. Inhabitants of the Township of New Providence, 25 N. J. L., p. 528.

“That a bond is valid though not strictly in accordance with the statute, as long as a substantial compliance with the statute and conditions intended by the parties is manifest.”

See case of

Rose v. Winn, 51 Texas, p. 545.

But the defendants claim that they have appeared in court on the fourth Tuesday of April, 1916. What proof have they produced? No record of any court proceedings of any kind, if such appearance was made; no record of any petition presented; no application to fix and appoint a day for the hearing; *no notice to the creditors* as required by Section 2 of the Insolvency Act. If they have appeared, as testified to by the defendant and his host of witnesses, that they were in court, that they were sitting there; for what purpose did they go there? Did they go there to examine the surroundings of the court, possibly to admire the judge in his judicial robe, or to admire the decorations of the interior of the court? Assuming that they did appear in court on that day, by coming into court, surely the appearance contemplated by the bond in question and by the act requires something more than the mere coming into court and sitting there to watch the proceedings.

And if they have failed to appear and petition the Court for the debtor's discharge and failed to notify the creditors of the time and place fixed for the hearing, there was a breach of the conditions of the bond, and the plaintiff is entitled to recover.

See

Hauser & Son v. Rayon, 73 N. J. L., p. 274.

Glynn v. Kelly, 71 N. J. L., p. 10.

POINT TWO.

But counsel for the defendants contends that they can escape liability on the theory that it was a wrong bond, that the bond was given under Section 13 of the insolvency laws, as the bond reads, and therefore the creditor having failed to file an undertaking, the bond became void. How the defendants can escape liability on that theory counsel is at a loss to know, but assuming for the sake of the argument, that the bond was given under Section 13, was the defendant discharged because the creditor failed to file his undertaking to pay for the debtor's board? No. No such order was entered by the judges of the Court of Common Pleas, but the debtor was discharged because he gave a proper bond, which was adjudicated valid by our Supreme Court in the case of

Koch v. Burpo, 91 N. J. L., p. 116.

Now, if he was discharged because he gave the bond and not because the creditor failed to file his undertaking, and surely the creditor is not obliged to file his undertaking whenever a new bond is filed, are there no other duties incumbent upon the insolvent debtor in addition to the filing of the bond and getting his discharge from jail? If we take Section 13, we must read that section in conjunction with Section 14, of the Insolvency Act, Compiled Statutes, Vol. 2, p. 2829, wherein it requires that the insolvent debtor should within thirty days after his discharge file his declaration, and that within twenty days thereafter the creditor is to file his plea. As there was no declaration filed by the debtor in this case, surely the creditor was not obliged to file his plea before the debtor filed his declaration. The bond required him to comply with the insolvency laws of this State. He has not complied with Section 2 of the act, and if we contend that this bond was given under Section 13, the insolvent debtor has not complied with that either, as he has not filed his declaration.

POINT THREE.

The next question is, does it lie in the mouth of the surety, after he has received the consideration of the bond, namely, the prisoner's discharge from jail, to say that he cannot be held liable on the bond because the bond is in the wrong form? The contention of counsel for the plaintiff is, that he cannot do so. It does not lie in the mouth of the defendant to say: "Yes, it

is true that we have signed the bond, and our purpose and object having been accomplished, by getting the man out of jail, under certain conditions, that the prisoner will comply with the insolvent laws of the State of New Jersey, and though the debtor has failed to comply with the terms of the bond, the surety is not liable because the bond was not in the proper form." The fallacy of any such contention is too apparent, and it would be rather an affront on the part of counsel to cite any authorities on any such question as that.

In *Corpus Juris*, Vol. 9, Section 39, at page 24, it says:

"Except where the statute, either expressly or impliedly, declares all bonds void which do not strictly comply with the requirements therein prescribed, such bonds are good. A bond need not be in the exact words of the statute, and the fact that it slightly varies from the form prescribed will not invalidate it, provided it includes substantially all that the statute requires. Thus, a bond intended to be given pursuant to the requirements of a statute is not invalid because of the variance from the statutory requirements as to the parties."

See case of

Mayor of the City of New York v. Goldman, 26 N. E. Rep., page 456.

And in *Corpus Juris*, Vol. 9, page 26, it is said:

"Where a bond contains the conditions prescribed by statute, and also contains conditions in excess to those so required, if the excess can be separated from the authorized portion without destroying the latter, it may be rejected as surplusage and the rest of the bond held valid, in the absence of a statutory provision expressly or by implication making it void."

Nowhere does our Insolvency Act make any bond void, if it does not strictly comply with the act or any part thereof. The bond was given upon the express condition that if the insolvent debtor should fail to comply with the insolvency laws of this State, then the said defendants should pay unto the said H. Koch & Co. a certain sum of money therein mentioned. The insolvent debtor did fail to comply with the conditions of this particular bond, in that he did not petition the Court for his discharge, if this bond is under Section 2 of the act. And if it is under Section 13, he failed to file his declaration and did not

attempt to proceed thereunder, and the creditor was not obliged to file any undertaking.

That the defendant is estopped from questioning his own bond is well established in the case of

Hunt v. Allen, 26 N. J. L., page 553.

He received the consideration of the bond in the release of the prisoner, and therefore he cannot now attack it, nor does it lie in his mouth to say that the bond is void, and the plaintiff cannot recover for the breach thereof.

It is, therefore, respectfully submitted that on the facts as set out in the opinion by the learned Trial Judge in the above entitled cause of action (as appears on page 44 of the printed state of the case) and on the authorities above cited, the judgment should be affirmed with costs.

Respectfully submitted,

WILLIAM GREENFIELD,

Attorney for and of Counsel with Plaintiff-Respondent.

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New Jersey Court of Errors and Appeals

HENRY KOCH, trading as
H. KOCH & Co.,
Plaintiff-Appellee,

vs.

STEFANO COSTELLO and
DOMENICO BOTTI,
Defendants-Appellants.

Action at Law.

Brief for Defendants-Appellants

FACTS

THIS is an action instituted by the plaintiff, to recover against the defendants, Stefano Costello and Domenico Botti, his surety, the sum of \$560.50 on a certain bond made by the defendants, Stefano Costello and Domenico Botti, to the plaintiff, Henry Koch, trading as H. Koch & Co., which bond was in the sum of \$1,121.00, and was given pursuant to Section 13 of the Act entitled, "An Act for the relief of persons imprisoned on civil process," G. S., p. 2,829 (see copy of bond printed case, p. 8 and 9).

On the 26th day of May, 1915, the plaintiff recovered a judgment against one of the defendants, Stefano Costello, for the sum of \$500.00, in the District Court of the City of Passaic. Execution was issued and returned unsatisfied, on September 1st, 1915, by virtue of an order on the ground of fraud, granted by the Judge of the District Court of the City of Passaic. The said Stefano Costello was then and there taken into custody, for want of sufficient goods and chattels to satisfy said judgment, and was delivered to the Sheriff of the County of Passaic. That thereafter, the said Stefano Costello gave a bond and petitioned the Court of Common Pleas of the County of Passaic, in accordance with Section 2-3-6-7-8 under the act entitled, "An Act for the relief of prisoners imprisoned under civil process." That by virtue of an order signed by the Honorable Abram Klenert, on December 2, 1915, the said petition was dismissed and the defendant, Stefano Costello, was remanded to jail.

That on the same day, December 2, 1915, the said Stefano Costello filed a second bond and again petitioned the Court of Common Pleas of the County of Passaic, in accordance with Section 2-3-6-7-8 under the said act, entitled "An Act for the relief of persons imprisoned under civil process," and the Court fixed and appointed January 27, 1916, to hear and determine what could be alleged for or against the liberation of the said Stefano Costello, under the Insolvency Laws of the State of New Jersey, and the said cause was adjourned to February 10, 1916, with the consent of all parties; that the said Stefano Costello, petitioner, again appeared for the second time, before the Court of Common Pleas of the County of Passaic, in his efforts to be discharged from imprisonment under the said act entitled "An Act for the re-

lief of persons imprisoned under civil process," in accordance with Section 2-3-6-7-8 of the said act, Compiled Statutes Vol. II, page 2,824. After the hearing the Court denied his application and dismissed the second petition and remanded the said Stefano Costello to prison.

The defendant, Stefano Costello, remained in jail until on or about February 16, 1916, on which day he filed a third bond, the surety in said bond being the defendant, Domenico Botti, and thereafter, the said Stefano Costello, was released from said imprisonment.

This bond, however, through mistake or otherwise, was not given in accordance with Section 2-3-6-7 and 8 of the said act, G. S. Vol. II, p. 2,824, nor did the defendant proceed as required by law under the above-mentioned section, and in the same manner as in the two previous applications, *i. e.*, by entering into bond, delivering to the officer making the arrest a true and perfect inventory, under oath, of all his goods and chattels, etc., and give a bond to the plaintiff, etc., as required by Section 2 of the said act; but, on the contrary, the defendant merely gave a bond pursuant to Section 13 of said act, G. S., p. 2,824, etc.

The conditions of which bond reads as follows:

"THE CONDITION of the above obligation is such, that whereas the said Stefano Costello made application to the Court of Common Pleas of Passaic County to be discharged *pursuant to thirteenth section of the act, entitled "An Act for the relief of persons imprisoned on civil process,"* and WHEREAS on the 10th day of February, 1916, the said Stefano Costello was remanded to the Passaic County Jail upon the Court not being satisfied with the truth and honesty of the declaration of the confession of the

said Stefano Costello, nor with the truth and fairness of the account and inventory exhibited in this cause.

Now, THEREFORE, if the said Stefano Costello shall appear before the next Court of Common Pleas to be holden at Paterson, on the Fourth Tuesday of April, 1916, *shall in all things remaining fully and honestly comply with all requirements of the Insolvent Laws of this State, and shall appear before the Court according to law, and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the Jail of the County of Passaic, and thereto remain until discharged by the course of law, then this obligation to be void, otherwise to remain in full force and virtue.*

Signed, Sealed and Delivered in the presence of HARRY L. SCHOEN.	}	COSTELLO, STEFANO. (L.S.)
		DOMENICO BOTTI. (L.S.)

(See copy of bond printed case, p. 8 and 9.)

Point One

1. Because the Court refused to non-suit the plaintiff, although a non-suit should have been granted.

2. Because at the close of plaintiff's case no evidence had been submitted by the plaintiff to prove the allegations set forth in the complaint, *i. e.*, no evidence was submitted to prove that the defendants had failed to comply with the conditions of said bond so entered into by them. (See printed case, p. 16-18.)

3. At the close of plaintiff's case it was apparent that the wrong bond had been entered into by de-

defendants and accepted by the plaintiff, *i. e.*, said bond was given and accepted under and pursuant to Section 13 of the Insolvent Debtors' Act, G. S., p. 2,828, whereas a bond should have been given pursuant to Section 2 of the Insolvent Debtors' Act, G. S., p. 2,824,—(see state of case, p. 17)—and the defendant should have proceeded under said section in the same manner as in his two preceding applications.

The condition of the bond under Section 2 provides that the defendant will appear before the next Court of Common Pleas to be holden in the County of Passaic and petition said Court for the benefit of the Insolvent Laws of this State; *and that said defendant will in all things comply with the requirements of the said Insolvent Laws, etc.*

The condition of the bond, under Section 13 of the act, however, provides that the debtor *shall in all things remaining fully and honestly comply with the Insolvent Laws of this State and shall appear before the Court according to law, etc.*

Under a bond given under Section 2 of the act it was incumbent upon the debtor to appear before the next Court of Common Pleas and petition said Court for the benefit of the Insolvent Laws. But under a bond given in this case under Section 13, it required the debtor to appear before the next Court of Common Pleas *and in all things remaining fully and honestly comply with the requirements of said act.*

When defendant's discharge was denied under the second application, in his third application he should have proceeded as in previous applications, *i. e.*, Section 2 of the act, and given a bond pursuant to said section. Instead, however, he made no application for his discharge, but gave a bond under Section 13 of the act.

So that at the close of the plaintiff's case there was no evidence from which the Court or Jury could infer that the defendant had violated the condition of said bond given in this case, insomuch as the bond provided that the defendant *shall in all things remaining fully and honestly comply with the requirements of said act.*

Defendant was not required to petition said Court under Section 13 of the act, nor does the bond require defendant to petition said Court, etc.

Before the bond, given by defendant under Section 13 of the act, became effective; it became and was the duty of the creditor, if not being satisfied with the truth and honesty of the declaration of the debtor, etc., as mentioned in said section, to offer and undertake to the Court to prove by the first day of next term that such debtor has concealed his assets, etc. (See copy of Section 13 on page 2,828.) This the creditor failed to do.

The following is a copy of Section 13 of the Insolvent Debtors' Act, page 2,828:

"That if the creditor or creditors at whose suit such debtor is imprisoned, or any other creditor shall not be satisfied with the truth and honesty of the declaration and confession of such debtor, nor with the truth and fairness of the account and inventory, so as aforesaid to be exhibited, and such creditor or creditors shall offer and undertake to the Court to prove by the first day of the next term, that such debtor has concealed and secreted some part of his estate, and has not fairly, fully and honestly, delivered up to the use and benefit of his creditors the whole of his estate, real and personal, it shall and may be lawful for the Court to remand such debtor to prison, and direct such debtor and the said creditor or creditors so dissatisfied, as aforesaid, to appear before the

Court on the first day of the next term; provided, that such creditor or creditors so dissatisfied, shall and do agree by writing under his or their hands, to allow and pay any sum that the court may direct, not exceeding two dollars per week, to and for the support of such debtor, to be paid to the debtor or left with the jailer at such time and in such sum as the creditor or creditors may choose; provided, the said allowance be not withheld for a space longer than one week at any one time; and on failure of payment of such weekly sum, such debtor shall, on application to the Court, or any three judges thereof, be forthwith by order as aforesaid, discharge; provided also, that if such creditor or creditors so dissatisfied, shall prove that such debtor hath concealed and kept back any part of his estate, he or they shall be reimbursed the expense of supporting such debtor out of the estate of such debtor; provided further, that such debtor who shall be remanded to prison under this section, is hereby authorized to execute and deliver to the Sheriff or Keeper of the Jail of the County a bond with one or more sufficient securities, freeholders and resident in the County, in double the sum for which such debtor was arrested or held in custody, or taken in execution, to any of the creditors who shall undertake, as in this section is mentioned, conditioned, that such debtor shall in all things remaining, fully and honestly comply with the requirements of the Insolvent Laws of this State, and shall appear before the court according to law and if refused a discharge, surrender himself immediately thereafter to the Sheriff or Keeper of the Jail of the County, there to remain until discharged by due course of law."

It is apparent from the reading of the foregoing section that before the bond given under Section 13 of said act became effective it was the duty of the creditor at whose suit such debtor was imprisoned (that is to say in case such creditor shall not be satisfied with the truth and honesty of the declaration and confession of such debtor, etc.) to offer and undertake to the Court to prove by the first day of the next term that such debtor has concealed and secreted some part of his estate, etc.

In this the creditor failed.

The point made is that it was a condition precedent on the part of the creditor to carry out certain provisions of said section before the said bond became effective.

Point Two

Because the trial judge, upon the trial of said cause, directed a verdict in favor of plaintiff and against the defendants over the objection of said defendants, whereas said trial judge should have directed a verdict in favor of defendants.

The reasons stated in Point One would apply to Point Two.

Point Three

Because the trial judge, upon the trial of said cause, directed a verdict in favor of plaintiff and against the defendants over the objection of said defendants, whereas said trial judge should have submitted the case to the jury for its verdict.

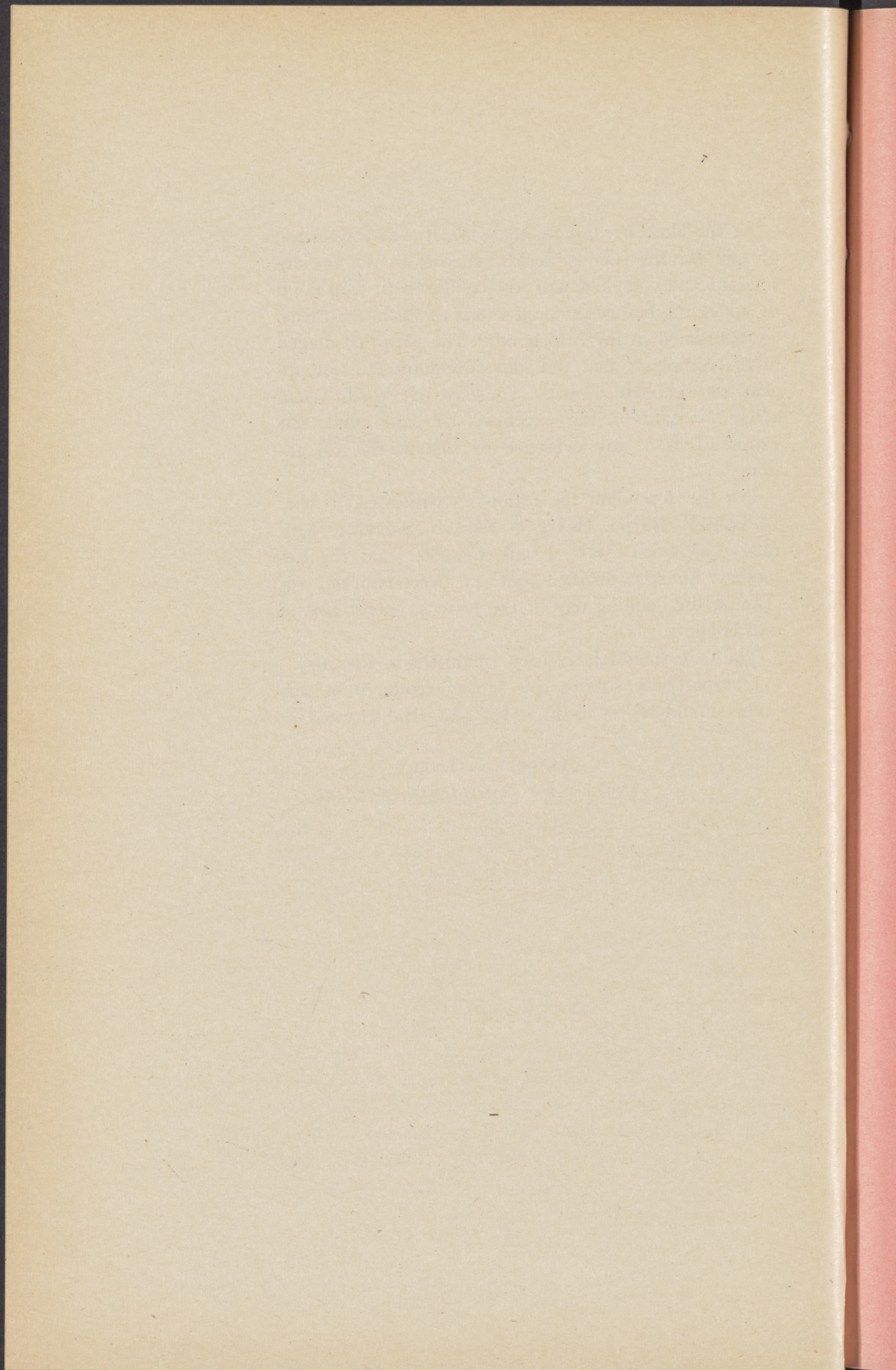
At the close of defendants' case, it was a question of fact for the jury to decide whether or not the defendant had complied with the condition of said bond by appearing before the next Court of Common Pleas, as mentioned in the said bond. The plaintiff alleged in his complaint that the said defendant did not appear on the said Fourth Tuesday of April, 1916, after the date of the execution of said bond, but failed to offer any evidence to sustain this allegation.

For the defendant the following witnesses, to wit: William B. Burpo, Harry L. Schoen, Salvatore Fulfaro, Domenico Botti, Frank Costello, and the defendant himself, testified that the defendant did appear on the opening day of the term as mentioned in said bond.

The case should have been submitted to the jury.

I respectfully submit the verdict rendered in this cause should be set aside and a new trial granted.

ISADORE KLENERT,
Attorney for Defendants-Appellants.



PROSS 1

PROSS 1