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Bill of Complaint.

Bill of Complaint.

Filed July 21, 1923.

In Chancery of New Jersey

To His Honor, Edwin Robert Walker, Esq., Chan- 10
cellor of the State of New Jersey.

Complainants Antonio Cerrato and Cecilia Cerrato, his wife, of the City of Newark, County of Essex and State of New Jersey, respectively shows:

1. That on April 10, 1923, complainants entered into a written contract with Giuseppe Megaro and Giovanni Megaro, whereby said Giuseppe Megaro and Giovanni Megaro agreed to purchase premises known and designated as 251 Eighth avenue, and 29 Clifton avenue, Newark, N. J., on or before July 10, 1923, and more particularly described hereafter for the sum of \$27,500.00, a copy of which contract is hereto attached and made a part hereof. 20

2. The premises above mentioned are in the City of Newark, County of Essex and State of New Jersey and described as follows:

BEGINNING at the northeasterly corner of Eighth avenue and Chatham street, now Clifton avenue, and from thence running along said Eighth avenue easterly twenty-two feet, ten inches; thence northerly at right angles with the same one hundred and ten feet; thence westerly twenty-one feet, ten inches to Chatham street, now Clifton avenue aforesaid; and thence along said Chatham street, now Clifton avenue, southerly one hundred and eleven feet to the place of BEGINNING. 30 40

Bill of Complaint.

3. By mutual agreement between complainants and Giuseppe Megaro and Giovanni Megaro, the date of closing title was changed to July 6, 1923.

10 4. That on said July 6, 1923, complainants were ready, willing and able to convey said premises according to the terms of said contract, above mentioned, and offered to perform their part of said contract, but said Giuseppe Megaro and Giovanni Megaro, refused to take title to said premises or perform any terms of the aforesaid contract.

5. Complainants are now ready, and have been ready and will be ready to carry out the terms of the above-mentioned contract.

20 6. Complainants are without adequate remedy in the Courts of Law and therefore pray:

1. That the said Giuseppe Megaro and Giovanni Megaro, who are the defendants in this suit, may answer this bill of complaint without oath.

2. That the said Giuseppe Megaro and Giovanni Megaro be compelled to specifically perform the terms of the contract above mentioned.

30 3. That a writ of subpoena may issue commanding the said Giuseppe Megaro and Giovanni Megaro to answer this bill of complaint and abide by such decree as this Court may make in the premises.

CHARLES P. CERRATO,
Solicitor for and of Counsel
for Complainants.

Answer and Cross-Bill.

Answer and Cross-Bill.

Filed July 28, 1923.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, etc.

*Answer and
Cross-Bill.*

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The defendants, Giuseppe Megaro and Giovanni Megaro, answering the bill of complaint filed in this cause, say that:

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1. The allegations in the bill of complaint are all admitted.

2. As a defense they ought not to be compelled to specifically perform the terms of the contract mentioned in the complaint, because the complainants did, by a certain writing dated October 4, 1922, execute a lease of the store, forming a part of the building in question, and particularly known as No. 251 Eighth avenue, together with the three rooms on the second floor of the premises in question, to one, Domenico Pirone, for the term of five years from November 1, 1922; and in said agreement the complainants promised and agreed with Domenico Pirone, his heirs, executors and administrators, that during the existence of said period of five years, beginning No-

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Answer and Cross-Bill.

10 vember 1, 1922, he, the said Domenico Pirone, would be given the first preference to purchase said property in the complaint described. That said lessee, Domenico Pirone, is in actual occupancy and possession of the said demised premises, under and by virtue of the aforesaid lease, and has, since July 1, 1923, informed these defendants, and he now insists and maintains, that he was not given the first preference to purchase the said property in accordance with the terms of the aforesaid lease.

20 3. That since the execution of the Articles of Agreement set forth in the bill of complaint, these defendants have expended various amounts of money, aggregating the sum of \$1,500.00 for necessary repairs and improvements, consisting of
20 plastering work, carpenter work and plumbing work, and have expended much personal energy and great loss of valuable time in and about procuring a mortgage loan from various Building and Loan Associations for the purpose of financing that part of the agreement on their part to be performed, and did succeed in obtaining a
30 loan of \$15,000.00 on said property from the Annexed District Building and Loan Association of the City of Newark, and were ready to assign to complainants a mortgage in the sum of \$4,000.00 covering premises No. 54 Highland avenue, in the City of Newark, and to execute back to the complainants the purchase money mortgage in the sum of \$7,500.00, and also to pay the balance of cash necessary on the delivery of the deed, and otherwise fully perform each agreement on their part to be performed in the said transaction.

40 4. Giovanni Megaro, one of the defendants, and his family, are in occupancy and possession of

Answer and Cross-Bill.

the room in the basement floor of the premises designated as No. 31 Clifton avenue, and two other certain rooms on the third floor of the premises in question.

5. In view of the existing claim made by Domenico Pirone, and in anticipation of the failure of complainants' title on that account, and the complainants' inability to perform specifically their part of the agreement set forth in the bill of complaint, the complainants did agree to and with these defendants, on July 6, 1923, to pay to these defendants the sum of \$2,000.00 in cash, and to give the defendant, Giovanni Megaro, a lease for the period of one year of the two rooms on the third floor of that part of the premises in question commonly known as No. 29 Clifton avenue, and the room in the basement of the building for a monthly rental of \$30.00. And in consideration of the premises, these defendants did, on said July 6, 1923, consent to the transfer to the complainants of a loan in the sum of \$15,000.00 on the property in question, granted to the defendants by the Annexed District Building and Loan Association of the City of Newark; with the expressed agreement that nothing in said consent was to operate as a cancellation of the promises and agreements contained in the agreement for the sale of said property set forth in the bill of complaint entered into between the complainants and the defendants on the date of April 10, 1923.

Wherefore, these defendants pray that it is necessary to make the said Domenico Pirone a party defendant to this suit for the complete determination and settlement of the said question relating to his not having received a first preference to purchase the property in question, during the term of his lease.

Petition to Admit Party Defendant

Wherefore, these defendants pray to be hence dismissed with costs.

And by way of Cross-Bill, these answering defendants pray:

10 1. That Domenico Pirone may answer this Cross-Bill without oath, and abide by such decree as this Court may make in the premises.

2. In the alternative, in case it should be determined at the final hearing of this cause, that these defendants should not specifically perform the terms of the contract mentioned in the bill of complaint.

20 3. The complainants re-imburse the defendants in the sum of \$2,000.00 in addition to the sum of \$800.00 earnest money paid to the complainants on the agreement in question, and execute in favor of the defendant, Giovanni Megaro, a lease of the rooms aforesaid, now occupied by him for the term of one year from July 1, 1923, at the monthly rental of \$30.00, in accordance with the stipulation and agreement entered into by the complainants and these defendants on July 6, 1923.

30 ANTHONY R. FINELLI,
Solicitor and Counsel of Defendants.

Petition to Admit Party Defendant

Petition to Admit Party Defendant.

Filed August 23, 1923.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

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The petition of Domenico Pirone, residing at No. 251 Eighth avenue, in the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. That on the 4th day of October, 1922, the petitioner entered into a deed of lease in writing with Antonio Cerrato of the City of Newark aforesaid, whereby petitioner leased for a term of five years certain premises known as "the store No. 251 Eighth avenue and store at No. 23 Clifton avenue and three rooms on first floor of No. 29 Clifton avenue, Newark, N. J., with the appurtenances, &c." upon the terms mentioned at length in said deed and that said deed of lease in addition to a right of renewal of said lease as defined therein, provided that "it is mutually agreed that the party of the second part will be given first preference to purchase said property any time before or at the expiration of the five years' lease." That said deed of lease was duly acknowledged according to law on the 10th day of April, 1923, by the said Antonio Cerrato, and recorded in the Register's office of Essex County on the 10th day of April, 1923, in Book D-68 of Deeds for said County on page 122, &c.

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2. That petitioner is advised and believes it to be true that before the expiration of the term of years provided in said lease and notwithstanding

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Petition to Admit Party Defendant

the provision made therein giving petitioner a first preference to purchase said property any time before or at the expiration of the five year lease and without the knowledge or consent of said petitioner, the said Antonio Cerrato and Cecilia Cerrato, his wife, entered into an agreement in writing with Giuseppe Megaro and Giovanni Megaro, residing at Sixth and Mt. Prospect avenues, in the City of Newark, whereby the said Antonio Cerrato and Cecilia Cerrato, his wife, agreed to convey the premises mentioned in said lease to the said Giuseppe Megaro and Giovanni Megaro by deed of warranty free from all encumbrances on or before the 10th day of July next ensuing the date hereof for the sum of \$27,500, payable as set out at length in said agreement, a true copy of which is hereto annexed and made part of this petition, which agreement was duly acknowledged by the said Antonio Cerrato and Cecilia Cerrato, his wife, on the 10th day of April, 1923, before Charles P. Cerrato, an Attorney at Law of this State as appears by his certificate endorsed upon said agreement, a true copy of which appears upon the copy of said agreement annexed hereto.

3. That immediately upon being advised that such an agreement had been executed and delivered by the said Antonio Cerrato and Cecilia Cerrato, his wife, your petitioner notified the said Antonio Cerrato forthwith that he had learned that he, Antonio Cerrato, had made an agreement with Giuseppe Megaro and Giovanni Megaro aforesaid, to convey said premises to them for the sum of \$27,500 as set out in said contract annexed hereto and that such an agreement was in violation of the rights of your petitioner under said lease and that your petitioner exercised his option

Petition to Admit Party Defendant

to a first preference to purchase said property any time before or at the expiration of the said five year lease and demanded of the said Antonio Cerrato that he convey the said premises to your petitioner upon the same terms as provided in the said contract with the said Giuseppe Megaro and Giovanni Megaro and your petitioner tendered himself ready on his part to carry out said contract upon the terms mentioned therein in the place and stead of the said Giuseppe Megaro and Giovanni Megaro but that the said Antonio Cerrato refused so to do. 10

4. Your petitioner confirmed said verbal notice and demands upon the said Antonio Cerrato by a notice in writing that he exercised his rights under the said agreement of lease and required the said Antonio Cerrato to convey said premises to him upon the same terms and conditions as set out in said agreement with Giuseppe Megaro and Giovanni Megaro and tendered himself ready to perform said agreement on his part in the place and stead of the said Giovanni Megaro and Giuseppe Megaro and that your petitioner is now and has at all times since then been ready to perform his part under such agreement but that the said Antonio Cerrato has refused and still refuses to convey said premises to your petitioner notwithstanding his rights under said lease. 20 30

5. That on or about the 23rd day of July, 1923, Antonio Cerrato and Cecilia Cerrato, his wife, aforesaid, filed a bill in this Court against Giuseppe Megaro and Giovanni Megaro setting out said contract made with them on the 10th day of April, 1923, in relation to the above premises and praying that an order of this Court may be made compelling said Giuseppe Megaro and Giovanni 40

Petition to Admit Party Defendant

10 Megaro to specifically perform said contract according to the terms thereof; that on or about the 25th day of July, 1923, the said Giuseppe Megaro and Giovanni Megaro filed their answer to said bill of complaint wherein they set up *inter alia*, the fact that your petitioner is in actual possession of said premises under the lease above referred to and that they discovered that under the terms of said lease your petitioner has a first preference to purchase said property during the term of said lease aforesaid and prays that your petitioner may be made a party to this suit and asks that your petitioner answer their alleged Cross-Bill set out in addition to said answer to the complaint of said Antonio Cerrato and Cecilia Cerrato.

20 6. Your petitioner alleges that he has an interest in the controversy between the said Antonio Cerrato and Cecilia Cerrato, his wife, and Giuseppe Megaro and Giovanni Megaro adverse to the complaint and prays that an order may be made in the suit between Antonio Cerrato and Cecilia Cerrato, his wife, and Giuseppe Megaro and Giovanni Megaro making your petitioner, defendant to said suit and giving your petitioner twenty day's time in which to file a Cross-Bill against the said Antonio Cerrato and Cecilia Cerrato, his wife, praying for the conveyance of said premises to your petitioner and to answer the Cross-Bill of the said Giuseppe Megaro and Giovanni Megaro aforesaid as set out in their answer to Antonio Cerrato and Cecilia Cerrato, his wife, filed herein.

40 7. The defendants, Giuseppe Megaro and Giovanni Megaro at the time of the execution and delivery to them of said contract of sale of April 10, 1923, by Antonio Cerrato and Cecilia Cerrato,

Petition to Admit Party Defendant

his wife, as aforesaid, had notice of the rights of your petitioner in the premises and knowledge of the fact that under said deed of lease your petitioner had the first preference in the purchase of said premises during the period of said lease.

And your petitioner will ever pray, &c.

ALGERNON T. SWEENEY,
Solicitor of Petitioner.

10

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

DOMENICO PIRONE, being duly sworn upon his oath according to law, deposes and says that he is the petitioner named in the foregoing petition and that the facts stated therein are true.

20

DOMENICO PIRONE.

Sworn and subscribed to before me
this 16th day of August, A. D.
1923.

ANTHONY REMONDELLI,
Notary Public of N. J.

30

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Order Making Domenico Pirone a Defendant.

Order Making Domenico Pirone a Defendant.

Filed August 21, 1923.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, &c.

*Order
Making
Domenico
Pirone a
Defendant.*

20 This matter being opened to the Court by Algernon T. Sweeney, solicitor for Domenico Pirone and the Court having read and considered the petition of the said Domenico Pirone, that he may be made a defendant in the above-named suit and Charles P. Cerrato, solicitor for the complainants and Anthony R. Finelli, solicitor for the defendants, being all the parties in interest, consenting hereto as appears by their consent endorsed in writing hereon, it is on this 17th day of
30 August, A. D. 1923, on motion of said Algernon T. Sweeney, solicitor of the petitioner, Domenico Pirone, ORDERED that the said petitioner, Domenico Pirone, be made a defendant in this suit and that he have twenty days from the date hereof to file his pleadings to the bill of complaint, the answer and the Cross-Bill of the defendants, Giuseppe Megaro and Giovanni Megaro filed herein.

E. R. WALKER,

C.

Answer and Cross-Bill of Domenico Pirone.

We consent to the above order.

CHARLES P. CERRATO,
Solicitor of Complainants.

ANTHONY R. FINELLI,
Solicitor of Defendants.

10

Answer and Cross-Bill of Domenico Pirone.

Filed October 2, 1923.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, &c.

20

*Answer and
Cross-Bill
of Domenico
Pirone.*

ANSWER TO ORIGINAL BILL OF
COMPLAINT.

30

The defendant, Domenico Pirone, residing at No. 251 Eighth avenue, in the City of Newark, County of Essex and State of New Jersey answering the bill of the complainants filed in this cause, says that:

1. He has no personal knowledge of the facts stated in paragraph 1, but believes the same to be true and says that on the 4th day of October, 1922, this defendant entered into a deed of lease

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Answer and Cross-Bill of Domenico Pirone.

10 in writing with the complainant, Antonio Cer-
rato, whereby this defendant leased for a term
of five years certain premises known as the store
No. 251 Eighth avenue and store at No. 23 Clif-
ton avenue, Newark, N. J., with the appurten-
ances all of which are in the building standing
upon the premises described in paragraph 2 of
complainant's bill upon the terms mentioned at
length in said deed of lease a true copy of which
is annexed hereto and made a part hereof and
that said deed of lease in addition to a right of
renewal of said lease as defined therein provided
as will appear thereon, "It is mutually agreed
that the party of the second part will be given first
preference to purchase said property any time be-
fore or at the expiration of the five years' lease,"
20 that said deed of lease was duly acknowledged
according to law on the 10th day of April, 1923,
and recorded in the Essex County Register's of-
fice on the 10th day of April, 1923, in Book D-68
of Deeds, page 122, &c, and that not only the com-
plainants, but the defendant, Giuseppe Megaro
and Giovanni Megaro had knowledge of said deed
of lease and the contents thereof and of this de-
fendant's option to purchase said property at
the time of entering into the contract of April
30 10, 1923, set out in paragraph 1.

2. The defendant admits paragraph 2.

3. The defendant has no personal knowledge
as to the facts set out in paragraph 3.

4. This defendant denies that the complain-
ants were able to convey said premises on the 6th
day of July, 1923, and give a good and marketable
title thereto to any person other than this de-
fendant, who immediately upon being advised of
40 the contract with the said Giuseppe Megaro and

Answer and Cross-Bill of Domenico Pirone.

Giovanni Megaro set out in paragraph 1 exercised his option to purchase said premises for the price therein stated and demanded of the complainants that the property be conveyed to this defendant according to the terms of said lease.

5. This defendant says that he has no personal knowledge as to the facts stated in paragraph 5 but says that the complainants cannot rightfully convey to any person other than this defendant who is now ready and has ever since been ready to purchase said premises under his option in said lease from the complainants at the price stated in the contract set out in paragraph 1. 10

Wherefore, this defendant prays to be hence dismissed with costs.

ANSWER TO CROSS-BILL OF THE DEFENDANTS, GIUSEPPE MEGARO AND GIOVANNI MEGARO. 20

1. This defendant answering paragraph 2 of the Answer and Cross-Bill of the defendants, Giuseppe Megaro and Giovanni Megaro, says that the facts stated in paragraph 2 are true.

2. That this defendant has no personal knowledge of the facts stated in paragraph 3 but says that any moneys expended or labor performed or costs incurred upon said premises or in relation thereto or in providing funds to carry out the terms of the contract set out in paragraph 1 of complainants' bill of complaint was done without the knowledge or consent of this defendant and with full knowledge of this defendant's right under his right to purchase said premises under said deed of lease. 30

3. This defendant admits paragraph 4. 40

Answer and Cross-Bill of Domenico Pirone.

4. This defendant has no personal knowledge of the facts stated in paragraph 5 but says that any action taken by the complainants and the defendant, Giuseppe Megaro and Giovanni Megaro in relation to the matters therein stated or any agreements made between them or any leases
10 given as therein stated, that such action, if any, was taken without consulting this defendant and without his knowledge and with full notice of this defendant's rights under said option of purchase and that this defendant had notified the complainant that he had exercised his right to purchase said premises under said option and that he demanded and insisted that said premises be conveyed to him in conformity with the provisions of said deed of lease and that any arrangements
20 made between the complainants and the said Giuseppe Megaro and Giovanni Megaro are not binding upon this defendant.

Wherefore this defendant prays to be hence dismissed with costs.

CROSS-BILL.

And by way of Cross-Bill, against the complainants, Antonio Cerrato and Cecilia Cerrato and the defendants, Giuseppe Megaro and Giovanni
30 Megaro, this defendant says:

1. That on or about the 4th day of October, 1922, this defendant, cross-complainant, entered into a deed of lease in writing with the complainant, Antonio Cerrato, as above set forth and incorporated herein as fully as if repeated completely as above and that immediately upon learning of the proposed contract made between the complainants and Giuseppe Megaro and Giovanni
40 Megaro, set out in paragraph 1 of complainants'

Answer and Cross-Bill of Domenico Pirone.

bill this defendant immediately notified the said complainants that in the exercise of his right of option under said deed of lease he would purchase said premises for the price stated in said agreement and demanded of the complainants that pursuant to his right of option in said deed of lease that they convey said premises to him for the price therein stated and tendered himself ready to perform his part under said right of option and that the said defendants, Giuseppe Megaro and Giovanni Megaro, at the time of the making of said contract on the 10th day of April, 1923, and at all times subsequent thereto up to the present time, had and have knowledge of this defendant's, cross-complainant's right of preference to purchase said premises. 10

2. That the premises mentioned in said deed of lease are the premises particularly described in paragraph 2 of complainants bill. 20

3. This defendant, cross-complainant, is now in possession and has been in possession of the stores and rooms mentioned in said deed of lease between this defendant, cross-complainant and the said Antonio Cerrato ever since the execution and delivery of the same on the 4th day of October, 1922, and that this defendant, cross-complainant, is now and has at all times been ready to accept conveyance of said premises under the terms of said deed of lease as above stated and that he has many times applied to the complainants in a friendly manner to convey said premises to him under the terms of said option and demanded that they do so but that the complainants have refused and still refuse to convey said premises to this defendant, cross-complainant, for the sum of \$27,500, the amount agreed upon by them with the 30 40

Answer and Cross-Bill of Domenico Pirone.

said Giuseppe Megaro and Giovanni Megaro, his wife, which sum this defendant, cross-complainant, tendered himself ready to pay immediately upon learning of said contract and still tenders himself ready to pay.

- 10 4. That at the time of the execution and delivery of said deed of lease by the complainant, Antonio Cerrato, the complainant Cecilia Cerrato, his wife, was present and had full knowledge of the contents of said deed of lease including the option to purchase given to this defendant, cross-complainant and assented thereto and that this defendant, cross-complainant is advised and believes it to be true that she consented to the sale of said premises to the said Giuseppe Megaro and Giovanni Megaro by the agreement of sale dated
20 April 10, 1923, as appears by her having signed the same and duly acknowledged the signing, sealing and delivery of the same as her voluntary act and deed before an attorney-at-law of the Supreme Court of New Jersey authorized to take acknowledgments to deed, &c., as appears by his certificate of acknowledgment endorsed thereon.

30 This defendant, cross-complainant, is without adequate remedy in the Courts of Law and therefore prays:

1. That the said Antonio Cerrato and Cecilia Cerrato, his wife, and the defendants, Giuseppe Megaro and Giovanni Megaro may answer this Cross-Bill of complaint without oath.
2. That the said Antonio Cerrato and Cecilia Cerrato, his wife, may be compelled to convey said premises to this defendant, cross-complainant, by virtue of his right of option to purchase contained in said deed of lease for the price stated
40

Answer and Cross-Bill of Domenico Pirone.

in the contract with the defendants Giuseppe Megaro and Giovanni Megaro and that the said Giuseppe Megaro and Giovanni Megaro be decreed to have no interest or lien upon said premises for material furnished or work and labor performed thereon or for moneys paid or expenses incurred in relation to the title thereto or for providing money to carry out the terms of the agreement of April 10, 1923, with complainants. 10

3. That the said complainants, Antonio Cerrato and Cecilia Cerrato, his wife, and the defendants, Giuseppe Megaro and Giovanni Megaro, may be required to answer this Cross-Bill of complaint and abide by such decree as this Court may make in the premises.

ALGERNON T. SWEENEY,
Solicitor of Defendant, Cross-complainant, 20
Domenico Pirone.

30

40

*Order Allowing Amendment to Cross-Bill.***Order of Leave for Defendant, Domenico Pirone,
to Amend His Cross-Bill.**

Filed October 2, 1923.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ANTONIO CERRATO and CECILIA CERRATO, <i>Complainants,</i> <i>and</i> GIUSEPPE MEGARO and GIOVANNI MEGARO, <i>Defendants.</i>	}	<i>On Bill, &c.</i> <i>Order of</i> <i>Leave for</i> <i>Defendant,</i> <i>Domenico</i> <i>Pirone, to</i> <i>Amend His</i> <i>Cross-Bill.</i>
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20 This matter being opened to the Court by Alger-
 non T. Sweeney, solicitor for the defendant, Dom-
 enico Pirone, who desires leave of the Court to
 amend his Cross-Bill filed herein and Mr. Charles
 P. Cerrato, solicitor for the complainants, and Mr.
 Anthony R. Finelli, solicitor for the defendants,
 consenting hereto as appears by their consent en-
 dorsed hereon, it is on this 2nd day of October,
 1923, ORDERED that the defendant, Domenico Pi-
 30 rone, have leave to amend his Cross-Bill filed here-
 in by adding thereto paragraphs 5 and 6 as ap-
 pears by amendment submitted and filed here-
 with.

E. R. WALKER,
C.

Amendment to Cross-Bill of Domenico Pirone.

We consent to the above order.

CHARLES P. CERRATO,
Solicitor of Complainants.

ANTHONY R. FINELLI,
Solicitor of Defendants, Giuseppe Megaro
and Giovanni Megaro.

10

ALGERNON T. SWEENEY,
Solicitor for Defendant,
Domenico Pirone.

**Amendment to Cross-Bill of the Defendant, Cross-
Complainant, Domenico Pirone.**

Filed October 2, 1923.

20

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, &c.

*Amendment
to Cross-
Bill of the
Defendant,
Cross-Com-
plainant,
Domenico
Pirone.*

30

The defendant, cross-complainant, Domenico Piron, with leave of the Court amends his Cross-Bill by adding the following paragraphs:

5. That on the day of the execution of the lease above referred to, this cross-complainant purchased from the complainants a confectionery

40

Amendment to Cross-Bill of Domenico Pirone.

business then and for a long time previous there-
to conducted by the complainants on the premises
mentioned in said lease for \$2,500.00, which was
twice the intrinsic value of the business at the
time and that this defendant, cross-complainant,
was induced to purchase said business from the
complainants at their request by virtue of the
10 agreement made with them that as part of the
transaction of the purchase of said store they
would execute and deliver to this defendant, cross-
complainant, a lease on said premises for five
years with the option to renew the same for three
years if they were still the owners and that in lieu
of giving a straight lease for eight years as this
defendant, cross-complainant desired, they would
give this cross-complainant the first preference to
purchase said property at any time before or at
20 the expiration of the first five-year period and
that this right should obtain against all purchasers
and should give this cross-complainant the option
to purchase said premises at any time within the
five years for the same price and upon the same
terms as they could obtain from any other pur-
chaser; that it was on account of this provision in
the lease protecting his interest in the right of
purchase that this cross-complainant finally ac-
30 cepted the offer as to the purchase of said store
as aforesaid and that the time of the acceptance
of said offer and of the execution and delivery of
the bill of sale to said store and the execution and
delivery of the said lease, the complainants who
were both present during all the negotiations knew
and understood that this cross-complainant was
induced by said right of option to purchase said
premises and that this cross-complainant paid his
money for said store and executed said lease and
40 entered into possession of said premises under

Amendment to Cross-Bill of Domenico Pirone.

said lease relying upon the promises made by the complainants as to the right of purchase and the provision inserted in said lease as aforesaid.

6. This cross-complainant further says that the complainant, Antonio Cerrato (nor the complainants, Antonio Cerrato and Cecilia Cerrato) did at any time after the execution of said lease and before their making of the contract aforesaid on the 10th day of April, 1923, with Giuseppe Megaro and Giovanni Megaro give this cross-complainant an opportunity to purchase said premises or to advise him of their proposed sale to any person and that he had no knowledge through them of the proposed sale of the premises to the Megaros as aforesaid, but that as soon as the matter was brought to his attention by either of the said parties, he notified each and all of them of his rights of first preference to purchase said premises and insisted upon the exercise of such option and that he would purchase the premises upon the same terms offered to the said Megaros.

ALGERNON T. SWEENEY,
Solicitor of Defendant, Cross-Complainant,
Domenico Pirone.

Replication & Ans'r to Cross-Bill of Def't Pirone.

**Replication and Answer to Cross-Bill of
Defendant, Domenico Pirone.**

Filed October 8, 1923.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ANTONIO CERRATO and CECILIA CERRATO, <i>Complainants,</i> <i>and</i> GIUSEPPE MEGARO and GIOVANNI MEGARO, <i>Defendants.</i>	<i>On Bill, &c. Replication and Answer to Cross-Bill of Defendant, Domenico Pirone.</i>
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20 The complainants, Antonio Cerrato and Cecilia Cerrato, join issue on the answer of the defendant, Domenico Pirone.

As to the counter-claim contained in said answer, complainants say:

(1) They deny each and every allegation therein set forth.

30 CHARLES P. CERRATO,
Solicitor for Complainants.

Replication & Ans'r to Cross-Bill of Def't Pirone.

Replication and Answer to Defendants' Cross-Bill.

Filed September 22, 1923.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, &c.

*Replication
and Answer
to*

*Defendant's
Cross-Bill.*

10

The defendants, Giuseppe Megaro and Giovanni Megaro, say that:

20

1. Each statement contained in the answer of the defendant, Domenico Pirone, is denied.
2. Each allegation in the answer to Cross-Bill of these answering defendants is denied.
3. Each allegation in the Cross-Bill of the said defendant, Domenico Pirone, is denied.

ANTHONY R. FINELLI,
Solicitor of Defendants, Giuseppe Megaro
and Giovanni Megaro.

30

Notice of Motion to Strike Out.

**Notice of Motion to Strike Out Answer and
Cross-Bill.**

IN CHANCERY OF NEW JERSEY.

10 *Between*

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, &c.

*Notice of
Motion.*

20 To: Anthony R. Finelli, solicitor for and of counsel with defendants, Giuseppe Megaro and Giovanni Megaro.

Dear Sir:

TAKE NOTICE, that on Tuesday, October 2nd, next, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard at the Chancery Chambers, Prudential Building, Newark, N. J., I shall apply to the Chancellor to strike out the

30 Answer and Cross-Bill filed by the defendants, Giuseppe Megaro and Giovanni Megaro, for the following reasons:

(1) Because the answer does not set forth any defense to the bill of complaint filed by the complainants.

(2) Because said answer bases its defense upon an alleged first preference in deed of lease to defendant, Domenico Pirone, to purchase said property; said preference not constituting any right

40

Notice of Motion to Strike Out.

in, or lien or estate in the property mentioned in the bill of complaint, and therefore no defense to the bill filed by complainants.

CHARLES P. CERRATO,
Solicitor for and of Counsel
with Complainants.

10

**Notice of Motion to Strike Out Answer and
Cross-Bill.**

Filed.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

On Bill, &c.

*Notice of
Motion.*

20

30

To: Algernon T. Sweeney, Esquire, solicitor for
and of counsel with defendant, Domenico Pi-
rone.

Dear Sir:

TAKE NOTICE, that on Tuesday, October 2nd,
next, at ten o'clock in the forenoon, or as soon
thereafter as counsel can be heard at the Chan-
cery Chambers, Prudential Building, Newark,
N. J., I shall apply to the Chancellor to strike out

40

Notice of Motion to Strike Out.

the Answer and Cross-Bill filed by the defendant, Domenico Pirone, for the following reasons:

(1) Because the answer does not set forth any defense to the bill of complaint filed by the complainants.

10 (2) Because said answer bases its defense upon an alleged first preference to the defendant, Domenico Pirone, to purchase said property; said preference not constituting any right in, or lien or estate in the property mentioned in the bill of complaint, and therefore no defense to the bill filed by complainants.

Will move to strike out the Cross-Bill filed by said defendant, Domenico Pirone, for the following reasons:

20 (1) Reiterates and re-asserts reasons 1 and 2 above mentioned.

(2) Because it does not set forth any cause of action against complainant, Cecilia Cerrato.

CHARLES P. CERRATO,
Solicitor for and of Counsel
with Complainants.

30

40

Order Denying Motion to Strike Out.

**Order Denying Motion to Strike Out Answer and
Cross-Bill.**

Filed October 2, 1923.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

Defendants.

*On Bill, &c.
Order.*

10

This matter being opened to the Court by Mr. Fred Masucci of counsel for complainants, in the presence of Mr. Anthony R. Finelli, solicitor for the defendants, Giuseppe Megaro and Giovanni Megaro, and Algernon T. Sweeney, solicitor for the defendant, Domenico Pirone, on motion of counsel to dismiss the Answer of the defendants, Giuseppe Megaro and Giovanni Megaro, and the Answer and Cross-Bill of the defendant, Domenico Pirone, and the Court having heard the argument in behalf of said motion and Mr. Finelli and Mr. Sweeney in opposition thereto and having considered the same, it is on this 2nd day of October, 1923, ORDERED that the motion be denied, costs of motion to abide result of final hearing.

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30

E. R. WALKER,

C.

Respectfully advised,

JOHN E. FOSTER,

V.-C.

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ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

10

and

GIUSEPPE MEGARO, *et al.*,

Defendants.

Transcript of testimony taken before Honorable John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, December 12, 1923, at 10:00 A. M.

20 Appearances:

Ferdinand D. Masucci, for complainants.

Anthony R. Finelli for defendant Megaro.

Algernon G. Sweeney for Dominic Pirone, one of the defendants.

CHARLES CERRATO, sworn for complainants.

30 *Direct examination by Mr. Masucci.*

Q You are a member of the Bar? A Yes.

Q And practise law in the City of Newark?

A. Yes.

Q And you are related to the complainants, Antonio Cerrato and Cecilia Cerrato? A Yes.

Q You are a son? A Yes.

Q Did you draw up a contract for the sale of the property 281 Eighth avenue, 25, 27 and 29 Clifton avenue? A Yes.

Charles Cerrato, direct.

Q I show you this contract and ask you if this is the contract which you drew up? A Yes.

Q Those are the signatures of Joseph Megaro and Giavanni Megaro? A Yes.

Q You witnessed them? A Yes.

Q And Cecilia Cerrato? A Yes.

10

Mr. Masucci: I offer this contract in evidence.

(Marked Exhibit C. 1.)

Q This contract is dated April 10th, is that the date it was drawn up? A The evening of April 10th.

Q And where was it drawn and executed? A At my home.

Q Who was present at the time? A My father and my mother, Joseph Megaro and Giavanni Megaro and another fellow and two other people, I forget their names, one is Cicillo. 20

Q Are they in court here? A No, I don't think so.

Q And before obtaining the signatures of Joseph Megaro and Giavanni Megaro and Cecilia Cerrato, did you read the contract to them? A Yes, I read the contract, and I read the lease to them. 30

Q (By the Court.) Do they understand English? A Yes.

Q Did you read it in English? A I read it in English and I explained it in Italian.

Q Have you a copy of that lease? A Yes, it is in the papers.

Q Is it a book lease, book form lease? A Yes.

Q Is this the lease that you refer to (witness is shown paper)? A Yes.

40

Charles Cerrato, direct.

Mr. Masucci: I offer it in evidence.

(Marked Exhibit C. 2.)

The Court: The copy is produced by Judge Sweeney for Mr. Ungaro?

Mr. Sweeney: Yes.

10 Q Did you read or explain this lease to the defendants, Joseph Megaro and Giavanni Megaro?
A Yes.

Q How did you explain or read it to them? A I read the whole thing through.

Q In English or Italian? A In English and then I explained it in Italian.

Q What did they say? A It was satisfactory to them to purchase subject to the lease.

20 Q And they signed the contract and gave you the deposit? A Yes.

Q (By the Court.) How much was paid? A Eight hundred dollars deposit.

Q What was said at the time you explained this lease, about the option in the tenant, Mr. Pirone? A To have the first right to buy the property.

30 Q What was said about that? A I explained it to them and they knew we had made the first preference to them. That we had offered it to them and they didn't want to buy it.

Q How did the Megaros know that? A We represent them as the prospective purchaser.

Q Who do you mean by we? A My father, myself and several other people here that were present.

40 Q You represented them to whom and when? A Mr. Pirone on the first of April. It was the first time that the Megaros came up to see the property and at that time we took them through

Charles Cerrato, direct.

The Court: When?

The Witness: On the 29th of June, I think it was. I went down to Lehlbach & Johnson's office to close the title. I was called there because of this option that was found on record of this lease and Judge Johnson wanted a release of that first preference to Pirone and at that time I drew up a stipulation and gave it to Mr. Pirone and he kept the stipulation there for a few days and then he said that on advice of counsel he would not sign it because he would be signing away the lease if he did sign it. 10

Q Who was present at that time, if anyone?

A I think my father was present, but I am not sure; I don't recall.

Q I show you a draft of the release and ask you if this is what you submitted to him at that time to have signed? A Yes. 20

Q Did you turn it over to him? A Yes.

Q How long did he keep it? A He kept it two or three days.

Q And then he returned it to you? A And then he returned it to me. He said on advice of counsel that he would be signing away his lease. 30

Mr. Masucci: I offer this in evidence.

(Marked Exhibit C. 3.)

Q (By the Court.) Did you prepare this paper? A Yes.

Q What date did you say was fixed to the closing of the title between your father and mother?

The Court: The agreement fixes it. 40

Charles Cerrato, direct.

Q What date was it? A July 10th, but a different day was fixed. I think it was July 10th that I went down to the lawyer for the building and loan.

Q July 5th was fixed for the date to close? A Yes.

10 Q Did your father, yourself, and your mother go there? A Yes.

Q Were the purchasers mentioned in this contract, the two Megaros there? A Yes.

Q Represented by whom? A Mr. Finelli.

Q Whose office was fixed as the place? A Johnson's office.

Q At Judge Johnson's office was title closed? A No.

20 Q Why not? A On account of the lease. The judge would not pass it unless he got the release from Pirone.

Q That was the only reason why it wasn't closed? A Yes.

Q The Pirones were not represented at the time you drew up the agreement of sale? A No.

The Court: Are you willing to take title?

Mr. Finelli: Yes.

30 The Court: It does seem to me that this issue narrows itself down to this. Did Pirone have his opportunity to exercise his privilege and option and did he refuse to do so?

Mr. Finelli: That is it.

The Court: If I eliminate him from this title, you can take your title and they can give it to you. It seems to me that the issue is really between the Pirones and complainants and defendants.

40

Charles Cerrato, direct.

the whole house. We took them through Pirone's store and he took them down in the cellar and in his own rooms and we told them that they were the tenants who contemplated buying the property and the following day we went there and told Pirone if he wanted to purchase it and he said, no, I don't want it.

10

Q What time would that be? A April 2nd.

Q Did Pirone go with them when they inspected the property? A Yes, and when they inspected the rooms, the wife of Pirone was with the prospective purchasers.

Q On the second day who asked Mr. Pirone if he wanted to purchase this property? A My father, my mother and Vincent Cerrato, and Mr. Spatola.

Q Were you present at that time? A No.

20

Q Did you see the defendant, Dominic Pirone before entering into the contract of sale and ask him if he wanted to purchase this property? A Yes.

Q When was that? A On the Friday we had a Loan Association meeting in back of the store and in the presence of Minisi and my father and myself we asked him again; that conversation took place nearly every night until the tenth, when the contract was signed.

30

Mr. Sweeney: What date was Friday?

The Witness: The sixth, I think.

The Court: Yes, this contract is dated the tenth.

Q When you asked him whether he would take the property in the presence of Mr. Minisi and the others on Friday, what, if anything, did he answer? A He said, what do I want with the

40

Charles Cerrato, direct.

property? I haven't any children and haven't any money, and I don't care to be bothered with the property. He said, I expect to go back to Italy in a short time.

10 Q Did you at any time subsequent to that and before the date of this contract come and speak to him as to whether he wanted to purchase this property? A Yes, on the eighth of April and Minisi were up there again to see the property, and we again took them through the store and stopped in Pirone's store and Megaro stated—we represented them as the prospective purchasers again. Nothing was said at that time, but on the Monday he said to me, I think I will record my lease, because I wanted to be protected from my lease, that is all. I don't care about buying the property.

20 Q Did he ask you to do anything else? A The following day, that was the tenth, he returned and he said, I cannot put the lease—I think it was the ninth, he said I cannot put the lease on record because there is no acknowledgment. I said, all right, I will give you an acknowledgment and you can put it on record. But if I ever draw a contract I will put in it is subject to the lease, and you will be protected.

30 Q And did you put a certificate of acknowledgment on the lease? A Yes, I did, and he recorded it.

Q Was that before the contract was signed?
A Yes.

Q Subject to the drawing of the contract were you ever apprised by Pirone that he wanted to purchase this property? A No, sir, not until after I gave him a stipulation that he signed for his option, did he say that he would want to purchase it.

40

Charles Cerrato, direct.

Q You drew up this contract in the evening?

A Yes.

Q You represented both sides? A I represented my father.

Q During the morning of the very same day Exhibit C. 2, the lease in question had be recorded because it bears the stamp April 10th? A Yes. 10

Q (By the Court.) Did you have it recorded? A No, Mr. Pirone took it down himself.

Q (By the Court.) What time was the lease recorded?

Mr. Finelli: 12:29.

Q On the occasion you drew up this agreement, Pirone actually had an option to take the property? A The first preference. I didn't tell you they had an option, they had the first preference. We made an offer to them and they didn't want it. 20

Q Is that the explanation you made in the presence of the assemblage, to these purchasers?

The Court: Give me your exact words.

A I explained the lease to them, and I said Mr. Pirone had the first preference to buy it and he has refused to buy it. 30

Q At what price did he have the preference, the same as you would give to anyone else? A If we could get him to make an offer at any time then he was to get first preference, but he never made an offer. Our asking price was twenty-eight thousand dollars, and we told Pirone that he could have it for five hundred dollars less.

Charles Cerrato, direct.

When we came together we agreed on twenty-seven thousand five hundred.

Q You and Pirone? A No, with Megaro. We named a price of twenty-seven thousand dollars, they were to procure a fifteen thousand dollar building and loan mortgage at least that.

10 Q Did you ever come back to Pirone with that proposition? A Of what?

Q That he could have it for twenty-seven thousand five hundred? A We told Pirone that he could have it, and our asking price was twenty-eight thousand dollars, and let you have it for five hundred dollars less. He never made an offer. He said, I don't want it.

Q Was that on Friday, April 6th, or before that that you made that offer? A The first time
20 we went to him and every time thereafter.

Q I understood the first you went to him was on April 1st? A Yes.

Q When he took these people through the store, and his wife took them through the house?
A Yes.

Q He knew they were expecting to buy it? A Yes.

Q Did you tell him so? A Yes.

30 Q Were you there at that time? A Yes.

Q What did you say on April 1st? A These people contemplated buying the property, we would like to show them through the house.

Q What did he say? A He said all right and he came down with us, took us through the cellar, and the wife—I think took them through the rooms, and they saw the whole house.

Q Was anything said at that time about Pirone having the privilege of buying at that particular time while you were in the premises? A
40

Charles Cerrato, cross.

Nothing was said, but on the following day we went to Prione.

Q Who went? A My father, my mother and Spatola happened to come in at the time that they were examining it.

Q You were not there at the time? A No.

Q Later on you went to him yourself on Friday? A On Friday, we were having a meeting of the Loan Association. 10

Q That was on the premises? A Yes.

Q In the room back of the store? A Yes.

Q Occupied by Pirone? A Yes.

Q What was said to him about exercising his first privilege to buy? A We told him, the conversation came up about selling the property, and said, why don't you buy it, you are in the store; he said, I don't want to be bothered with property, it is too much trouble and we don't want to take care of the steam. And we said, you can buy it if you want to, you have the first preference, and have to offer it to you first, and before we ever enter into a contract we would like to sell it to you. 20

Q What did he say? A He said, no, he didn't want to be bothered with it, he said he had no children and no money and he wanted to go back to Italy. 30

Cross examination by Mr. Sweeney.

Q That was on the eighth? A On the sixth.

Q Was that on the tenth when this agreement was actually made? A Yes.

Q And on the tenth you didn't consult Mr. Pirone any further? A If he refused it—

The Court: Don't argue; did you?

Charles Cerrato, cross.

The Witness: No.

Q And did you at any time show Mr. Pirone this agreement before it was executed by Mr. Megaro? A No, I did not.

10 Q This agreement not only provides for the building and loan mortgage of fifteen thousand dollars as part of the purchase price, but it also provides for another mortgage of four thousand dollars on Highland avenue, which was—

The Court: To be collateral?

The Witness: No, part of the purchase price.

20 Q It was also accepted as part of the purchase price. Did you offer a second purchase money mortgage to be left on the property of seventy-five hundred dollars; did you ever communicate those terms to Mr. Pirone? A No, sir.

Q This contract was signed in your presence? A Yes.

Q And by your mother? A Yes.

Q And her acknowledgment was taken by you? A Yes.

30 Q Mr. Cerrato, you say that the asking price had been twenty-eight thousand dollars? A Yes.

Q Hadn't you been asking as high as thirty-five thousand dollars? A We were asking whatever we could get, naturally. We were out to get as much as we could, but we never asked that of Pirone.

Q Didn't you ask him thirty thousand dollars? A No, sir.

40 Q Wasn't thirty thousand the lowest offer you ever made to Mr. Pirone? A No.

Charles Cerrato, cross.

Q Wasn't it a refusal of a thirty-thousand dollar cash offer that he refused? A No, sir.

Q Mr. Pirone had purchased the store, at the time of the execution of the lease which is dated the twenty-ninth of June, 1923, that was contemporaneous—

Q (By the Court.) What is that? The lease is dated the fourth of October, 1922. Contemporaneous with and forming a part of that transaction was the sale by your father of the store in the premises? A The sale of the store took place at the same time. 10

Q What was the business? A Confectionery.

Q Your father sold the business? A Yes.

Q You were present at the time these negotiations took place, were you not? A Yes. 20

Q And the price fixed in the agreement of sale was finally twenty-five hundred dollars? A Yes. 20

Mr. Masucci: I do not see how this is relevant to this issue.

The Court: I will let it in.

Q As I understand it, the moment that you went to Mr. Pirone with this waiver or release, or what appears to be in the form of a quit-claim deed, he refused from the first to sign it? A No, sir; he didn't refuse from the first. 30

The Court: That is not what he testified.

Q What day did you take it to him? A I think the twenty-ninth of June.

The Court: He kept it two or three days. 40

Charles Cerrato, re-direct.

Q Wasn't it on Sunday night? A No, I don't think it was. I don't know what day it was.

The Court: What difference does that make?

10 Q Didn't he tell you the next morning that he would not sign it? A No, he kept it two or three days and said he went to his lawyer, and on the advice of his lawyer he wouldn't sign it, because he would sign away his lease, but he was unwilling to sign it, only he was afraid he would be signing away his lease.

Mr. Finelli: Did you have a copy of this lease?

20 The Witness: Yes.

The Court: Your father had.

The Witness: Yes.

The Court: Did you show it to Megaro, the defendants; did they ever see a copy of it?

The Witness: Yes, when we drew up the contract I had the lease read to him.

30 Mr. Finelli: You didn't have the original.

The Witness: No, but I had a copy.

The Court: Was it signed in duplicate by both landlord and tenant?

The Witness: Yes.

Re-direct examination by Mr. Masucci.

40 Q When the contract was drawn up, was it signed immediately or left with Mr. Megaro? A No, signed the same night.

Charles Cerrato, re-direct.

Further cross examination by Mr. Sweeney.

Q Isn't it true that although you have said your father, and that your father has said in your presence, that they would not convey this property to Mr. Pirone under any consideration, and that you would spend the price of the property before Mr. Pirone should have it? A After this time, after he put us to all this trouble, we wouldn't convey to him after we had gone to two or three thousand dollars worth of expenses. 10

Q Hadn't your father become terribly incensed against Mr. Pirone on account of a Board of Health matter before this agreement was signed? A No.

Q (By the Court.) Before the agreement was signed had you become angry at Pirone so you wouldn't let him have the property? A No. 20

Q There was trouble about a Board of Health matter? A There was.

Q And isn't that the real reason why you wouldn't let Pirone have the property? A No, sir.

Re-direct examiantion by Mr. Masucci.

Q When was this trouble about the Board of Health, how long before this agreement? A After the agreement. 30

Q What were your relations with Mr. Pirone at the time this agreement was signed and shortly before that, friendly? A Always very friendly. We exchanged plates of food with one another, they came through our rooms, we went through their rooms.

Q Did you live in the same house? A Yes.

Q You purchased at the store? A Yes. 40

Anthony F. Minisi, direct.

Q When did this trouble about the Board of Health occur; in what month? A I think May or June, and we put in a pump there, too.

The Court: I don't care for the details, as long as it was after the contract.

10

ANTHONY F. MINISI, sworn in behalf of complainants.

Direct examination by Mr. Finelli.

Q Do you know Mr. Cerrato? A Yes.

Q Have offices in the same suite with him? A Yes.

20 Q You are a member of the Bar? A Yes.

Q Were you with Mr. Cerrato in the month of April on the Clifton avenue property? A Yes.

Q Did you see there Mr. Pirone? A Yes.

Q Who besides yourself, Mr. Cerrato and Mr. Pirone were present? A Mr. Charles P. Cerrato was present, Mrs. Cerrato was present.

Q And they lived in the rear of the store at the time? A Yes.

30 Q (By the Court.) What day in April was this? A I believe it was the sixth, on a Friday night, and the officers of a certain loan association were present.

Q Are you connected with any loan association that brought you there? A Yes. I am counsel and we met every other Friday, and we met that time.

Q That is why you were there? A Yes.

40 Q Did you overhear any conversation between Mr. Pirone and Mr. Cerrato? A I did.

Anthony F. Minisi, cross.

Q Which one? A The two of them.

Q (By the Court.) What did they say to each other? A I cannot recall the words, not at this time, but I know that there was a conversation relating to the purchase of the premises on the corner in which the store is located, which is being conducted at the present time, and at the time by Mr. Pirone and they apprised him of the fact that the property was to be sold to someone else unless he chose to purchase it himself, and he said that he had no use for the property, that he didn't have the money to pay for it, in fact, and that he would not buy it.

10

Q Was there any price or any terms mentioned? A Not that I heard. I didn't hear any terms.

Cross examination by Mr. Sweeney.

20

Q So, when you heard, you say, that he didn't want to buy the property, you don't know what price was being asked or what terms made? A I didn't hear the terms fixed, not in my presence. I was busy with other business at various times and whenever the officers released me, I would go over to where they were conversing.

Q Mr. Cerrato, has the honor of being associated with you in business? A No, sir, we are not partners.

30

The Court: You have an office in his suite?

The Witness: Yes.

Antonio Cerrato, direct.

ANTONIO CERRATO, sworn on behalf of complainants.

Direct examination by Mr. Masucci.

10 Q You are one of the owners of this property on Clifton avenue and Eighth avenue? A Yes.

Q Did you enter into an agreement for the sale of this property with Joseph Megaro and Giavanni Megaro? A Yes.

Q Before entering into that agreement, did you see Dominic Pirone, the tenant who has the store? A I saw him every day.

Q Are you employed there? A No, I help him in the store all the time.

20 Q You had had that business before that? A Yes; fourteen years.

Q Since you sold the business, about how long have you not been engaged in any other employment? A All the time.

Q You are retired? A Yes.

Q On the day of April 10th, did you see Mr. Pirone and speak to him about the sale and purchase of this property? A Every day. Before that I signed the agreement for Mr. Megaro.

30 Q When did Mr. Megaro first speak to you about buying? A On the 2nd of April, he come and see the house. The 1st of April, on Sunday he come.

Q Was that the first time he talked about buying? A Yes.

Q And between that and the 10th, you say you saw Mr. Pirone, the tenant, every day? A Yes, on the 2nd of April.

40 Q When was the first time that you asked Mr. Pirone, if he wanted to purchase your property? A On the 2nd of April, because this Megaro come

Antonio Cerrato, direct.

along and see the property and want to buy it, and I went in the store, me and my wife. I said I got to give the preference to Mr. Pirone first.

Q Who did you see? A Pirone and his wife.

Q What did you say and talk about? A I said the house I got in the market and might sell it because my wife can't stay, she is sick and if you want to buy the house I give you first preference and I would like to give you the chance to buy. He said, what I going to do with the house, what I going to do with it, I don't want no house. He said in Italian, you want to give me something worthless, or a piece of junk; the first thing I got no money; the second thing I don't got no children; maybe a year or two I got a chance to sell the store and go to the old country, because I live better on the other side. I could swear a thousand times I wouldn't change my word for no money, that is the way he told me.

Q Was there any price or any terms? A I told him twenty-eight thousand dollars.

Q When? A On the 2nd, that the price was twenty-eight thousand, if you want to buy I will take off five hundred.

Q (By the Court.) Did you ever speak to him before that about buying, before the 1st of April, did you ever speak to the tenant about buying the property? A Sure I told him, I say, you can buy it any time you want.

Q But, on the 2nd you say you told him he could buy it for twenty-eight, and take off five hundred? A Yes, keep five for himself.

Q What did he say to that? A He say he don't want it. He shook his head and wouldn't have anything to do with it.

Q When did you say you again spoke to him about the sale of this house? A Every day. That

Antonio Cerrato, direct.

was in the store. After eight o'clock in the morning I was in the store every day all day long. I was there three weeks, I worked with him, because he had the furniture in the storage, and had to buy some other kind of furniture. I worked with him to move furniture from Broad street, and I worked three weeks with him.

10

Q You were on good terms? A Yes.

Q Did he pay you for helping him? A No, nothing; he didn't even say thank you.

Q During all of these occasions you spoke to him about purchasing or selling the property, did he at any time express any intention of wanting to buy it? A He never said that he wanted to buy it, no.

20

Q (By the Court.) When did he first tell you, if he ever did, that he wanted to buy it? A About three or four months after I had the agreement with Mr. Megaro, our foreman.

Q Did he tell you then he wanted to buy? A No.

Q When did he tell you he wanted to buy it? A He told me nothing; maybe he told someone else.

Q What did he say to you? A No, he never told me at any time.

30

Q Has he ever told you that he wanted to buy this property? A No.

Q You personally? A No.

Q Did you take the Megaros through the house about April 1, 1923? A Yes.

Q Who was with you when you took them through the house? A Mr. Megaro and his brother John Megaro, all three, and went through the house.

40

Q Did you take them through this store that Mr. Pirone occupied? A Yes, we went down and

Antonio Cerrato, cross.

I said, Mr. Pirone, these people want to see the house, you want to buy it, and want to see the cellar. He said, I go down and show them.

Q Did he go with you? A People were in the store. He opened the cellar door to go down.

Q Made no objection to your going? A No, nothing.

10

Q Was the wife of Mr. Pirone present? A Yes, she was there.

Q Did she take you through her rooms? A Yes, because she had a key.

Q Did they at that time tell you that they wanted to purchase this property? A I cannot understand that.

Q Did they tell you they wanted to buy the property? A No.

The Court: He said Pirone has never told him personally up to this moment that he wanted to buy it.

20

Q Did Mrs. Pirone ever say it? A No.

The Court: The lease is to him only.

Mr. Masucci: By him.

Cross examination by Mr. Sweeney.

30

Q On the 8th of August, 1923, was there a registered letter which came to your house addressed to you which you received containing a paper signed by Mr. Pirone, demanding that you convey that property to him upon the same terms of the agreement which you had made with the Magaros? A I don't remember.

Mr. Masucci: We will admit we received it.

40

Antonio Cerrato, cross.

The Court: It is admitted it was received either by the witness' son or the father.

Mr. Sweeney: I should like to have it admitted that it came by registered mail.

Mr. Cerrato: No, it didn't come by registered mail; I don't think so.

10

The Court: Let it be marked by consent of counsel.

(Counsel for complainant produces the notice referred to by Mr. Sweeney in his question and it is marked as complainant's exhibit.)

(Marked Exhibit C. 5.)

Q Why did you tell the Court that there had
20 been no demand made on you by Mr. Pirone—up to the present moment by Mr. Pirone upon you for the conveyance of this property to him upon the terms of this agreement?

Mr. Masucci: I object.

The Court: He never told me anything of the kind, the objection will be sustained. He said Mr. Pirone had never told him, that Mr.
30 Pirone was ready to buy the property or wanted to buy it.

Q Why did you tell his Honor that Mr. Pirone had never told you that he was ready and wanted to buy this property? A He never told me that once that he wanted to buy it; he never spoke to me once about it, I want to buy it. I wanted to give it to him hundreds of times, but he refused.

Q You say you were in Mr. Pirone's store
40 every day from eight o'clock in the morning?

Antonio Cerrato, cross.

The Court: He hasn't said anything of the kind. Stop misquoting his testimony. He said he was there every day for two or three weeks helping to get the place in shape.

Q Isn't it true that on the 1st day of April, and for days following continuously thereafter to the 10th, and after the 10th of April of this year, that you and Mr. Pirone were very bad friends? A Yes, good friends. 10

The Court: Yes, what?

The Witness: Good friends.

Q Weren't you bad friends from the time the inspector from the Board of Health came up from the year before? A I was good friend to Mr. Pirone at all times. 20

The Court: Were you bad friends at any time before the 10th of April?

The Witness: No, good friends.

Q Hadn't you refused to permit Mr. Pirone to sell the store prior to April 10th, exercising your rights under your lease, hadn't you refused to consent to Mr. Pirone selling the store? A I cannot understand that word. 30

Q Did Pirone want to sell it before April, did he want to sell the business? A No, he said any time he got a chance to sell—any time I get a chance to sell, I sell.

Q (Last question repeated.) A It is not true.

Q The first time that Mr. Megaro came there to look at the house was on Sunday morning? A Yes. 40

Antonio Cerrato, cross.

Q And you took him down in the cellar? A All through the house.

Q Didn't you do it without saying a word to Mr. Pirone as to why they were there or what you wanted to do? A I said, these people come over and want to buy the house and want to look at it, and he opened the cellar door and let me go down, me and Megaro.

Q Did you tell Mr. Pirone that you wanted to go down to see about some cement work in the cellar, some repair work in the cellar? A No.

The Court: When you took the buyer there that Sunday, did you make that as an excuse for going down in the cellar, that you wanted to see about some cement work?

The Witness: No.

Q Didn't you tell Mr. Pirone that you wanted to take Mr. Megaro down into the cellar and look at some cement work, repair work in the cellar? A No.

Q Mr. Megaro is a mason, isn't he? A Yes.

Q Hadn't you been asking thirty-five thousand dollars for that property? A No, sir.

Q Did you ever ask anyone to pay you thirty-five thousand dollars? A Yes, before I sold him the store.

Q You asked him to pay thirty thousand dollars? A I didn't ask him no price.

Q (By the Court.) Did you ask Pirone? A No, I say nothing to Pirone.

Q The least offer you made to Pirone was thirty thousand dollars? A No, sir.

The Court: What was the lowest price you gave Pirone for the property?

Antonio Cerrato, cross.

The Witness: I didn't give no price.

Q (By the Court.) Didn't you say he could have it for twenty-eight? A Yes. I said I take off five hundred dollars if you buy it.

Q But, if he wanted to buy it for someone else he would have to pay more for it—is that the only price you ever named to Pirone for the purchase of the property? A Yes. 10

Q Did you ever ask Pirone thirty thousand dollars for the property? A No, that is another party I asked thirty thousand dollars.

Q When did you have your last talk with Pirone about his buying the property, on what day in April did you last speak to Pirone, that he should buy? A I cannot remember the time.

Q Did you talk to him the day you signed the contract? A Yes, every night I was with him. 20

Q He was not present when the contract was made with Megaro, was he? A No.

Q And he didn't know anything about the fifteen thousand dollar building and loan? A I don't know.

Q He didn't know about the seventy-five hundred dollar purchase money mortgage to you? A Only the four thousand dollars on mortgage.

Q How much cash did you get out of the transaction? A One thousand cash and four thousand dollar mortgage. 30

Q A second mortgage? A The second mortgage, whatever was left, and the building and loan.

Mrs. Cecilia Cerrato, direct.

MRS. CECILIA CERRATO, sworn on behalf of complainants.

Direct examination by Mr. Masucci.

(Witness examined through William Notte, interpreter who was first duly sworn.)

10

Q You are one of the owners of the Clifton and Eighth avenue property? A Yes, sir.

Q And Mr. Pirone is a tenant occupying the store on the corner of that property? A Yes.

Q You entered into a contract for the sale of that property on April 10th? A The 1st of April. She said the first of April Mr. Megaro came to him.

20 The Court: Ask if she signed a paper for the sale on April 10th?

The Witness: No.

Q Ask her if that is her signature (witness is shown paper). A Yes, on the 10th, I did.

Q And do you know Joseph Megaro and Giovanni Megaro? A Yes.

Q They are the persons first mentioned in the contract of sale? A Yes.

30 Q Did you see them on April 1st, before this contract? A Yes, the 1st.

Q Where did you see them? A They came to my home to see the property.

Q And did you show them the property? A Yes, I did.

Q Where did you take them, through the property? A Down in the cellar, downstairs and upstairs.

40 Q Did you take them through the store occupied by Mr. Pirone? A Yes.

Mrs. Cecilia Cerrato, direct.

Q And did you take them through the rooms occupied by Mr. Pirone in that house? A I brought them to Mr. Pirone's rooms after the woman came over to look at the property.

Q Was that on the 1st? A In between the week, in the middle of the week. On the 1st when Megaro came.

Q On the 1st, did you take Mr. Megaro through the rooms of Mr. Pirone? A Yes.

Q And who took you to the rooms and let you go through those rooms? A The wife of Mr. Pirone.

Q Were all the rooms locked at the time you got there? A Yes, and she came and opened them; Mrs. Pirone came and opened them.

Q Was there any conversation with Mr. Pirone or Mrs. Pirone relative to the sale of this property at this time? A Yes.

Q What did you tell them about the sale of it? A These are the new owners if they buy the house. This is Mrs. Megaro.

Q (By the Court.) Who did you tell that to? A To the wife of Mr. Pirone.

Q What did she say? A She said, very well, I am very glad, so long as they respect my rights under the lease. Your lease rights will be well taken care of.

The Court: Who said that?

The Witness: She said that.

Q What else was said about the purchase of the property? A This happened all in the middle of the week, then on a Monday, I and my husband went down in the store, and we told them we had people that wanted to purchase the house, but before we sell to them we want to give you the first

Mrs. Cecilia Cerrato, cross.

preference to it, because you have that right under your lease, and he answered, he said, where have I got the money, in potatoes? And then said, who do you want to give this plaster to?

Q Who said this? A Mr. Pirone and his wife.

10 The Court: Let it appear upon the record that counsel agrees that this expression means something like poultice, something about its being worthless, as a poultice. He said I have no family and I keep the store two or three years and then I will go to Italy. Then he concluded by saying, just as long as you respect my rights under the lease I don't care who takes the property, and he always told them, we prefer to give it to him rather than
20 anyone else.

Q What did he say? A He said, no, I haven't got no money, I haven't any children. Then we didn't say anything else to them, and then Mr. Megaro and his wife came and we took them through the rooms, and Mrs. Pirone took them through the rooms.

Mr. Finelli: No questions.

30 *Cross examination by Mr. Sweeney.*

Q Was this conversation with Mr. Pirone before Mr. and Mrs. Megaro came to look at the property?

40 The Court: She didn't say anything of the kind. She said this was in the middle of the week after she had shown the property, that then Mrs. Megaro came over to see the property.

Mrs. Cecilia Cerrato, cross.

Q How many times did they go through the rooms? A One time. The wife of Mr. Megaro came up. First the men came and then the woman came.

Q Wasn't it on a Sunday? A Mr. Megaro came there on Sunday, but the woman came in the middle of the week.

10

Q After Mrs. Megaro came, did you have any conversation with Mr. Pirone about his purchasing the property? A Immediately.

Q When? A The day after.

Q What was said that day? A Three or four days consecutively we spoke about it.

Q What did she say? A She said we were very, very good friends of Pirone and we would prefer to give it to Mr. Pirone rather than anyone else.

20

Q Wasn't the offer he made to Mr. Pirone thirty thousand dollars and didn't he understand that the Megaros were paying thirty thousand dollars? A No, sir.

Q Did you ever name any price to Mr. Pirone, or your husband? A I and my husband told him that the price was twenty-eight thousand dollars, but if you take it, we will take five hundred dollars off.

Q When was that? A On the 3rd.

30

Q And after that, was the matter left entirely to your son Charlie? A Yes, because he said I was useless.

Q So, after that you didn't tell Mr. Pirone the exact terms upon which this property was being sold?

The Court: There is no claim that they ever told him the terms.

Mr. Masucci: No.

40

Armadio Spatola, direct.

ARMADIO SPATOLA, sworn on behalf of complainants. Examined through interpreter.

Direct examination by Mr. Masucci.

Q Mr. Spatola, do you know Antonio Cerrato?

A Yes.

10 Q Did you know Mrs. Cerrato, his wife? A Yes.

Q Are you acquainted with Dominic Pirone?

A Yes.

Q Where do you live? A 89 Clifton avenue.

Q Is that near the premises in the corner of Clifton avenue and Eighth avenue? A Three or four minutes.

Q And were you on Clifton avenue and Eighth avenue in this store belonging to Mr. Pirone on April 2nd, this year? A Yes, about half-past nine or ten o'clock.

Q Night or day? A In the morning.

Q Who was present? A I was purchasing cigars and I saw Mr. Cerrato and Mrs. Cerrato.

Q Was Mr. Pirone there? A Yes, he is the owner, surely.

Q Did you ever hear any conversation with Mr. and Mrs. Cerrato and Pirone? A After I purchased my cigars, I was lighting one, I heard 30 Mr. Cerrato telling Mr. Pirone, why don't you purchase this property.

Q Say the balance of it. A He said, why don't you buy it. I will give you the preference; I will allow you five hundred dollars on your purchase, but if someone else purchases it will be five hundred dollars more.

Q And what, if anything, did Mr. Pirone answer? A Mr. Pirone answered, why, I am tired and shortly I will sell out and go to Italy. 40

Armadio Spatola, crosss.

Q Did you ever hear any further conversation? A I heard nothing else, then I walked out.

Q How long were you in the store? A A minute and a half or two minutes.

Cross examination by Mr. Sweeney.

Q You are a relative of Mr. Cerrato? A I am not related to him, but my wife is a distant relative of theirs. 10

Q What day of the week was this? A It was on the 2nd of April; I am not sure; maybe Monday, maybe Tuesday.

Q Where were you on the 2nd of June? A I was doing the same thing; I am sick.

Q And where were you on the 22nd of April at nine o'clock in the morning? A I was in my home walking around. 20

Q (By the Court.) Why do you remember that this conversation was held on the 2nd of April? A Because April 1st is April fool and I remember that the next day I bought a cigar.

Q You took no part in this conversation? A I said I heard a lot of conversations.

Q Did you have any talk with them? A It was none of my business. 30

Q You didn't take any part? A No.

Q You don't know what price was talked about except Mr. Pirone was to have it at five hundred dollars less? A Yes.

Q You have talked with Mr. Pirone about this matter often since then? A Yes, I talked for ten years. I talked to him in the morning, noon and night.

Q Was Mrs. Pirone present at this conversation? A I saw her but I wouldn't swear that she 40

James Del Mauro, direct—cross.

was around. She could walk around the store. I don't know.

10 JAMES DEL MAURO, sworn on behalf of complainants.

Direct examination by Mr. Masucci.

Q Mr. Del Mauro, do you know Mr. Pirone?

A Yes.

Q How long have you known him? A Over ten years.

Q Did you meet Mr. Pirone in the month of April this year? A Yes.

20 Q Where did you meet him? A I met a grocery salesman and I go in there nearly every week.

Q Did you meet him in the store in April? A Yes.

Q Did you have any conversation with him relative to the purchase of the Clifton avenue property in which he has a store? A Yes.

30 Q What did you say to him about that? A He told me, he said, Mr. Cerrato is selling the house. I said, why don't you take it, you got the preference, you told me, why don't you buy it? He said, the price is too dear, thirty thousand dollars, he cannot attend to it; that is what he told me.

Q Was there any further conversation? A That is all I know.

Cross examination by Mr. Sweeney.

40 Q Have you been asked to say that the price was twenty-seven thousand five hundred? A No.

Vincent Caruso, direct.

I just said, why don't you buy? He said, thirty thousand dollars is too much to me.

Q Has anybody asked you here to testify that the price was different? A No. That is all I know.

10

VINCENT CARUSO, sworn on behalf of complainants.

Direct examination by Mr. Masucci.

Q Do you know Mr. and Mrs. Cerrato? A Yes.

Q Do you know Mr. Pirone? A Yes.

Q You lived on the property on Clifton avenue? A Yes, I did at the time.

20

Q In April, 1923? A Yes.

Q Did you see Mrs. Cerrato in April go through the house? A Mr. Cerrato and Megaro brothers on April 1st in the afternoon.

Q Where did you see them? A In my flat. They come in and Mr. Cerrato asked me if he could show them the rooms. I said, yes, come in. I took them around. They were satisfied, so Mr. Cerrato introduced me to them and said, these are the Megaro brothers and soon they will be the new owners.

30

Q The next day did you see Mr. Pirone? A No, in the evening I had company home I went down to get some ice cream and cigars for them. I said, Mr. Pirone, we will have a new owner soon so he said, Vincent, I know it, they came through my store and through the cellar. I said, Mr. Pirone, why don't you get that property, but he said, Vincent, my first name, I can get that prop-

40

Joseph Megaro, direct.

erty for five hundred dollars less before anyone can get it, but, he said, I haven't got any children, I haven't got no money and I am not going to bother with the steam. I will not shovel coal to get heat.

Q Is that the whole conversation? A Yes.

10 Q Did you see him at any other time and speak to him about the purchase of the property? A Nearly twice a day.

Q How many times all told did you speak to him and ask him why he didn't buy the property?

A Nearly every night. I had no place to go and I used to go in and buy cigarettes and stay there in conversation with them, and he always refused.

20 Q During this conversation relative to the purchase of the property was there, at any time, any price mentioned by Mr. Pirone? A Never, but he said that he could get that property for five hundred dollars less than anyone else could get it for.

Mr. Finelli: No questions.

Mr. Sweeney: No questions.

COMPLAINANTS REST.

30

JOSEPH MEGARO, sworn on behalf of defendants, through interpreter.

Direct examination by Mr. Finelli.

Q When did you first find out that Pirone had the preference to buy the property? A The fourth or fifth of April; I am not sure.

40

Joseph Megaro, direct.

Q Who gave you the information? A The lawyer, Charles Cerrato.

Q What did Mr. Cerrato say to you? A He told me if I bought the property, Mr. Pirone had a five-year lease.

Q Did he say anything else to you? A He further told me that he had a three-year renewal, and if you want to give it to him— 10

Q You don't answer my question. When did you first find out that Pirone had the first preference to buy the property? A Two days before we had to execute the deed.

Q At what place did you find that out? A I do not remember.

Q Was it at the lawyer's office, in the store or at some lawyer's office? 20

The Court: Before or after you signed the agreement to buy it?

The Witness: This was two days after we had to get the deed, which was after the agreement.

Q How many weeks or months after you signed the agreement? A He said, now I remember it; up at the Building and Loan lawyer's and there this question came up. 30

Q What month? A In July.

Q Was Mr. and Mrs. Cerrato there? A They were not there.

Q Was your attorney there, Mr. Finelli? A Yes.

Q And Mr. Cerrato was there? A Yes.

The Court: Judge Johnson?

The Witness: Yes. 40

Joseph Megaro, direct.

Q I show you a bill of items and ask you whether they are in the handwriting of yourself?

A Yes.

Q You made certain repairs to the property?

A Yes.

Q The first repairs were made when? A July
10 23, this year, he says.

Q (By the Court.) Under the contract could he enter into possession before closing?

Mr. Masucci: We will admit that we permitted him to make repairs.

The Court: What is the purpose of this?

Q What did you first tell Pirone that you had
20 an agreement to buy this property? A It was two or three days after the agreement. In fact, I see him every day and he said, I am very glad you purchased the property.

Q And subsequent to that, after the time you went down to Judge Johnson's office to get the Building and Loan money, did you make repairs to the building? A Yes, I did all the alterations.

Q Tell us who made the repairs and the amount?

30 The Court: What did you do in the way of repairs?

The Witness: Painted.

Q Did he paint the entire house? A All the necessary work.

Q Inside and out? A Five rooms inside and four rooms at another place.

Q Where was this work done? A The bill
40 came in July 2nd. Another painted three rooms.

Joseph Megaro, cross.

Q When? A June 20th, eighteenth or twentieth of June.

Q (By the Court.) Did you paint any of Pirone's rooms? A No.

Q Did you make any repairs or changes in Pirone's rooms or store? A Mr. Pirone asked me that I should paint the front of his store. 10

Q What did you tell him? A As soon as I have time I will get it painted for him. He wanted it painted before the holidays.

Q Which holidays do you mean, the Christmas holidays? A He said before the summer comes on, the Christmas holidays.

Cross examination by Mr. Masucci.

Q The contract was signed on April 10th? A 20
I think it was ninth or tenth of April.

Q And a copy of the contract was turned over to you immediately after it was signed? A Yes.

Q Did you take this contract away to your lawyer on the following day? A In the following week, I did.

Q When you signed the contract was the lease there? A On the table.

Q Before you? A I don't remember. 30

Q Did Mr. Cerrato, the attorney, read the lease to you? A He read to me the five-year lease period and then a three-year privilege of renewal.

Q Did you understand when he read it to you that Mr. Pirone had the first privilege of buying? A No.

Q Wasn't that first preference to purchase read to you word for word in English first? A I didn't hear it. 40

Joseph Megaro, cross.

Q You wouldn't say that it wasn't read to you, would you? A No; I am sure I didn't hear it; I don't know.

Q A lease was read to you, wasn't it? A Yes. I heard afterwards that some time before the house was offered to Mr. Pirone and he didn't
10 want to buy.

The Court: Keep his mind on his meeting, this night when the paper was signed.

Q Was there a lease read to you that night, the lease to Pirone? A No.

Q Do you know from what was read, he said to you that night that Pirone had the first right to buy this property and—

Q The contract of sale was read to you, explained to you, wasn't it? A Yes.
20

Q And that specified that the property was sold subject to a lease. Didn't you ask and find out what the terms of that lease were? A No, I made no demand; no request.

Q Isn't it a fact, Mr. Megaro, another paper besides the contract was read to you in English first? A I don't remember.

Q And wasn't it subsequently or immediately afterwards explained to you in Italian, this very lease? A All I heard was the lease that he had.
30

Q Did you ask him how much rent was to be paid? A He was paying seventy-two dollars and the next following month he paid seventy-five.

Q That was explained to you by Mr. Cerrato, wasn't it? A Yes.

Q And he got those facts from a paper that he had before him, on a document. A He had it in his hand, I don't know where he got it.
40

Joseph Megaro, cross.

Q Did you communicate with and engage Mr. Finelli, and bring the contract to him two or three days afterwards? A Yes, he is my lawyer and I brought it down and showed it to him.

Q And did Mr. Finelli call your attention to that part of the contract which stated you were taking the property subject to the lease? A Yes, 10
he read the contract.

Q Do you know of your own knowledge whether Mr. Finelli went up to see Pirone and ascertained the conditions of this lease? A He went. I don't remember what day that was.

Q How many days after you brought the contract to him, do you know? A I don't remember.

Q Was it before you appeared at Judge Johnson's office to close the title? A No, it was afterwards. 20

Q When you appeared on the premises on Clifton avenue to make repairs you spoke to Mr. Pirone as you said, did Mr. Pirone advise you at any time during that period that he had had a first privilege to purchase and didn't want to buy it? A He never spoke to me about it.

Cross examination by Mr. Sweeney.

Q This painting work was all inside, was it not? A It was inside. I painted a flat on Clifton avenue, another flat on Eighth avenue, and I put some bath tubs in. 30

Q It was a flat that had been vacated and being made ready for a new tenant? A Yes.

Q And the same as the other flat where you made repairs? A In the very flat where Mrs. Pirone lives, and he said you may as well fix it before I move. 40

Joseph Megaro, cross.

Q She was living there when these repairs were made? A Yes.

Q Did you ever have any personal conversation at all with Pirone about this agreement to buy this property from Cerrato? A Of course every time I go there he speak to me about it; he
10 knew I bought it, how much I paid for it and everything else.

Q (By the Court.) How did he know that? A He knew that because we was, on April 1st, with Mr. Cerrato, and Mr. Cerrato asked him to let us see the store and rooms, that we were the new purchasers and then he said that Mr. Megaro is buying this house. Then we went down in the cellar. After we come up, we had a cigar and three days later I went back and Mr. Pirone asked
20 me, did you buy the house.

The Court: What did you say?

The Witness: I think everything will be all right in the course of two or three days.

Q Did you tell him what price you were paying for it? A Yes. I told him that the price was twenty-eight thousand dollars, but that Mr. Cerrato had taken off five hundred dollars, due
30 to the fact that I had to go and get a Building and Loan mortgage.

Q What did you tell Pirone, what price did you tell Pirone that you paid for the property? A He said twenty-eight thousand dollars and Mr. Cerrato will take five hundred dollars off.

Q Did you tell that to Mr. Pirone? A Yes.

Q When did you tell it to him, before or after you signed the agreement of sale? A Before signing the agreement.
40

Joseph Megaro, cross.

Q Is that the time you say he told you he was glad you had bought the property? A Yes, he was very much satisfied we was purchasing the property.

Q At the time that you actually did sign the agreement as I understand it, it was in the evening of the 10th of April and just who was present? A Mr. and Mrs. Cerrato, Lawyer Cerrato's son, my brother and I and another person was present. 10

Q Who was the other person? A Zucardi.

Q Where was the paper signed? A At the home of Mr. Cerrato.

Q At what hour of the night? A Half-past seven or eight o'clock; I don't remember.

Q When you were talking with your brother you talked in Italian? A We talked in Italian.

Q When you talked with Antonio Cerrato you talked in Italian. A Yes. 20

Q And Mrs. Cerrato, she talks Italian? A Yes.

Q There wasn't a single person there that night that spoke English all the time? A Speaking Italian and English.

Q There was no one there that didn't understand Italian? A No.

Q Was any paper read in English that night? A Everything was read in Italian. 30

Q And isn't it a fact that Mr. Cerrato was asking thirty thousand dollars for that property?

A No, he asked twenty-eight thousand dollars.

Q Is that the highest price he asked? A That was the first, last and highest price.

Q You did finally buy it for twenty-seven thousand five hundred? A And Mr. Cerrato said you take care of finding your loan and I will give it to you for twenty-seven five. 40

John Megaro, direct.

Q You are a real estate broker? A No.

Q Aren't you now, since that time? A No. I buy property and sell it for my own use.

Q But in this buying and selling for your own accommodation you are now associated with Mr. Antonio Cerrato? A No.

10 Q I don't mean at the time this sale was made, but at the present time? A Mr. Cerrato, he sells a different house; he is in the real estate business, but I have a grocery store.

Q Don't you divide commissions and profits when you make sales with Mr. Cerrato, the father?

A I got my own house in Bloomfield avenue.

Q You divide the profits of the business between you? A No.

20 Q Do you remember making any division of commission of broker's fees or profits? A I pay him commission for sales in all my property, but as far as profits is concerned, I don't divide it.

(Recess.)

JOHN MEGARO, sworn on behalf of defendants.

30 *Direct examination by Mr. Masucci.*

The Court: I understand you are going to examine this witness for Mr. Finelli.

Mr. Masucci: Yes.

Q You are one of the purchasers mentioned in the agreement of sale of April 10th? A I cannot talk very good English, just a little.

40 Q (By the Court.) To buy this property? A Yes.

John Megaro, direct.

Q When the contract was drawn up and signed by you, was it explained to you or anybody present that this lease contained a first privilege to Mr. Pirone to purchase the property? A No. I asked him. I said, when I buy the house, I said, somebody has got a lease, this Mr. Pirone, he got a lease.

10

Q Was it explained to you then, what the rights of Mr. Pirone were? A What do you mean?

Q Was it explained to you that Mr. Pirone had a right to buy the property before anybody else? A No, he said he has got a lease, that is all.

Mr. Masucci: That is all Mr. Finelli wanted me to ask him. I would like to cross examine him.

20

Examination by the Court.

Q When did you first know that Mr. Pirone had the right to buy the property? A After the agreement was made, when they went to make the deed to the house I go down to the Building and Loan, in this building.

Q Judge Johnson's office? A Yes, he was there, and there was an O. K. for me. I come down there. My lawyer said, you cannot make a deed today, there is some trouble; I said, what trouble? My lawyer, Mr. Finelli said, all right, I will let you know tonight; I will explain to you what the trouble is. He said, Mr. Pirone has got a right before you to buy the place. I said, I don't know anything about that.

30

Q Was that the first time you knew anything of it? A Yes, the first and the last.

40

John Megaro, cross.

Cross examination by Mr. Masucci.

Q At the time you were there to sign the contract, did you see any other papers besides the two contracts? A No.

10 Q Did you see a paper like this purporting to be a lease, that they explained to you was the lease? A He told me about the lease; Mr. Cerrato read it; he said, Mr. Pirone got a lease; he paid seventy-two dollars and fifty cents a month one year, after that he is supposed to pay seventy-five dollars; I said all right.

Q And he read that over, this lease? A I don't know.

20 Q He read that from some paper? A Yes, he told me in Italian and American. I don't understand some question and he told me.

Q So that he explained or read the whole thing to you, that paper that he had in English and some in Italian. A He read it in American first and I cannot understand, and he explained it.

Q. (By the Court.) Did you inspect the property before you bought it, did you go through the house? A Yes, sure.

Q When? A In April.

30 Q Did you see Mr. Pirone there? A The first time I go and see the house, Mr. Cerrato said all right, I go and see the front first up Eighth avenue and go in the store, and he said, Mr. Pirone, I want to show the house; he said all right. We go in the cellar, after we go upstairs. I see the house and I come downstairs and buy some cigars. Something was said about the house; he said, I want to show the house.

40 Q Who took you upstairs to see the rooms? A Mr. Cerrato.

John Megaro, cross.

Q And who was with Mr. Cerrato? A Me and him, my brother.

Q Who opened the door to the flats upstairs?

A When I come and see the house where Mr. Pirone living, my wife, my brother and his wife.

Q On the second day when your wife went you were not alone? A No, my wife go and see the rooms. 10

Q What day of the week was this, the first day? A About Monday or Tuesday.

Q That you went?

The Court: He cannot remember the day; Monday or Tuesday.

The Witness: A day or two after I see the house, then my wife went to see it.

Q That was when your wife went there on Monday or Tuesday? A Yes. 20

Q When did you go there first, what day of the week? A About the first of the week, I don't remember.

Q Did you see Mr. Pirone there on Monday or Tuesday until the day that you signed the contract at any time? A No; I saw him and I see him in the store.

Q Did you speak to him? A No. 30

Q Did you ever inform him that you were purchasing the property, that you were buying the property? A I don't know; Mr. Pirone don't know that I buy it. I tell him after I make the agreement.

Q How many days after the agreement did you tell him? A About a week or two, like that.

Q What did you tell him then? A I start in to make some patching, as a mason. I said, won't you give me a chance? 40

John Megaro, cross.

Q What did you tell Mr. Pirone when you spoke to him? A Mr. Pirone said, you buy the house; I said sure, I buy it.

Q What did he say? A That is all.

Q Did you speak to him before you went to Judge Johnson's office? A I work over there
10 and paint and work three or four days. I say, good night or good evening. Mr. Pirone ask me, what are you going to do upstairs; I said, I paint more still. He said, what plumbing are you doing; I said, put in plumbing.

Q Did he ever ask you to do any painting or anything in his flat? A He said, look at the store; he start to paint the ceiling, and I said, why don't you tell him to finish it up before I make the deed.
20 I said, I ain't got much money to paint, when I have money I will paint it.

Cross examination by Mr. Sweeney.

Q As I understand your testimony, the first morning you went there and asked to go down in the cellar, you didn't have any conversation with Mr. Pirone about buying the house? A No.

Q And nothing was said to Mr. Pirone at that
30 time, and you didn't personally talk to him about buying the house until after the agreement was all made. A I said, I want to see the cellar; he show the cellar.

The Court: He said Mr. Cerrato told Mr. Pirone he wanted to show this house and sell it to him, that was his expression. That was the first day when he went over and he said it was all right; isn't that so?

40 The Witness: Sure.

John Megaro, cross.

Q What did Mr. Cerrato tell Mr. Pirone was the reason that he wanted to take him down in the cellar? A He said, I want to bring these people down in the cellar; he don't know what for. Mr. Pirone said, go ahead, go down in the cellar. I looked at the machine, I see the ice cream maker; Mr. Pirone said, see what I got there. 10

Q Didn't you tell me that Mr. Cerrato said he wanted to show him that you were going to buy the house? A He told me before.

Q (By the Court.) Did he tell Pirone that? A No, he tell him alone.

Q So there was absolutely nothing said to Mr. Cerrato and Mr. Pirone at that time about your buying the house? A I don't feel like that. Mr. Pirone, when Mr. Cerrato said, I want to bring this man down in the cellar, there was brick there, Mr. Pirone say nothing. He said this man will go down in the cellar, he is a mason, he wants to fix the door. That is what we figured. 20

The Court: He said that is the way Pirone figured it afterwards.

Q When you went downstairs did you see places that needed repairs? 30

The Court: No, I don't care about that. It has no bearing on the case.

Q Do you remember talking to Mr. Pirone about this matter, the latter part of June this year? To refresh your memory, do you remember an occasion in June when you came along with a little ice on a wagon and that you sold the ice to Mr. Pirone for seventy-five cents? 40

John Megaro, cross.

The Court: Did you ever sell him some ice for seventy-five cents?

The Witness: I was an ice man myself?

The Court: Were you an ice man?

The Witness: No, I am a mason.

10 Q Do you remember some time when you came along last summer with some ice in your wagon?

A I know nothing about that.

Q It was your ice? A No.

Q (By the Court.) Did you have a wagon? A No, I buy ice from the wagon myself.

Q Your own wagon he is talking about; did you have a wagon of your own? A No.

Q And that you had a conversation with Mr. Pirone about the price that you were paying for the property, did you tell Mr. Pirone how much you paid for the property? A No, he asked me one time; I said, I don't know what it cost. I asked a thousand or two.

Q Did you tell him how much you were paying Mr. Cerrato for the property, how much you bought it for? A No, I don't tell him.

Q Did you tell him in June that you paid seven—twenty-seven thousand five hundred for it? A No, I don't tell him myself.

30 Q Did you? A No, sir. He asked me how much that cost, this house; I said I don't know how much, it cost about thirty-one thousand dollars, everything, improvements and everything, all my expenses. I cannot figure yet how much it come to. He asked me, Mr. Pirone, how much you give? I said fifteen thousand dollars. He said, who got the second mortgage, seventy-five hundred dollars? I said, the rest of the money I pay myself. He said, what kind of money; he wants

40

John Megaro, cross.

to know whether I paid cash the rest of the money or give a mortgage; I said, I give a mortgage.

Q That the sale price was twenty-seven thousand five hundred? A Yes.

Q Is that what you told him? A He got five hundred dollars out.

Q (By the Court.) You don't understand. A He said what he told me it would cost thirty or thirty-one. He didn't know what it would cost, but he had a lot of repairs and improvements which he made.

10

Q Did Mr. Pirone then for the first time learn that you bought it for twenty-seven thousand five hundred? A No, I didn't tell him nothing of the kind.

Q At that time didn't Mr. Pirone tell you he understood you were paying thirty thousand dollars for it? A I said, I don't know how much it cost, maybe about thirty-two or thirty-three. I told him no price. He said how much you think it cost? I said I don't know when I finished the painting and everything, I figure what it cost.

20

Q Didn't Mr. Pirone at that time say that thirty thousand dollars was too much? A No.

Q Didn't Mr. Pirone say that at twenty-seven thousand five hundred dollars he would buy it, and that he had the first right to buy, and at that price he would take it? A He said about twenty-six. He said it cost him like that. I want it myself for twenty-six; I said I don't know; why don't you buy it for twenty-six.

30

Q Do you know James Del Gurtio? A Yes, the plumber.

Q Do you know that gentleman? A Yes.

Q Where is his business? A Cutler street.

40

Henry F. Kneller, direct.

Q Do you remember having any conversation with him about having purchased this property?

A I work in the house.

Q Didn't you tell him you paid thirty thousand dollars for it? A He asked me, what are you fixing at the house? He don't ask the price.

10 Q Didn't you tell him, Mr. Cerrato said you must pay thirty thousand dollars for this property? A No.

The Court: Is that Mr. Finelli's case?

Mr. Masucci: That is the only witness he has.

20 HENRY F. KNELLER, sworn on behalf of defendant, Pirone.

Direct examination by Mr. Sweeney.

Q You are an inspector of the local Board of Health? A Yes, sir.

Q And have been so how long? A Nine years.

Q And is the corner of Eighth avenue and Clifton avenue in your district? A We take in the whole city.

30 Q Were you selected to inspect the confectionery premises on this property? A Yes.

Q When did you make the inspection? A The first inspection—we make out cards like this one here, 6/19/22.

Q That would be the nineteenth of June, 1922? A Yes.

Q Did you find violations?

40 The Court: What difference does it make?

Henry F. Kneller, direct.

Q What violations did you find there?

The Court: I don't care for the details.

Q (By the Court.) Did you make a subsequent inspection? A Yes.

Q As a result of your inspection and the conditions that you found there, did you revoke the license to manufacture ice cream on the premises? 10

A Yes.

Q And when did you make a later inspection?

A On the twenty-third of March, 1923.

Q Who did you find there? A Mr. Pirone.

Q What did you say to him? A I told Mr. Pirone—

Mr. Masucci: I object; it is not binding on us. 20

The Court: I will sustain the objection.

Q Who was there besides Mr. Pirone? A The wife of the old owner.

Q Mrs. Cerrato? A Yes.

Q Did you hear any conversation in relation to these premises? A They were kind of talking loud, but they were talking in Italian. I couldn't understand, and Mr. Pirone told me, she is mad, she is mad that I sent for you. 30

The Court: Did he say that in her presence?

The Witness: Yes.

Q What did she say? A I cannot understand; she was talking in Italian.

Q What else did he say? A That is all he told me.

Henry F. Kneller, direct.

Q Did he say anything in her presence that he had an objection to buying the property?

The Court: Don't lead him. If he did, what difference does it make?

10 Q Did he make a statement in her presence as to whether he would exercise his option and purchase these premises? A No, the only thing I asked Mr. Pirone, whether he bought the house or bought the property and he said, no, that he had a lease with an option to buy. I said, then you want to make these recommendations, because if you don't it will revoke your license, because there is no one can make ice cream under conditions this place is in.

20 Q (By the Court.) What did he say? A He followed up the recommendation and I O.K.'d it later on.

Q When did you make your next inspection? A This inspection I followed up in July, 1923. He has it on the card there. That was when the license was issued, the first of July. The license was granted to him on June 25, 1923.

30 Q Upon this particular occasion in March when you were speaking about the option, what did he say in the presence of Mr. Cerrato as to whether he intended to buy the property? A He told me he had a lease on the property with an option to buy.

Q (By the Court.) Is that all he said about buying? A Yes.

40 Q Did you ask him any questions as to the business? A No, the only thing I told him then, if they lease it, they must follow up these recommendations or they cannot make ice cream, which

Henry F. Kneller, cross.

he said he would and he did finally; he fixed up the different things that we recommended.

Q Was there anything said at that time in the presence of Mrs. Cerrato as to whether or not Pirone would ever get the property on account of what Mrs. Cerrato at that time said in the presence of yourself when he called her up there? A 10
He said he would make these recommendations and he would buy the place. He told me, I fully understood he was going to buy it from the way he talked.

Cross examination by Mr. Masucci.

Q What did you mean that he fully understood, was it expressed that he would buy it? A Yes.

Q In the presence of Mrs. Cerrato? A Yes.

Q How far away was Mrs. Cerrato at the time? 20
A Not more than three feet. I sat in front of the fountain and she sat next to me and Mr. Pirone was over there.

Q What language was spoken? A He spoke in English to me.

Q Did Mrs. Cerrato say anything or appear to understand what Mr. Pirone said? A I cannot say.

Q Did she take any part in the conversation 30
between you and Mrs. Pirone? A She said something in Italian, but I cannot understand.

Q Before or after? A After that expression, he would buy the property then.

Q You don't know what she said? A No.

Dominic Pirone, direct.

DOMINIC PIRONE, sworn in his own behalf.

Direct examination by Mr. Sweeney.

10 Q Mr. Pirone, after the execution of this lease in October did Mr. Cerrato ever offer to sell this property to you and if so at what time and at what price? A When I buy the store I ask Mr. Cerrato and I want an eight-year lease.

Mr. Masucci: That is not responsive to the question, but I cannot object.

The Court: Do you understand the question?

Mr. Sweeney: I withdraw the question.

20 Q At the time that you purchased the place, this confectionery business for twenty-five hundred dollars, and at the time that the lease was drawn up, who prepared the papers? A The youngest Cerrato.

Q Did you at that time have any lawyer? A No, I went to call up my lawyer. He said, my son is a lawyer, he do everything, what is right.

30 Q And how did this provision, giving you the first preference to purchase the property come into the lease?

The Court: What difference does it make? He has got it. The testimony is he didn't avail himself of it.

Q This lease is dated the fourth of October, 1922? A Yes.

40 Q The agreement to sell the property to Mr. Megaro is dated the tenth of April, 1923. Between those two dates did Mr. Cerrato at any time come

Dominic Pirone, direct.

to you, at any time or place and tell you that he was about to sell the property, and tell you the price for which he was about to sell it and ask you if you wanted it at that price? A Yes, but he asked me thirty-five thousand dollars.

Q When? A I think April 2nd or 1st. He said, if you want to buy the property you got to buy it because we say to Mr. Cerrato on account of the Board of Health when I buy the place, he say it was all O. K. for ice cream. I said, why did you do this? He said, no, I give you a preference on your lease. The next day I come. He said to me, you going to buy the property for thirty-five thousand dollars? I said, no. All right, the conversation was over, but two or three days later, I think on Friday he ask me, will I buy; I said, no, not for that price; on Tuesday the agreement was made in the night. On Wednesday morning Mr. Cerrato come in my store about half-past ten and he said to me, I come back and tell you I sell the property. I said, you sell the property, how about my option, my privilege. He said, I have sold the property at thirty thousand. I said, thirty thousand, it is too much for me. I said, you can sell to anyone you like for thirty thousand, but it is too much for me.

Q Between April 1st and the twelfth of April were you and Mr. Cerrato good friends? A Yes, we were talking all the time about thirty thousand dollars. We never mentioned any more.

Q Was he in the store every day? A Once in awhile.

Q Did Mr. Cerrato at that time know about this inspector's visit from the Board of Health? A I told him you do that work on the Board of Health? He said, no. The next day I called him down and said, for gracious sakes, you bother me

Dominic Pirone, direct.

all the time. He said I like to sell the house to the people and never give you satisfaction, and then a few days after he come and he offered me the house for thirty-five thousand dollars; I said, no, and a couple of days later he come again and Charlie was there, too, and said, I give you an
 10 offer thirty thousand; I said, I don't buy.

Q What effect, if any, upon the feelings of Cerrato, did this have?

Mr. Masucci: I object.

Mr. Sweeney: I withdraw it.

The Court: He said they were good friends between the first and tenth of April in answer to your question.

Q Were you good friends with the Cerratos
 20 between the first of April and tenth of April? A No, we was good friends between the middle of March and when I find out that the Board of Health try to cause trouble and said if you don't do this and that, you cannot make ice cream.

Q Were you bad friends between the first of April and the tenth? A Not very bad friends. We start to have a little scrap because I said, you are a crook and liar when you sold the place; you
 30 told me the license for ice cream was O.K. and the Board of Health now won't let me. I said, you bother me too much, if I find a chance to sell it, but I never give him satisfaction.

Q When did you first learn that the real price was changed? A I find out in June, last week, in June.

Q How did you find out? A From Joseph Megaro.

Q What did he tell you? A One morning I
 40 was waiting for the ice man to bring the ice. I

Dominic Pirone, direct.

was outside and Joseph Megaro came with a little Ford with the two and a half blocks of ice in a wagon. I said I take it, my ice man don't come. He said I give you my ice for seventy-five cents and I took it, and after he threw the ice in the cellar and after I bring him in the store, Mr. Megaro come in the store and start to talk and said, how is business? I said, business is good. Mr. Megaro told me, do you know what happened; he said Mr. Cerrato take the wine press from down in the cellar. I said, yes, he is a nice man. I said, you are a damn fool—pardon me. I said, you pay thirty thousand dollars for the property. No, he said, I tell you the truth, that property I paid twenty-seven thousand five hundred. I said if that is the price I go on because I have an option in the lease. Mr. Megaro answered back, he said: all right, I got nothing to do with you and he went away.

Q Did he say anything about a lease? A He went away because he went to buy ice for himself.

Q (By the Court.) When did you first know he was going to buy the property? A I know on Sunday, the eighth of April. Before noon, come to Mr. Cerrato and the two brothers, Megaro, in my store, and Mrs. Cerrato said, you give me permission to go in the cellar; I said, yes. The boy who worked for me opened the door and they went down in the cellar. They go away and they took a cigar and a drink. Joe Megaro, I said, what is the matter; he said, I got a little trouble. He never talked anything about a house or anything, and he went away. On the same day, that Sunday evening, I got suspicious because I know Mr. Megaro buy the house. I said, I think they make me a trick. Monday morning I dressed up and get the

Dominic Pirone, direct.

lease from the bank and go to the court house and put it on record. They refuse it. I go down to Market street and went to my lawyer and said, what is the matter? Mr. Megaro said it needs something, so he wrote an acknowledgment on it. Charlie is across the street. I said, Charlie, you told me when my girl comes, I let you put it on.
 10 On Tuesday he stopped and bought a box of cigarettes. He said, you go down and get your paper, and your bookkeeper gave it to me and put the lease on record.

Q Why did you put it on record? A Maybe they sell the property and I lose the lease.

Q Had your lawyer advised you to put it on record? A No. All my lease I have on record.

Q At the time Charlie fixed this up for you, were you and his father and mother angry at each other, bad friends? A Yes, we were bad friends because of the scrap with the Board of Health.
 20

Q Did Charlie make any trouble about fixing up this acknowledgment for you? A No, he don't make any trouble.

Q He didn't refuse to do it? A No.

Q And at that time what did you understand the property was being sold for?

30 Mr. Masucci: I object.

The Court: He don't know anything about it being sold at that time; not until the last week in June he said did he know it was sold.

The Witness: I know it was sold.

Q (By the Court.) How did you know it? At the time you say Charlie fixed up the acknowledgment did you know it was sold? A No.

Q When did you first know it was sold? A
 40 Wednesday morning.

Dominic Pirone, direct.

Q Who told you? A Mr. Cerrato come in my store.

Q What did he tell you? A He said, I sold my property. How about my option? He said, your option don't amount to anything. I said, who did you sell your property to, let me know the price. Thirty thousand dollars. I said, for thirty thousand dollars? It didn't pay for me. 10

Q Who was present? A My boy who worked there.

Q Anyone else? A My wife.

Q Did you take Mr. Megaro and his wife through the building or did your wife? A No, my wife was upstairs cleaning the rooms, on Monday morning when Mr. Megaro went upstairs.

Q Did they have any talk with you at the Building and Loan meeting about buying the property? A Yes. 20

Q Who talked with you there? A Charlie and Mr. Cerrato.

Q What did they say? A They said, why don't you get this property? I said, at that price it don't pay me. Thirty-five thousand dollars they want the first time.

Q How much did you offer to pay? A I never offer anything. We call up the real estate and fix the price. 30

Q Why didn't you make an offer when he said thirty thousand dollars, you say he stopped every day in the week? A Two or three times he stopped.

Q When you thought thirty thousand dollars was too much, why didn't you say what you would be willing to pay? A I asked him.

Q Did he offer to give you a reduction? A I said if you make a reasonable price I buy it. 40

Dominic Pirone, direct.

Q Did he offer to give you a five-hundred dollar reduction? A He said, my price is thirty thousand dollars.

Q Did Cerrato at any time ever say that you could buy the property for five hundred dollars less than anyone else? A No.

10 Q Or that Mr. Megaro was going to pay twenty-eight thousand dollars, but that you could have it for twenty-seven thousand five hundred? A No, he told me Mr. Megaro paid thirty thousand.

Q Did Mr. Cerrato ever tell you that he was letting this property go to Mr. Megaro for twenty-seven thousand five hundred? A No, he said, thirty thousand dollars.

Q (By the Court.) Do you want to buy the property? A Yes.

20 Q (By the Court.) When did you make up your mind that you wanted to buy it? A All the time.

Q (By the Court.) Long after this property had been sold in April? A Yes.

Q (By the Court.) Why didn't you begin suit against Mr. Cerrato to make him sell to you? A I thought the price was thirty thousand.

30 Q (By the Court.) You found out the last of June that it was twenty-seven thousand five hundred dollars? A Yes.

Q Why didn't you start suit then? A I said, Mr. Cerrato, I want the property.

Q (By the Court.) What did he say? A He said, you never get it from me.

Q (By the Court.) Why didn't you make him do it by bringing suit? A This was July, on Sunday, half-past ten, I was ready to close my store; Mr. Cerrato come with two sheets of paper. He said, you sign this: I said, no, I don't sign.

40

Dominic Pirone, direct.

Q (By the Court.) Mr. Cerrato, the lawyer?

A No, his father. I said, I want the property, and I give it back on Monday morning, when I was making ice cream down in the cellar; Charlie and young Cerrato come in my store and find my wife and said, where is Mr. Pirone? She said Mr. Pirone is making cream. He said get him to sign it, that is nothing. I went to my lawyer. 10

Q Do you know the date of that? A When I go down on Monday it was about four o'clock and on the second of July I call my girl Millie, I said you bring that check to Mrs. Cerrato and my girl went over and find his wife and she refused the check.

The Court: Strike that out.

The Witness: I give the check; they refuse it, then Mr. Cerrato come with the girl and said, my uncle don't like to sign this because they want the house and they had the rent check. That evening about seven o'clock— 20

Mr. Masucci: I object.

The Court: I will strike this all out, what he has said is a waste of time and it will all go out.

Q What did you tell Mr. Cerrato that night? 30

A That night he come, Charlie and his father, and he said, why don't you want to sign? I said, I want the house; he said, if you don't sign the paper even if he gives me five thousand dollars I won't sign the agreement.

Q (By the Court.) With whom did he come? A With Mr. Megaro.

Q You say this was July 2nd? A Yes.

Q Mr. Cerrato and his father came to the store on the second of July? A Yes. 40

Dominic Pirone, direct.

Q At night? A Yes.

Q Tell me what happened. A They come. Charlie said, what for you don't want to sign; I said, because I want the house, I find out that the price was twenty-seven thousand five hundred; I said, for that price I take the house, and Mr. Cerrato, his father, said if he don't sign anything I
10 will sign the agreement tomorrow—the deed. Possibly if they give me five thousand dollars I sign the deed.

Q To whom? A To Megaro.

Q And after that did you have written notice served upon Mr.—

Mr. Masucci: We will admit that.

Q At the time Mr. Megaro made these repairs
20 upon the house, painting and so on, did you know that he had bought the house for twenty-seven thousand five hundred dollars? A No, I never know it.

Q Do you know Mr. Vincent Kneller? A Yes.

Q Did you hear his testimony today? A Yes.

Q Did you at any time ever tell him that Mr. Cerrato had come to you and told you that you could have the house for five hundred dollars less
30 than anyone else? A No, he never told me that.

Q That you didn't want the house because you had no children and no money? A No.

Q And you were about to return to Italy? A No.

Q Do you know Mr. Spatola? A Yes.

Q Was he ever in your house? A Once in awhile.

Q Was Mr. Spatola ever in your store at the time Mr. Cerrato was there and Mr. Cerrato told you that you could have the house for five hundred dollars less than anyone else, and that you
40

Dominic Pirone, cross.

could have it for twenty-seven thousand five hundred? A Never mentioned any price at all to me.

The Court: He mentioned two different prices, thirty thousand and thirty-five thousand.

Q Mr. Cerrato did make a price to you? 10

The Court: He said so, thirty-five thousand and thirty thousand.

Q And did you tell Mr. Cerrato in the presence of Mr. Spatola that you didn't want the house and that you were going to Italy? A No, I never said that.

Q Did you ask Mr. Megaro to paint the other store at any time? A No. 20

Q (By the Court.) Did you ask him to paint the ceiling wall? A No, I never ask that because the ceiling Mr. Cerrato paint when I buy the place.

Q From the time that you learned this property was sold for twenty-seven thousand five hundred dollars have you been ready and willing and able to take the property and are you ready and able and willing now to take the property at that price? A Yes. 30

Q Upon the terms stated in this agreement? A Yes.

Cross examination by Mr. Masucci.

Q Would you take this property upon the terms stated in this agreement; have you got five thousand dollars in cash? A Yes.

Q Or have you got a thousand dollars in cash and a second mortgage on some property, four 40

Dominic Pirone, cross.

thousand dollars? A I got all cash, five thousand dollars.

Q What bank have you got it in? A I got pretty nearly four thousand dollars in the savings bank and I got Liberty Bonds.

Q Which bank is that? A Howard.

10 Q Did you have the money there in April?
A No, I put in three thousand dollars in April, and maybe I get a mortgage for sixteen hundred and fifty dollars. I got five hundred dollars Liberty Bonds. I got some stock.

Q (By the Court.) You made your first deposit here apparently on the twenty-fourth of July, 1923? A This is the second book I got from the bank, the other book was filled up.

20 Q When did you open the account in this bank?
A Years ago.

Q And did you have an account in this bank in April of this year? A Yes.

Q How much deposit did you have or balance did you have in bank on April 10th of this year?
A The old book I have.

30 Q (By the Court.) Answer his question; do you know what your balance was in the bank on the tenth of April? A I think pretty near three thousand dollars.

Q What became of the old deposit book that you had? A The bank got it.

Q They have it yet? A I don't know if they have it yet.

40 Q When did you deposit the four hundred and thirty dollars and seventy cents if you had three thousand dollars in the bank? A About three thousand. I drew three hundred and fifty the other day. I sent money on the other side to buy merchandise.

Dominic Pirone, cross.

Q Mr. Pirone, isn't it a fact that when the bank issues a balance and opens up a new book that they have to put the amount of the balance on this side of the sheet, the right-hand side?

Mr. Sweeney: I object because the book will show.

10

The Court: The book speaks for itself, and if you want to get some bank official here who is familiar with this transaction you may do so.

A Yes, they put it on this side.

Q And this sum of three thousand four hundred and thirty-four dollars and seventy cents, that shows deposits.

The Court: It looks like a deposit on the twenty-fourth of July.

20

Q Even now, Mr. Pirone, you haven't got five thousand dollars in the bank? A I got some in the other bank, the North Ward Bank checking account.

Q How much did you have on deposit then? A I don't know. I don't look up what I got there.

Q When you took this lease to Lawyer Mancusi Ungaro did you ask him to explain to you whether it was necessary to record the lease to protect your interest? A I don't remember.

30

Q Did he advise you that it wasn't necessary to record this lease because you were in possession? A No, he don't tell me anything.

Q Did he request you to go over to Mr. Cerrato's office to have an acknowledgment put on there? A Yes.

Q And Mr. Cerrato did put it on? A Yes.

40

Dominic Pirone, cross.

Q And this was on the tenth? A Yes.

Q And the very next day you recorded the lease? A Yes.

The Court: The same day, at twelve-thirty.

10 Q Did you know the selling price at that time, thirty thousand dollars—you say you suspected the property was being sold at that time, on April 10? A When I see Mr. Megaro come around I want to protect myself.

Q Mr. Megaro, his brother and their respective wives, have been there on the property on two different occasions previous to the tenth, is that right? A No. They only come on Sunday. I saw Mr. Megaro. I saw him on Sunday before noon
20 when they come down and sold it, and I don't see him any more.

Q Did you see Mr. Megaro? A On Monday, yes.

Q Following that Sunday? A Yes.

Q And before April 10? A Yes.

Q Didn't he inspect your flat? A No. My wife was upstairs because I am in the store on Eighth avenue and the rooms are on Clifton ave-
30 nue.

Q When Mr. Cerrato asked you to sign, did he tell you what he was asking you to sign? A No.

Q What did you do with the writing, take it down to your lawyer? A Yes.

Q Did your lawyer tell you you were giving up all rights you had under the lease? A I don't remember.

Q What advice did he give you if any, as to the contents of that record? A When I went to my
40 lawyer on Monday, when Charlie bring me the

Dominic Pirone, cross.

paper I said, I don't want to sign this because I want the house. He said, you got your lease. I said, yes. I said, they offer to sell for thirty thousand dollars and I find out from Mr. Megaro that it was twenty-seven thousand five hundred. I am ready to pay that, twenty-seven thousand five hundred.

10

Q And you refused to sign the paper? A Yes.

Q On June 27 you found out the price? A The twenty-fifth of June.

Q Between June 25 and August 8 why didn't you go down and make an offer of purchase of this property? A I went to my lawyer's.

Q When, on the twenty-fifth of June? A No.

Q How long after? A On Monday, on the second of July, because I don't have time during the week. My father-in-law was very sick at the time. 20

Q On July 2? A Yes.

Q And did you instruct your lawyer to send a notice to Mr. Cerrato you wanted to purchase it? A Yes.

Q Do you know that that notice was not sent until August 8? A Yes, why, yes.

Q You do know that? A Yes.

Q (By the Court.) Why wasn't it sent before? A He say he ain't got no time and as soon as I got time I make the notice out. I went in and I said, what is the matter, I cannot get the house. He said, we sue Mr. Cerrato. I said, all right, and they start to make the papers and I mail one to Mr. Cerrato. 30

Q During the month of April, 1923, you lived in this property, Eighth avenue and Clifton? A Yes.

Q And you saw Mr. Cerrato daily? A Yes, we have a little scrap. 40

Dominic Pirone, re-direct.

Q And he used to come in your store almost daily and see you and make purchases from your store? A Never speak to me any more. When they sell the house to Mr. Cerrato then he work in the cellar for himself. We never had any conversation. When he told me, I sold the property for thirty thousand dollars, I refuse to buy; we
10 never have any more conversation about the property.

Q Did you talk about other things? A Yes, we talked about other things, about the Board of Health.

Re-direct examination by Mr. Sweeney.

Q You were asked as to why action was not taken between the second of July and the eighth
20 of August in relation to this matter. Who was acting for him at that time?

Mr. Masucci: I object.

The Court: I will receive it.

A Mr. Ungaro.

Q And didn't Mr. Ungaro report to you a conversation that he had had in your behalf with Mr.
30 Charles Cerrato and Judge Johnson representing the Building and Loan? A He called me on the telephone.

Mrs. Rosie Pirone, direct.

MRS. ROSIE PIRONE, sworn on behalf of defendant, Pirone. Examined through interpreter.

Direct examination by Mr. Sweeney.

Q You are the wife of Mr. Pirone? A Yes.

Q Do you remember Sunday, the first day of April, 1923? A I don't remember the date. 10

Q Did Mr. Megaro come to see the store? A Yes, this occurred, it was April 1.

Q What happened that day? A Mr. Megaro and Mr. Cerrato came in and said, I beg your pardon; can we come in. Then my man, a boy who was working for me, opened the door and they walked in.

Q Was this in your flat or store? A Store.

Q Where was your husband then? A Right in the store. He went downstairs and then he come back and they make a treat. 20

Q Who went downstairs? A Mr. Cerrato and the two brothers.

Q Did they say why they wanted to go downstairs? A They just asked permission to go downstairs in the cellar. When they come upstairs they started to treat two or three times.

Q Was there anything said at that time about selling the property? A No. 30

Q When did you first hear yourself, anything about the property being sold? A We hear on Wednesday.

Q Who from? A Either Tuesday of Wednesday.

Q Who told you? A Mr. Cerrato came down and offered it to us for thirty thousand dollars.

Q Where? A On a Monday the two wives came and was upstairs in the rooms and I see two 40

Mrs. Rosie Pirone, direct.

people. I know Mrs. Cerato didn't want to see me because I look for a house; she make all arrangements. She was asking and talking to us. She said, you live here? I said, how long you come from the other side? She said, we came over here, down in the store—

10 Q What did they say about buying the property? A Nothing.

Examination by the Court.

Q Did anybody say anything on that Tuesday, the next day, was anything said about buying the property? A The day after, that was Wednesday.

Q When he offered it for thirty thousand dollars? A Yes.

20 Q What did your husband say when he said he could have it for thirty thousand dollars? A He said, what is the matter with my option, for thirty thousand dollars. Mr. Cerrato offered it to my husband for thirty thousand dollars and my husband answered that it didn't pay him to buy.

Q Did your husband tell you what he would give for the property? A No.

30 Q Did your husband and Mr. Cerrato have any further talk at any other time about buying the property at any price? A No, he didn't say anything. My husband told Mr. Cerrato, when he heard that the property had been sold for twenty-seven thousand five hundred dollars, why did you sell it to him for that and not sell it to me?

Q When was that? A When we found out from Mr. Megaro.

40 Q When was that? A The end of March. I was waiting in the store and I didn't understand very much.

Mrs. Rosie Pirone, direct.

Q How did you find out it was sold for twenty-seven thousand five hundred? A My husband asked Mr. Megaro to come and get some ice for him; my husband told Mr. Megaro that he had borrowed the wine press and had brought it back.

Q Who had borrowed it? A That was in reference to the press that Mr. Cerrato was to loan, to Mr. Megaro, and he didn't do it, and my husband said, he played some trick on him, he offered it to me for thirty thousand dollars and sold it to you for twenty-seven thousand five hundred. I tell you the truth I did pay twenty-seven thousand five hundred. 10

Q You heard that conversation yourself? A Yes.

Q Was it in Italian? A Yes, then he went away.

By the Court. 20

Q Her husband said to Megaro that he played the same trick on him, he told him that he had sold the property for thirty thousand dollars and then he sold it for twenty-seven thousand five hundred, is that what your husband said? A Yes.

Q Then when he told Megaro that he had been fooled the same as he had been, then Megaro said, yes, I will tell you the truth, I paid twenty-seven thousand five hundred, is that what he said? A Yes. 30

Q Do you know how your husband knew before Megaro told him the truth that the price was twenty-seven thousand five hundred? A We found out from Megaro.

Q And on this day did you find it out from Megaro or some other time? A Afterwards.

Q What do you mean by afterwards? A I tell you I don't remember because I was waiting on the people, waiting around the store. 40

Mrs. Rosie Pirone, cross.

Further direct examination by Mr. Sweeney.

Q Mrs. Pirone, this conversation took place between your husband and Mr. Megaro on the day of the ice instance, on the day at the time he got the ice? A Yes.

10 Q Before that date did you know how much Mr. Megaro had paid for the property, before the ice day? A Twenty-seven thousand five hundred.

Q How long before the day when he got the ice was it that you knew that? A I don't remember.

Q Was it a long time or a short time before the day that he brought the ice? A Quite awhile had elapsed.

Q How did you know, from whom did you get the information before the day he brought the ice that the price was twenty-seven thousand five hundred? A As soon as we found it out my husband went to him and said, you offered it to me for thirty thousand dollars and you sell it for twenty-seven thousand five hundred to Mr. Pirone.

20 Q Who told him so you found it out? A Megaro.

Q Which Megaro? A The boys who bought the house; the first one on the witness stand, Joseph Megaro.

30 Q It was the day you got the notice from Mr. Megaro that you first learned that the price was twenty-seven thousand five hundred dollars? A Yes.

Cross examination by Mr. Masucci.

Q Did Mr. Megaro at the time he was making the repairs—Joseph Megaro speak to you or your husband about the sale of this property or the price of it? A No.

40

Rocco Barbela, direct.

Q You saw him doing repairs and painting around the house, didn't you? A She said that Mr. Cerrato promised to paint the outside for her and that Mr. Cerrato painted the ceiling.

Q Who promised to paint the outside? A Mr. Cerrato promised when he made the lease, he would paint the outside for us.

10

Q How long was Mr. Megaro around making repairs or painting the house? A He would come and he would go.

Q Was he at it for some weeks? A Quite a while; quite a long time.

Q And he was very friendly with you and spoke to you often and spoke to your husband often? A After Mr. Cerrato go we start talking.

Q (By the Court.) Talking with Mr. Megaro? A Yes.

20

Q And Mr. Cerrato was living in the property at the time the repairs was being made, wasn't he? A He moved.

Q Before the repairs were made? A He moved before the alterations were started. Mr. Cerrato moved and then did the alterations. Mr. Cerrato was living there when the repairing was done.

30

ROCCO BARBELA, sworn on behalf of defendant, Pirone.

Direct examination by Mr. Sweeney.

Q You know Mr. Pirone? A Yes.

Q What is your business? A Jewelry line.

Q Were you in this confectionery place last summer and do you remember an occasion when

40

Nicola Del Guercio, direct.

Mr. Megaro came in and got some ice from him?

A No.

Q Were you in his store about the time when there was a conversation between Mr. Cerrato and Mr. Pirone? A I happened to be in the back room of Mr. Cerrato's store with Mr. Pirone. I went in the store and bought something.

10 Q (By the Court.) When was this? A The latter part of June of this year. I went to Mr. Pirone to buy some olive oil.

Q What conversation did you hear between Mr. Pirone and Mr. Cerrato in relation to this property? A I overheard the conversation while I was there and Mr. Pirone said to Mr. Cerrato, I found out that the property has been sold for twenty-seven thousand five hundred; you wanted thirty thousand dollars from me. For 20 twenty-seven thousand five hundred I would have bought it myself. You know I have an option on this property, and Mr. Cerrato said that option is nothing and he went out.

Cross examination by Mr. Masucci.

Q That may have been the early part of July, that conversation? A No, that conversation was 30 the latter part of June.

NICOLA DEL GUERCIO, sworn on behalf of defendant, Pirone.

Direct examination by Mr. Sweeney.

Q What is your business? A Grocery store.

Q Do you know Mr. Joseph Megaro? A Yes.

40 Q Mr. John Megaro? A Yes.

Amato Palmire, direct.

Q And did you have any conversation with him in relation to the purchase of the Cerrato property?

Mr. Masucci: I object unless he shows Mr. Cerrato was present.

A He saw him once there.

10

Q When was it? A I don't remember; I don't remember that.

The Court: What is the purpose?

Q What did Mr. Megaro tell you he paid for this property? A He said, I bought the corner of Eighth avenue and Clifton avenue for thirty thousand dollars or thirty-five, I don't remember which he said, for sure, it is so long ago.

20

(No cross examination.)

AMATO PALMIRE, sworn on behalf of defendant, Pirone.

Direct examination by Mr. Sweeney.

30

Q Mr. Palmire, you at one time worked for Mr. Pirone? A Yes.

Q When did you begin up there? A About February.

Q And were you there when the Board of Health inspector came? A Yes.

Q And did you hear the conversation between Mr. Pirone and Mrs. Cerrato at that time? A Yes.

40

Amato Palmire, cross.

Q Did you hear any conversation between Mr. Cerrato and Mr. Pirone in the store as to the purchase of the property? A Downstairs I heard it.

Q What did you hear? A The question was asked, who would pay the plumber.

10 Q Pirone asked who was going to pay the plumber for the work? A Yes, because, the Board of Health was there.

Q What did he say? A He said, you will have to pay it, why don't you buy the house, and he said, what do you want; he said thirty thousand dollars. It don't pay me.

Q (By the Court.) What else was said? A That was upstairs, listening.

Q What did you hear while listening? A That is all I heard and then I waited on someone.

20 Q Do you remember when Mr. Megaro came and saw the property on Sunday? A Yes.

Q Was this about that time? A No, it was before a quarter of ten or half-past ten. He come there with Mr. Cerrato.

Q Were you there at the time? A I was at the counter, and asked for Mr. Pirone and I called him and he come out and he asked Mr. Pirone's permission to go down in the cellar; Mr. Pirone said, yes; I went and opened the door and they went down. They come up and bought a cigar and one blew and then the other blew, then they walked out.

30 Q Was anything said at that time between either one of them about the property? A No, sir.

Cross examination by Mr. Masucci.

40 Q Mr. Cerrato said to Mr. Pirone, why don't you buy the house; isn't that right? A No.

Amato Palmire, cross.

Q Who said it? A Nobody.

Q On this day when the inspector had been there about the plumbing work? A The plumbing work was before that.

Q I mean before that, on this day, you said on direct examination the question was asked, who would pay the plumbing bill. You stated that Mr. Cerrato said, why don't you buy the house; is that correct? A Yes. 10

Q Mr. Cerrato said that to Mr. Pirone? A Yes.

Q He didn't say to him, I won't sell you the house if it costs me five thousand dollars? A He said, why don't you buy the house.

Q And he said, how much do you want? A Thirty thousand dollars; he said it don't pay him.

Q That is what Pirone said? A Yes.

Q Are you related to Mr. Pirone? A Yes. 20

Q What relation? A I heard another conversation, too.

Mr. Sweeney: When was that?

The Witness: On Sunday.

Mr. Sweeney: Who was that with?

The Witness: Mr. Cerrato came over on the next day and wanted to know where Pirone was and I called him out and he was in the lavatory. I told him that Mr. Cerrato wanted to see him and so Mr. Cerrato told him that he sold the house. 30

Q This is the next day? A Two days after.

Q After the plumber talk? A No.

Q When he offered the house for thirty thousand dollars? A I said, Mr. Cerrato wants to see you. He said, how about my statement; that don't amount to nothing. 40

Charles Carrato, direct.

Q What statement? A The statement, the lease.

Q The option or privilege of buying? A Yes.

Q And Mr. Cerrato told him that didn't amount to anything? A Yes.

10 Q Did he tell him why he took the trouble to go over and tell him he sold the house? A That is all he said.

Q What did Pirone say when he told him that his option didn't amount to anything? A That is all I heard.

Q When did you leave Pirone's employ? A In July.

Q Or June? A About the first or last of June.

20 Q Did you ever hear Pirone say he wanted to buy the house? A Yes, he was willing to buy the house.

Q For how much? A Always thirty thousand dollars.

Q How much did Pirone say he was willing to pay for it? A I didn't hear because I was away.

Q Did you ever hear him say he was willing to buy it at any price? A No, sir.

BOTH SIDES REST.

30 The Court: I will recall Mr. Cerrato, the lawyer.

CHARLES CERRATO, recalled for examination by the Court.

40 Q How long have you been practising law? A Four years.

Exhibit C. 1.

EXHIBIT C. 1.

ARTICLES OF AGREEMENT

(Copy)

Made the 10th day of April in the year of Our Lord one thousand nine hundred and twenty-three BETWEEN Antonio Cerrato and Cecilia Cerrato, his wife, residing at No. 29 Clifton avenue of the City of Newark, in the County of Essex and State of New Jersey, party of the first part; AND Giuseppe Megaro and Giovanni Megaro, residing at No. Sixth avenue and Mt. Prospect avenue, of the City of Newark in the County of Essex and State of New Jersey, party of the second part; WITNESSETH, that the said party of the first part, for and in consideration of the sum of twenty-seven thousand five hundred and 00/100 dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they, the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by deed of warranty, free from all encumbrance, on or before the 10th day of July next ensuing the date hereof, all that lot, tract, or parcel, of land and premises, with the buildings thereon, hereinafter particularly described situate, lying and being in the City of Newark in the County of Essex and State of New Jersey, being known as No. 251 8th avenue and 25-27-29 Clifton avenue, and more particularly described as follows: Being a frame and brick building on a plot of ground 22 feet 10 inches by 110 feet, more or less.

10

20

30

40

Exhibit C. 1.

10 IT IS UNDERSTOOD AND AGREED that the buildings upon the said premises are all within the boundary lines of the property described herein, and that there are no encroachments thereon, and that the buildings comply with municipal ordinances and regulations and the regulations of the New Jersey State Board of Tenement House Supervision, to be shown by the report of the Secretary, where such ordinances and regulations apply, and also with the requirements of the Board of Health.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the sale of Land for non-payment of the municipal taxes or assessments, or adverse possession.

20 If at the time for the delivery of the deed the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and
30 to be liens upon the premises affected thereby, and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

It is understood that January 1st to December 31st shall be considered as the calendar year for the purpose of this contract.

40 AND the said Giuseppe Megaro and Giovanni Megaro for their heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that the said

Exhibit C. 1.

party of the second part, will pay and satisfy or cause to be paid and satisfied, unto the said party of the first part, the said sum of twenty-seven thousand five hundred dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

10

On Execution of this agreement
for which this is also a receipt\$ 800.00

On delivery of deed, cash\$ 200.00

On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and default clauses, and an agreement not to claim credit on the interest payable on the bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at %
payable for years.....\$

20

Total \$

Parties of the second part are to assign a second mortgage held by them on premises at 54 Highland avenue which mortgage is for \$4,000.00 and has one and one-half years to run, said mortgage is second to \$4,000.00, a B. & L. mortgage of \$7,000.00.

30

Parties of the second part are to procure a Building and Loan mortgage on these premises at their own expense and in as large a sum as possible and not less than \$15,000.00 \$15,000

Parties of the first part agree to take back a second mortgage for the balance same containing usual interest, tax assessment, \$7,500 insurance and default clauses and said mortgage to run for a period of five years with interest at six per cent. payable semi-annually on which mortgage

40

Exhibit C. 1.

the sum of \$500.00 must be paid every year and same can be paid off at any time.

This conveyance is made subject to existing tenancies and subject to lease for five years held by Domenico Pirone for store at 251 8th avenue and 23 Clifton avenue and 3 rooms in 29 Clifton avenue at a rental of \$72.

10

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, their heirs and assigns, may enter into and upon the said land and premises on the 10th day of July next ensuing the date hereof, and from thence take the rents, issues and profits to premises and their use.

20

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed of warranty shall be delivered and received at the office of Charles P. Cerato, 196 Market street, between the hours of 10 in the forenoon and 4 o'clock in the noon on the said 10th day of July next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

30

Gas and electric fixtures and chandeliers, window shades, screens, awnings, carpets, linoleum, mats and matting in halls, ash cans and heating apparatus, if any, are included in this sale.

In case the premises shall suffer injury beyond the ordinary wear and tear the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

40

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective

Exhibit C. 1.

heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of _____ which they hereby fix and settle as liquidated damages therefor.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned. 10

ANTONIO CERRATO (L. S.)

her

CECILIA x CERRATO (L. S.)

mark

GIOVANNI MEGARO (L. S.)

GIUSEPPE MEGARO (L. S.)

Signed, sealed and delivered
in the presence of

20

CHARLES P. CERRATO.

In consideration of (\$ _____)
dollars to _____ in hand
paid _____ hereby assign to
this contract and all _____ rights thereunder.

WITNESS hand and seal this

day of

, A. D. 19

30

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

BE IT REMEMBERED, That on this 10th day of April in the year of our Lord one thousand nine hundred and twenty-three, before me, the subscriber, an Attorney at Law of N. J., personally appeared Antonio Cerrato and Cecilia Cerrato, his wife who, I am satisfied, are the grantors men-

40

Exhibit C. 1.

tioned in the within Instrument, to whom I first
made known the contents thereof, and thereupon
they acknowledged that they signed, sealed and
delivered the same as their voluntary act and
deed, for the uses and purposes therein expressed;
and the said Cecilia Cerrato being by me pri-
vately examined, separate and apart from her
said husband, further acknowledged that she
signed, sealed and delivered the same as her vol-
untary act and deed, FREELY, without any fear,
threats or compulsion of her said husband.

CHARLES P. CERRATO,
An Attorney at Law of N. J.

CONTRACT

For the Sale of Property

ANTONIO CERRATO, *et ux.*

TO

GIUSEPPE MEGARO, *et al.*

Dated April 10th, 1923.

In consideration of mutual promises and agree-
ments herein stated, we hereby agree to extend
the date for the delivery of deed and execution of
this contract to at same hour
and place

WITNESS our hands and seals this
day of , A. D. 19 .

Opinion.

OPINION.

Filed January 30, 1924.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and DOMEN-
ICO PIRONE,

Defendants.

On Bill, &c.

10

20

Submitted January 22, 1924.

Decided January 28, 1924.

Mr. Ferdinand D. Masucci and Mr. Charles P. Cerrato, for complainants.

Mr. Anthony F. Finelli, for defendants Megaro.

Mr. Algernon T. Sweeney, for defendant Domenico Pirone.

30

FOSTER, V.-C.

Complainant seeks a decree for the specific performance of a contract made by the defendants Megaro with him on April 10, 1923, for the purchase of certain real estate in Newark. The defendant Pirone has intervened and in his counterclaim he asks that complainant be decreed to convey the property to him.

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Opinion.

In October, 1922, Pirone purchased from complainant the business which was then being conducted in the premises in question; and at the same time obtained from complainant a lease for the premises for five years from November 1, 1922, with an option for its extension for three years longer.

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The lease also contained the provision that Pirone would be given the first preference to purchase the property at any time before the expiration of the demised term of five years.

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Some time later complainant undertook the sale of the property and offered it at different times to Pirone at prices ranging from \$30,000 to \$27,500, and Pirone refused to purchase it stating he did not have the money to pay for it, that he would not be bothered with heating the apartment and that in a year or two he was going back to Italy to live, thereupon complainant sold the property to the defendants Megaro and they finally refused to take title claiming they did not know of the option or preference to Pirone contained in his lease, to purchase the property, although they did know of the lease itself. This excuse of defense cannot, of course, avail them as they are chargeable with notice of all the lease contains.

30

Furthermore, as Pirone was in possession, inquiry by the Megaros upon him would have given them all the information upon the subject they desired. *Hoy v. Bramhall*, 19 Equity 563; *Vredenburgh v. Burnett*, 31 Equity 229. As a matter of fact I find the evidence shows that the Megaros did have notice of the option or preference granted to Pirone by the lease, and as a matter of fact I also find it clearly and convincingly established that Pirone was given the right to exercise this option or preference and that he refused to do so, not-

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Opinion.

withstanding his insistment that he was never given the opportunity to exercise the option or preference at any price, and that he was never given the opportunity to exercise it at the price and on the terms and conditions on which the complainant has agreed to sell the property to the defendants Megaro.

10

I have reached these conclusions on the facts without applying the well-settled rule of law which holds; that an option or preference such as the one in question is an incomplete contract because of the absence therefrom of the price and terms; and of any method by which these elements of the contract can be ascertained, is unenforcible in view of the Statute of Frauds.

Under the facts stated and following a uniform line of cases in this State and elsewhere which are cited by Vice-Chancellor Backes in the case of *McClung Drug Company v. City Realty and Investment Co.*, 91 Equity, p. 216, etc., it must be held that this so-called option or preference was not exercised by the defendant Pirone; and that it is unenforcible because of the Statute of Frauds. Complainant is entitled to specific performance of the contract by the defendants Megaro, and a decree will be advised to that effect and that the counter-claim of Pirone be dismissed.

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Decree.

DECREE.

Filed January 30, 1924.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ANTONIO CERRATO, <i>et al.</i>, <i>Complainants,</i> <i>and</i> GIUSEPPE MEGARO, <i>et als.</i>, <i>Defendants.</i>	} <i>On Bill, etc.</i> <i>Decree.</i>
----	--	--

This cause coming on to be heard before the Chancellor, on bill, counter-claims, and answers thereto, in the presence of Charles P. Cerrato, of counsel with complainants, Algernon T. Sweeney, of counsel with defendant, Domenico Pirone, and Anthony R. Finelli, of counsel with defendants, Giuseppe Megaro and Giovanni Megaro, and it appearing to the Court, that the defendant, Giuseppe Megaro and Giovanni Megaro, entered into a written agreement, dated April 10, 1923, with complainants, whereby said complainants agree to sell, and the defendants, Giuseppe Megaro and Giovanni Megaro, agreed to purchase premises hereinafter described, for the sum of \$27,500, and according to the other terms of said contract.

The premises above referred to, are in the City of Newark, County of Essex and State of New Jersey, and described as follows:

Beginning at the northeasterly corner of Eighth avenue and Chatham street now Clifton avenue and from thence running along said Eighth avenue easterly twenty-two feet ten inches; thence

Decree.

northerly at right angles with the same one hundred ten feet; thence westerly twenty-one feet ten inches to Chatham street, now Clifton avenue aforesaid and thence along said Chatham street now Clifton avenue southerly one hundred eleven feet to the place of beginning.

Being commonly known and designated as No. 10
251 Eighth avenue, and twenty-three and twenty-nine Clifton avenue, Newark, New Jersey.

And it further appearing to the Court, that the said complainants have always been and are now, ready, willing and able, in all things, to comply with the stipulations in said agreement mentioned, and have prayed the order or decree of this Court directing the defendants, Giuseppe Megaro and Giovanni Megaro, to comply with and fulfill the terms of said contract and all things on their part to be performed and the Chancellor being of the opinion that the complainants are entitled to the specific performance of said articles of agreement on the part of the said defendants, Giuseppe Megaro and Giovanni Megaro, as in said bill prayed for; 20

It is, on this 30th day of January, A. D. 1924, ORDERED, ADJUDGED AND DECREED, that the articles of agreement be in all things, specifically performed by the said defendants, Giuseppe Megaro and Giovanni Megaro, in accordance with the terms of said agreement, upon delivery to them, Giuseppe Megaro and Giovanni Megaro, from complainants, of warranty deed for said premises, and an accounting of the rents, issues, and profits of said premises, since July 10, 1923, the date of closing title, as specified in said agreement. 30

And it is further ordered, that the prayer in the counter-claim filed by the defendants, Giuseppe 40

Decree.

Megaro and Giovanni Megaro, and defendant,
Domenico Pirone, respectively, be, and the same
is hereby denied and said counter-claim dismissed.

And it is further ordered, that this decree be
made with costs to complainants against said de-
fendants, and counsel fees to be allowed com-
plainant's counsel to be hereafter determined.

E. R. WALKER,

C.

Respectfully advised,

JOHN E. FOSTER,
V.-C.

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Notice of Appeal.

NOTICE OF APPEAL.

Filed February 11, 1924.

IN CHANCERY OF NEW JERSEY.

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants,

and

GIUSEPPE MEGARO and GIOVANNI
MEGARO,

and

DOMENICO PIRONE,

Defendants.

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On Bill, etc.

*Notice of
Appeal.*

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The defendant, Domenico Pirone, hereby appeals from the whole and every part of the final decree, made in this Court, in the above-stated cause to the Court of Errors and Appeals in the last resort in all causes.

Dated Newark, N. J.

February 6, 1924.

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ALGERNON T. SWEENEY,
Solicitor and of Counsel
for said Defendant.

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Notice of Appeal.

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

ALGERNON T. SWEENEY,
Of Counsel with said Defendant,
Domenico Pirone.

10

Service of the within notice of appeal is hereby acknowledged this 6th day of February, A. D. 1924.

F. C. MASUCCI,
Of Counsel for Complainants.

ANTHONY R. FINELLI,
Of Counsel for Defendants,
Giuseppe Megaro and Giovanni Megaro.

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CHARLES P. CERRATO,
Of Counsel for Complainants,
Antonio Cerrato and Cecilia Cerrato.

30

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Petition of Appeal.

Proposed Petition of Appeal.

Filed.

New Jersey Court of Errors and Appeals

Between

ANTONIO CERRATO and CECILIA

CERRATO,

Complainants-Respondents,

and

GIUSEPPE MEGARO and GIOVANNI

MEGARO,

Defendants-Respondents,

and

DOMENICO PIRONE,

Defendant-Appellant.

*On Bill of
Complaint.*

*Petition of
Appeal to
the Court of
Errors and
Appeals.*

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

The petition of Domenico Pirone, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 30th day of January, 1924, wherein the above-named Antonio Cerrato and Cecilia Cerrato were complainants and Giuseppe Megaro and Giovanni Megaro, his wife, and your petitioner were defendants, in these respects, to wit:

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1. That said decree adjudges and decrees that the articles of agreement entered into between the complainants and the defendants, Giuseppe

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Petition of Appeal.

Megaro and Giovanni Megaro, his wife, dated April 10, 1923, in said decree referred to, be in all things specifically performed by the defendants, Giuseppe Megaro and Giovanni Megaro, his wife.

10 2. That said decree adjudges and decrees that the said defendants, Giuseppe Megaro and Giovanni Megaro do within a time in said decree named, upon delivery to them from complainants of a warranty deed for the premises described in said decree and upon certain terms named therein pay or cause to be paid to the complainants the purchase price of said premises, in accordance with the terms of said contract, embodied in substance in said decree.

20 3. That said decree orders, adjudges and decrees that the prayers in the counter-claims filed by the defendants Giuseppe Megaro and Giovanni Megaro and the defendant Domenico Pirone, respectively, be denied and said counter-claims dismissed.

 4. That said decree orders, adjudges and decrees that the same be made with costs to complainants against said defendants, with counsel fee to be allowed complainant's counsel, to be thereafter determined.

30 AND YOUR PETITIONER HUMBLY APPEALS from all of said decree of the Chancellor as aforesaid upon the grounds that the same is erroneous, for that the said complainants were and are without any equity in their suit in Chancery as aforesaid; and for that their said bill of complaint should have been dismissed; and the counter-claims of the defendants sustained.

40 Your petitioner therefore prays that said decree be reversed, set aside and for nothing holden,

Petition of Appeal.

and that complainants' bill be dismissed and a decree be made herein ordering the complainants to specifically perform the covenant in the deed of lease made with the defendant Domenico Pirone October 4, 1922, and that complainants be ordered to convey the premises described therein and in said decree to said Domenico Pirone upon the same terms and conditions in principle as set out in said decree directing the conveyance of the same to the defendants subject to such modification in detail as the facts of the case may require. 10

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem needed.

ALGERNON T. SWEENEY,
Solicitor for and of Counsel with
Defendant-Appellant, Domenico Pirone. 20

Service of a copy of the within petition of appeal in the above-stated cause, is hereby acknowledged this 15th day of May, 1924.

CHARLES P. CERRATO,
F. D. MASUCCI,
Solicitor and of Counsel with the
Complainants-Respondents,
Antonio Cerrato and Cecilia Cerrato. 30

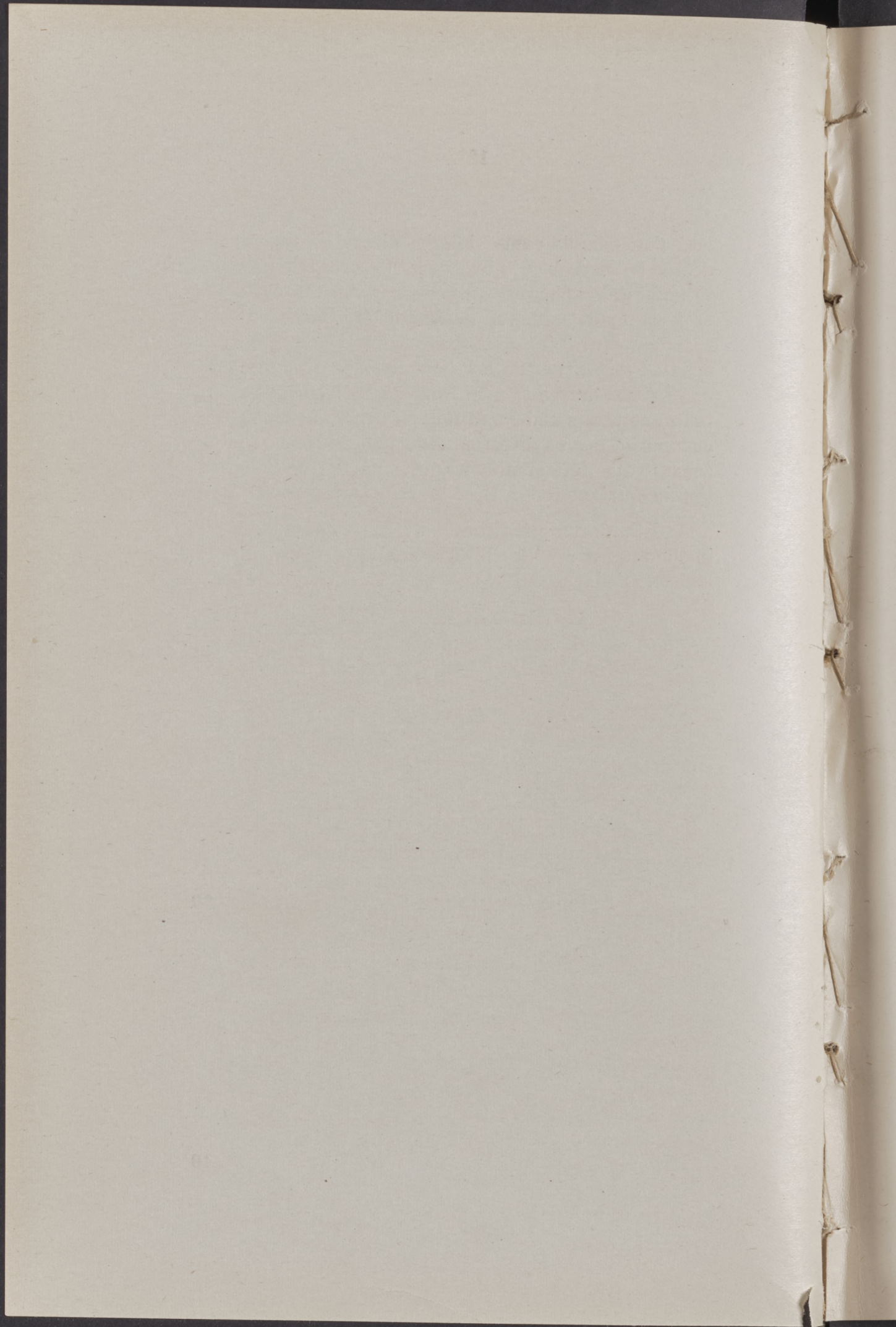
ANTHONY R. FINELLI,
Solicitor and of Counsel with the
Defendants-Respondents,
Giuseppe Megaro and Giovanni Megaro.

I consent to the filing of this petition as of time.

ANTHONY R. FINELLI,
Solicitor.

5/15/24.

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112a

*Exhibit C. 2.***EXHIBIT C. 2.**

N. W. B.

THIS INDENTURE OF LEASE, made the 4th day of October, 1922, between Antonio Cerrato of the City of Newark, County of Essex and State of New Jersey of the first part and Domenico Pirone of the City of Newark, County of Essex and State of New Jersey, party of the second part. 10

WITNESSETH: That the party of the first part has agreed to let and hereby does demise and let upon the express condition hereinafter stated, and the said party of the second part has agreed to take and hereby does take the store at 251 8th avenue and store at 23 Clifton avenue and three rooms on the first floor of 29 Clifton avenue, Newark, New Jersey, with the appurtenances and sole uninterrupted use and occupation thereof except as hereinafter mentioned for a term of five years, commencing on the 1st day of November, 1922, and ending the 1st day of November, 1927, at ten o'clock in the forenoon of that day. It is mutually agreed that the party of the second part will be given first preference to purchase said property any time before or at the expiration of the five years' lease. Party of the second part has the option for an extension of lease for a further period of three years, this however, upon the express condition that should party of the first part sell or convey said property, then this further period of three years' lease shall be null and void and terminated upon three months' notice in writing. 20 30

The yearly rent for the store and rooms is \$870.00 for the first year in monthly installments of \$72.50, the second year and every year there- 40

Exhibit C. 2.

after at the yearly rental of \$900.00 payable in monthly installments of \$75.00 payable in advance on the 1st day of each and every month and the said party of the second part does hereby agree to pay to the said party of the first part, their heirs, assigns, agents or attorneys the said yearly rental in monthly installments as aforesaid.

10

THIS LEASE is upon the following conditions and covenants, all and every of which the said party of the second part agrees to perform and keep. That he will pay the rent at the times aforesaid and will not let, sell under-let or assign the premises, or any part thereof, and he will not use them, permit any part thereof to be used for any business or purpose and now used as confectionery and cigar store or for any other business or purpose except one which is extra-hazardous, without the written consent of the party of the first part, his heirs, assigns, agents or attorneys. It is further mutually agreed that the party of the first part will not rent stores 25-27 Clifton avenue for confectionery or cigar store.

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AND will permit the said party of the first part or his agent to enter the said premises at reasonable hours in the day time, to examine or to make such repairs and alterations therein as shall be necessary for the preservation thereof; the party of the first part not being bounden, however, to make any repairs unless it be elsewhere in this lease expressly so agreed; and will permit the said party of the first part to exhibit the premises after the expiration of this lease to persons, and to put and maintain notices, "To Let" or "For Sale," on the walls thereof; and if the premises, or any part thereof, shall become vacant or deserted during the said term, will permit the party of the first part, or his agents, to re-enter,

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Exhibit C. 2.

without being liable to any prosecution thereof, and re-let the same and receive and apply the rent, first, to the payment of the expense of re-entering and then to the payment of the rent due by these presents; and will preserve the said premises and quit and surrender them at the expiration of said term is as good condition as reasonable use and wear thereof will permit, damages by the elements excepted. 10

It is expressly stipulated and agreed that the only repairs party of the first part is to make is in case plumbing work is defective or pipes burst, all other repairs to be made by party of the second part.

It is further stipulated and agreed that steam is to be furnished by the party of the first part both in store and rooms. 20

AND it is agreed that upon the breach of any of said covenants or conditions, the party of the second part shall forfeit said term, and the party of the first part may, at his option, re-enter and recover immediate possession of said premises, and shall also have an action for all damages arising from such breach.

It is further agreed that the party of the second part will pay as deposit to secure the rent of said store and rooms the sum of \$75.00 which sum shall be returned at the expiration of this lease without any, interest on said money so deposited with them. 30

IN WITNESS WHEREOF, the parties hereto have set their hands in duplicate, the day and year first above written.

ANTONIO CERRATO, (L. S.)
DOMENICO PIRONE.

Exhibit C. 2.

Signed, sealed and delivered
in the presence of

CHARLES P. CERRATO.

10 STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

BE IT REMEMBERED, That on this Tenth day of April, in the Year of Our Lord, One Thousand Nine Hundred and Twenty-three, before me, the subscriber, an Attorney-at-Law of New Jersey, personally appeared ANTONIO CERRATO, who, I am satisfied is the lessor mentioned in the within instrument, to whom I first made known the contents thereof and thereupon he acknowledged that he signed, sealed and delivered the same as his
20 voluntary act and deed for the uses and purposes therein expressed.

CHARLES P. CERRATO,
An Attorney-at-Law of N. J.

30 Received in the Register's Office of County of Essex, N. J., on the 10th day of April A. D., 1923, at 12:29 o'clock in the afternoon, and Recorded in Book D-68 of Deeds for said County, on pages 122-123.

HOWARD S. DODD,
Register.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ANTONIO CERRATO, *et al.*,
Complainants-Respondents,

and

GIUSEPPE MEGARO, *et al.*,
Defendants-Respondents,

and

DOMENICO PIRONE,
Defendant-Appellant.

On Appeal.

BRIEF OF ANTONIO CERRATO AND CECILIA CERRATO, COMPLAINANTS- RESPONDENTS.

It is doubtful what questions are raised by the appeal in this case in as much as the petition of appeal merely states that the appellant is aggrieved by the orders and decrees of the Court of Chancery and gives no specific reason or cause or assigns no error in the trial or decision of said cause. The complainants-respondents have not as yet been served with the briefs of appellant, Domenico Pirone. The action is one for the specific performance of a contract (State of Case, p. 31) whereby complainant-respondent agreed to sell and defendants-respondents agreed to purchase premises 251 Eighth avenue and 29 Clifton avenue, Newark, N. J. The defendant-appellant intervened and in his counter-claim asked that complainants be decreed to convey said premises to him, because in a lease of part of said premises had by ap-

pellant, there was contained the following clause:
 “* * * *It is mutually agreed that the party of the second part will be given first preference to purchase said property any time before or at the expiration of the five years' lease.* * * *”

The trial of the facts in the case involved the question of whether appellant had been given the first preference to purchase same and the learned Vice-Chancellor found that the evidence clearly and convincingly established that appellant was given the right to exercise said option or preference and the appellant refused to take advantage of said preference.

That there was sufficient and ample testimony to warrant the conclusions of the learned Vice-Chancellor can be readily ascertained by an examination of the transcript of the evidence in said case. For this purpose attention is called to the testimony of Charles P. Cerrato (State of Case, p. 38) as follows:

(By the Court):

Q Did you ever come back to Pirone with that provision?

A Of what?

Q That he could have it for \$27,500.00?

A We told Pirone that he could have it and our asking price was \$28,000.00, and let you have it for \$500.00 less. He never made an offer. He said I don't want it.

Q Was that on Friday, April 6, or before, that you made that offer?

A The first time we went to him and every time thereafter.

And also the testimony of Antonio Cerrato (State of Case, p. 47):

Q Was there any price or any terms?

A I told him \$28,000.00.

Q When?

A On the second that the price was \$28,000.00. If you want to buy it I will take off \$500.00.

(By the Court):

Q Did you ever speak to him before that about buying it before the first of April? Did you ever speak to the tenant about buying the property?

A Sure I told him, I say you can buy it any time you want.

Q On the second you say you told him he could buy it for 28 and take off 500?

A Yes, keep 5 for himself.

Q What did he say to that answer?

A He said he don't want it. He shook his head and wouldn't have anything to do with it.

And Mrs. Cecilia Cerrato, the other complainant-respondent, also testified to somewhat similar effect (State of Case, p. 57):

Q Wasn't the offer he made to Pirone \$30,000.00 and didn't he understand that the Megaros were paying \$30,000.00?

A No, sir.

Q Didn't you ever name any price to Mr. Pirone or your husband?

A I and my husband told him that the price was \$28,000.00 but if you take it, we will take \$500.00 off.

Also the testimony of Joseph Megaro (State of Case, pp. 68-69):

Q Did you tell him what price you were paying for it?

A Yes. I told him that the price was \$28,000.00 but that Mr. Cerrato had taken off five hundred due to the fact that I had to go and get a Building & Loan mortgage.

Q What did you tell Pirone? What price did you tell Pirone that you paid for the property?

A I said twenty-eight thousand and Mr. Cerrato will take off \$500.00.

Q Did you tell that to Mr. Pirone?

A Yes.

Q When did you tell him, before or after you signed the agreement of sale?

A Before signing the agreement.

Q Is that the time you say he told you he was glad you had bought the property?

A Yes. He was very much satisfied that we was purchasing the property.

And further, the appellant admitted that he was given a first preference to purchase said premises (State of Case, p. 87). Under direct examination of Mr. Sweeney, appellant testified as follows:

Q Who talked with you there?

A Charlie and Mr. Cerrato.

Q What did they say?

A They said, why don't you get this property. I said at that price it don't pay me, thirty thousand, they want the first time.

Q How much did you offer to pay?

A I never offered anything. We call up the real estate and fixed the price.

Q Why didn't you make an offer, when he said thirty thousand. You said he stopped every day in the week.

A Two or three times he stopped.

Q When you thought thirty thousand was too much, why didn't you say what you would be willing to pay?

A I asked him.

Q Did you offer to get him a reduction?

A I said, if you make a reasonable price I buy it.

So that from the testimony of the defendant-appellant himself, it can be readily seen first, that the property was offered to him at thirty thousand and that he refused to purchase same at said price. Secondly, that he never made any counter-offer or counter-proposition indicative of an intention upon his part or an interest to purchase said premises.

So, therefore, it can be readily seen that the conclusions of the learned Vice-Chancellor were based on sufficient and convincing and practically uncontroverted testimony and facts.

Covenant Not Enforceable.

It was contended by complainants that the covenant was not an enforceable and binding covenant because: 1. It does not state the purchase price. 2. Nor does it state any method by which said price can be ascertained.

The principle of law that a contract or covenant is not enforceable specifically where it does not state either the price or a method of ascertaining the price is so well established that it will be only necessary to cite a few of the cases in point. A leading case on that subject and the case which has been repeatedly cited in other cases is the case of *Woodruff v. Woodruff*, 16 Atl. Rep. 4, at page 8, in which McGill, Chancellor, says:

“The second objection is that the contract is incomplete because no price is fixed for which the property shall be re-conveyed. The contract provides that the complainant may purchase back his interest in the farm at a valuation to be made by 2 disinterested persons, one to be selected by him and the other to be selected by the representative of Patrick. The defendant, Louisa Woodruff, sole representative of Patrick, refuses to name a value on her part and claims that this Court will not compel her to appoint such a person and will not require such person to act, if he be appointed; in other words, will not COMPLETE the INCOMPLETE CONTRACT by compelling an agreement as to price for which reconveyance is to be made.”

The learned Chancellor McJ. continues as follows:

“It is well-settled that the Court will not decree the specific performance of a contract which involves the payment of a price until the price is ascertained. The ASCERTAINMENT of the PRICE must PRECEDE a DECREE where the contract specifies a mode of ascertaining the PRICE WHICH IS ESSENTIAL. The contract is conditional till the ascertainment and is absolute only when the price has been determined, if there be default in this respect, the contract remains imperfect and incapable of being enforced. THE LIMIT to which this Court has gone in fixing the price to be paid is to ascertain it by reference to a Master when the agreement simply provides that it shall be FAIR WITHOUT POINTING OUT THE MODE OF DETERMINING IT.”

Citing *Van Doren v. Robinson*, 16 N. J. E. 256; *Telegraph Co. v. Telephone Co.*, 29 N. J. E. 160, and English cases.

In the latter case of the *Domestic Telegraph Company v. Metropolitan Telephone Co.*, 39 N. J. E. 160, it was decided that the following covenant was not sufficiently definite to be the subject of specific performance:

“IF AT THE EXPIRATION OF THE ABOVE PERIOD OF FIVE YEARS, the party of the first part (defendant company) shall not desire to conduct the business of telephone district exchange directly within said District of the party of the second part (complainant) or of merging said district into some other district, but shall, on the contrary, desire to have such business conducted for it, then and in such case the party of the SECOND PART SHALL HAVE THE FIRST RIGHT of acquiring the license or agency to conduct such business at such rate or rental and upon such terms as may then

be fixed as determined by the party of the first part."

The five years had expired and the complainant had applied for a renewal of license and the application was refused. Van Fleet, Vice-Chancellor, said:

"The Court of Equity may compel specific performance of a contract which the parties have agreed upon and which is sufficiently certain and definite in its terms to enable the Court to see what they meant, but IT IS ENTIRELY BEYOND THE POWER OF ANY JUDICIAL TRIBUNAL TO MAKE A CONTRACT FOR LITIGANTS OR COMPEL THEM TO MAKE A CONTRACT WITH EACH OTHER."

"If the matter still rests in treaty or if the agreement in any MATERIAL PARTICULAR be uncertain or undefined, equity will not interfere. Citing many cases. Under the language of this covenant, the thing promised to the covenantee is not a renewal of its license but MERELY THE FIRST RIGHT OR CHANCE TO MAKE A BARGAIN FOR A LICENSE. Before any right can arise under such a stipulation, it is clear that it must be shown that a bargain has been made. CONSTRUED FOR THE COMPLAINANTS as favorable as its language will want, it is manifested that all the covenant gives the complainant is the first right to make a bargain for a new license."

SUCH A COVENANT CANNOT BE ENFORCED IN EQUITY, at page 165 of said case.

"Under such a stipulation the LICENSOR IS LEFT FREE IN EVERY RESPECT as it would be if no previous contract relations had existed between the parties and the complainant now, for the first time applied for a license. This Court cannot compel a person to make a contract, the terms of which have not been agreed upon, THOUGH HE MAY HAVE COVENANTED SO TO DO."

The latest case on the subject is the case of *McClung Drug Co. v. City Realty Co.*, 108 Atl. Rep. 767, affirmed by this Court and affirmance reported in 111 Atl. Rep. 926.

The action was to compel performance of the following covenant:

"That should the party of the first part decide to place this property on the market for sale, then the said party of the second part shall be given 30 days' notice in writing of such intention with the privilege of purchasing same within 30 days."

The learned Vice-Chancellor Backes in said case, says:

"The question for decision is: 'Is the option a complete contract and enforceable in view of the Statute of Frauds?' It seems to me the answers must be in the negative as there was no price stipulated and no method provided for its ascertainment.

It is familiar law that equity will not specifically enforce a contract for the sale of lands unless it is conclusive and certain as to parties, the subject matter, the price and the terms. Citing many cases in this state.

It is not necessary that the price be specified in figures or words at length. It is sufficient if a standard is established by which the price may be determined, with certainty, as for instance, the 'fair value' or 'market value.' *Van Doren v. Robinson* (16 N. J. E. 256), at a price offered by another upon a certain event and accepted (citing cases), or the appraisal of 'arbitrators.' "

It was argued in said cases that inasmuch as the covenanters had agreed to sell said premises at the sum of \$34,000.00 to one other than the covenantee (the appellant in said case), that said stipulated price established the price for which the covenantor would be bound to sell said

premises to the covenantee and supplied the omission of the price, and therefore, said covenant was sufficiently complete as to be the subject of specific performance.

As to that the learned Vice-Chancellor says:

"It is not the privilege of the Court to piece out the option into a complete contract by seizing upon the resolution to sell for \$32,000.00 or the selling price to Greenspan and Borak of \$34,000.00, as the sum for which the Realty Company were or ought to sell to complainants. That it would be Juridical interpolation of an essential of the contract upon which the minds of the parties had not met, at least not at the time the option was granted, and it is of that period that it must speak. Citing *Fogg v. Price*, 145 Mass. 513, in which case Judge Holmes, expressing the opinion for the Court, says: * * *

"It is not the event but the nature of the contract which is to be considered and THAT MUST BE DETERMINED by looking at it AS IT STOOD AT THE TIME IT WAS MADE. (Citing cases.)"

So, therefore, even if the appellant be correct that there is no foundation for the conclusions arrived at by the learned Vice-Chancellor in the instant case, and that the appellant was not given the first preference to purchase said premises and had no opportunity to purchase same upon the terms offered to the other defendants-respondents, it seems that the law, following the cases above cited, that the covenant in the instant case is not enforceable covenant because:

First: It has no price for which said property should be sold, and, secondly, there is no mode or method mentioned in said covenant upon which the price may be ascertained or determined.

So that either upon the findings of fact or upon the conclusions of law of the learned Vice-Chancellor in the instant case, the appeal should be dismissed, and the case affirmed.

All of which is respectfully submitted.

FERDINAND D. MASUCCI,
CHARLES P. CERRATO,
Of Counsel for Complainants-Respondents.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ANTONIO CERRATO and CECILIA
CERRATO,

Complainants-Respondents,
and

GIUSEPPE MEGARO and GIOV-
ANNI MEGARO,

Defendants-Respondents,
and

DOMENICO PIRONE,

Defendant-Appellant.

*On Bill of
Complaint,
&c.*

*On Appeal
from Decree
in Chancery.*

BRIEF FOR DEFENDANT-APPELLANT, DOMENICO PIRONE.

Statement of the Case.

On or before October 4, 1922, Antonio Cerrato was the owner of and conducted a confectionery business on the ground floor of the premises described in the lease, which premises were owned by himself and his wife, Cecilia Cerrato, both of whom are the complainants-respondents. On the fourth day of October, 1922, Domenico Pirone, the defendant-appellant, was induced to purchase said confectionery business at a price in excess of what he had theretofore offered for the same by the Cerratos agreeing to put in the lease of five years, with a conditional extension of three years, a clause providing that Pirone should have a first preference to purchase the property at any time during the life of the lease. The bargain was consummated according to said agreement, a bill of sale of the confectionery business executed,

and Pirone entered into possession of the leased premises under said lease.

On the tenth day of April, 1923, the Cerratos executed an agreement in writing (Exhibit 1, p. 107), agreeing to convey said premises to Giuseppe and Giovanni Megaro upon the terms therein stated, which permitted the Megaros (State of the Case, p. 109) to provide the purchase price of \$27,500 by paying \$800 in cash upon the signing of the agreement; obtaining a Building & Loan of \$15,000, which should be a first lien upon the property; the execution of a purchase money mortgage of \$7,500, subject to the lien of the proposed Building & Loan of \$15,000, to run for a period of five years, with interest payable semi-annually, and a principal sum of \$500 payable annually; the assignment by the Megaros to complainants of a second mortgage held by them on property in Newark in the sum of \$4,000 which second mortgage of \$4,000 was subject to a prior mortgage of \$7,500; and the payment of \$200 in cash upon the delivery of the deed. The complainants-respondents admit that the terms set out in this contract with the Megaros were never made known to the defendant-appellant, Pirone. The attorney for the Building & Loan, Judge Johnson of Newark, refused to pass the loan to the Megaros on account of the first preference clause in the Pirone lease (State of the Case, p. 36, l. 19), and which resulted in the filing of the bill by the complainants against the Megaros for the specific performance of said contract (State of the Case, p. 1). Thereafter the defendant-appellant Pirone filed a petition to be made a party (State of the Case, p. 7), and being admitted by order of the Court (p. 12) filed his answer and cross bill against the complainants (State of the Case, p. 13), praying that by virtue of the first

preference clause in his lease the complainants be decreed to convey the premises to him upon the same terms as those contained in the Megaro contract.

The complainants-respondents admit that the terms set out in this contract with the Megaros were never made known to the defendant-appellant Pirone, or in the language of the Court (State of the Case, p. 59, l. 37), "There is no claim that they ever told him the terms."

Upon the conclusion of the hearing the learned Vice-Chancellor in the court below ruled (State of the Case, p. 115, l. 10) that the first preference clause contained in the lease was unenforcible in view of the statute of frauds, although in this same suit upon a motion to strike out the answers and counter-claims involving the same legal principle (State of the Case, pp. 26-27) the same learned Vice-Chancellor denied such motion (p. 29, l. 34) and sustained the answers and counter-claims.

The lease is legally efficacious by its first preference clause to give the lessee the right to purchase before all others on equal terms and is not within the statute of frauds, and the terms of sale are equally important with the price.

As stated by counsel orally at the bar of this Court, upon the opening day of the term, counsel considers the appeal in this cause lies within a very narrow compass. The facts in relation to the negotiation, execution and delivery of the lease (Exhibit C, p. 148-A) are not in dispute.

The complainants-respondents admit that the terms set out in this contract with Megaro were never made known to the defendant-appellant,

Pirone, and the learned Vice-Chancellor in the court below held that they were not under any obligation to do so, and he also found against the contention of Pirone that no price had been made to him of less than \$28,000 for the property, although sold to the Megaros for \$27,500 and upon the terms which made the actual cash payment to the Megaros nominal, as against a cash demand for the full amount required of Pirone.

Counsel considers there are three problems for solution, and that if the first two are answered in the affirmative that it will not be necessary to consider the third, and the first two questions counsel conceives to be purely legal.

1. Does the lease as written give defendant-appellant Pirone an enforceable right in the Court of Equity? And if that question is answered in the affirmative, has the defendant-appellant a right to be preferred as to terms as well as to price, and if this question also is decided in the affirmative, it is considered that inasmuch as the complainants-appellants do not make any pretence that they communicated the terms of the Megaro contract to defendant-appellant, Pirone (State of the Case, p. 40, l. 5) that it will not be necessary for the Court to consider the third question, which is purely one of fact, and which is: Did complainants-respondents, Cerratos, give Pirone a first preference within the meaning of the lease? For the assistance of the Court in the determination of these questions, counsel respectfully refers particularly to the following decision, the first of which, *Conemaugh Gas Company v. Jackson Farm Gas Company*, Supreme Court, Pennsylvania, July 21, 1898, 40 Atlantic 1000, at page 1003, counsel conceives to be upon all fours with the instant case. This was a suit between Cone-

maugh Gas Company which supplied gas to the domestic consumers and manufacturers for a mandatory injunction to compel the Jackson Farm Gas Company, a dealer in gas at wholesale, to continue to supply natural gas which it had contracted to furnish plaintiff.

The clause relied upon by plaintiff read (at p. 1000): "E. This contract to be in force until July 1, 1893. After that date, plaintiff shall have the preference in purchasing gas from defendant over any other consumer." The referee found for complainant, which affinding was affirmed on appeal by the unanimous judgment of the Supreme Court, at page 1003, the referee said, "Perhaps the most heated point of discussion in the correspondence is of the term 'preference in the contract.' This seems to have been the starting place of controversy and the irritation which grew as the discussion continued and brought the other points of disagreement to the surface. Upon this controversy the position of Mr. Eaton, president of the defendant company, seems to the referee the only tenable one. The term preference seems to mean that favorable consideration which a bidder, on equal terms with others, is entitled to over his competitors. The method of ascertaining it would seem clearly to be that, when the defendant company receive an offer for portion of its surplus gas, it would communicate this fact to the plaintiff; and, if the latter did not then wish to contract for it the gas could then be fairly sold to the first bidder."

In *Hayes v. O'Brien* (149 Ill. 403, same case 37 N. E. 73, same case 23 L. R. A. (1894), p. 555), this was also a suit in equity on bill for specific performance filed by Michael C. Hayes against William D. O'Brien and others, and the prin-

ciples of law announced therein have been repeatedly adopted by implication through citations in this Court.

The suit therein was instituted to enforce the specific performance of a contract for the conveyance of land under a provision in a lease which among other things provided "Said party of the first part hereby reserves the right or privilege of selling that portion of said land at any time from and after this date; but no such sale of said land shall be made by said first party without first having given said second party the privilege of purchasing said land upon such terms and at the same price per acre as any other person or purchaser might have offered therefor." The bill alleged that in the month of September, 1889, Thompson, without any notice to complainant, and without giving him the privilege of buying, as he covenants to do, sold and conveyed the land to O'Brien, whom it is alleged purchased with full notice of the complainant's rights. Defendants demurred and the bill was dismissed in the court below, which dismissal was reversed by the Supreme Court of Illinois (1894) in an opinion by Shope, Judge, after disposing of the question raised as to the jurisdiction of the Court, and the enforceability of the contract for formal reasons. The Court said:

"Three. The more difficult questions arise by the objection that the contract is indefinite, uncertain and incomplete in its terms. After providing that the leasehold estate shall continue for ten years, it is stipulated: 'Said party of the first part hereby reserves the right or privilege of selling that portion of said land at any time from and after this date; but no such sale of said land shall be made by said first party without first having given said second party the privilege of

purchasing said land upon such terms and at the same price per acre as any other person or purchaser might have offered therefor?' It is clear the latter part of this clause in the lease was inserted for the benefit of the lessee, and was intended to secure some right which he might otherwise not have had. It is urged that the contract is void as a contract of sale, for the reason that there is no price fixed at which the sale should be made; and it is said, if it is enforced the court must interpolate that term into the contract. This, it is at once conceded, the court may not do. Their duty is to enforce contracts as made by the parties. In the construction of contracts, the intention of the parties—to be ascertained from the words employed, the connection in which they are used, and the subject matter in reference to which the parties are contracting—must control; and courts are powerless to interpolate terms and conditions into the contract to which the minds of the parties have not given assent. Courts will, however, look to the entire instrument, and if possible, give such construction that each clause shall have some effect, and perform some office (2 Parsons on Contracts, 7th Edition, 633) and for this purpose will, as far as practical, view the contract from the position of the parties at the time it was made, in order to understand their language in the sense in which it was used (*Wilson v. Roote*, 119 Ill., 10 N. E. 204; *Wood v. Clark*, 121 Ill. 362, 12 N. E. 271) and such construction will be adopted, if it can consistently and reasonably be done as will render the whole contract operative. *Field v. Leiter*, 118 Ill. 21, 6 N. E. 877; *Holmes v. Bemis*, 124 Ill. 453, 17 N. E. 42; *Bishop on Cont.* 391-3.

The lessor reserved the right to sell the land at any time, but covenanted that no sale of the land should be made by him without first having given the lessee the privilege of purchasing. Thus far there is no uncertain-

ty. It will be seen that the lessee was given the right to purchase the land 'upon such terms and at the same price per acre, as any other person or purchaser might have offered therefor.' This language is plain and unambiguous, and admits of no construction other than that the terms and price per acre at which the lessee might purchase was the same as offered by any other person or purchaser, and which the lessor was willing to accept. It is true, as said by counsel, the lessor was not bound to sell at all, nor was he bound to take any price offered. But he covenanted that before he would sell to any other person than the lessee, at any price, the lessee might exercise his option to take the land at the price offered; that is, the lessee might purchase upon the terms and at the price the lessor was offered by another, which he decided to accept. As already seen, the fact that, by the contract the lessor was not bound to sell, would not render the contract invalid. By the contract of the parties, the lessee had acquired an estate for years in the land; and as parcel of the transaction and entering into its consideration for the execution and acceptance of the contract, he acquired the right to purchase the leased premises, if his landlord determined to sell. It may well be that the landlord was then unwilling to sell at any price and that the tenant was willing to accept the lease under him but wholly unwilling to accept the lease for a term of years, and run the hazard of a sale to one whose interest might be inimical to his own - - - That question does not arise in this case, and it is unnecessary to determine it. If, however, that construction can be placed upon the contract, it at once becomes apparent that the right of purchase by the lessee was an important part of the consideration for his acceptance of the lease. It is clear the lessor was not bound to sell but having determined to do so at a price and upon terms satisfactory to himself of-

ferred by some other person or purchaser, he covenanted that he would not sell to such other person or purchaser without first giving to the lessee the right to exercise his option to purchase the land upon the same terms; and it can not be presumed that the tenant would have taken the lease without his covenant, or that the landlord would have granted the concession without each understanding that it entered into and formed part of the consideration moving between them.

We know of no principle of equity that is violated by such a contract, nor are we referred to any class holding that a contract of this character may not be enforced in equity. The contract is that the lessee shall have the right to purchase at a price set to the lessor and when fairly entered upon a valuable consideration, if the terms upon which the sale is to be made are fixed in the contract or the parties have by the contract provided the means for their ascertainment, no reason is perceived by a court of equity may not compel its enforcement. The authorities are agreed that the contract must be complete, that is, must contain the terms by the acceptance of which the grantee will become entitled to a conveyance. In most of the reported cases there has been an offer to sell or an option to purchase at a fixed price named in the written contract but this is not necessary where the written instrument fixes a definite mode of its ascertainment - - - - Here the parties by their contract, prescribed a mode by which the price at which the lessee was to purchase was definitely ascertainable. If the lessor received an offer for the land which he was willing to accept, that became the price at which the lessee might purchase, and, if the lessee accepted it, the lessor was bound to convey."

It follows that the Court below erred in sustaining the demurrer and dismissing the bill. The

decree will be reversed and the case remanded for further proceedings. Reversed and remanded.

Three years later, 1897, the same Court went a step further in *Marske v. Willard* (reported in 169 Ill. 276, 48 N. E. 290). As stated in the opinion by Boggs, Judge, this was *assumpsit* brought by the appellee against appellant to recover damages for the alleged breach of a contract to sell and convey to him a certain described portion of certain premises therein mentioned. A general demurrer to the declaration was overruled and the defendant caused exceptions to be entered, &c. After judgment for the plaintiff defendant moved for a new trial and the arrest of judgment on the ground *inter alia* that the declaration was insufficient to maintain the action. The gist of the action is based upon a clause in the lease which provided as follows: "And it is further agreed that this lease may be continued from year to year under the same terms, at the option of the said party of the second part, for a period not to exceed five years." "And should said party of the second part desire to surrender possession after the first year, he may do so by giving to said Marske at least sixty days' previous notice of his intention so to do; and should the said Marske desire to sell said premises he may do so by giving to said Willard sixty days' previous notice and by first giving to said Willard the first opportunity to purchase said premises, provided he will pay as much as any other person." In the interpretation of these clauses and their legal efficacy Boggs, speaking for the Court, at page 291, said:

"Nor is there any force in the position that the contract providing for the sale and purchase of the property rests partly in writing and partly in parol, and is therefore void,

under the statute of frauds, as a contract for the sale and conveyance of lands. The contention in this respect is that the contract does not fix the price to be paid or the terms and time of payment. The true construction of the contract is that appellant must give to the appellee sixty days' previous notice of his intention to sell, and give him the option during that period of time, of purchasing the property, in preference to any other person who desires to buy at the same price such proposed purchaser was willing to pay, and upon the same terms appellant was willing to accord to such proposed purchaser.

"Nor can we assent to the proposition, urged with such earnestness that the contract as to the sale is so 'vague, uncertain and indefinite' that it cannot be enforced."

The undertakings and obligations of the respective parties fully appear under the construction which, as we have indicated hereinbefore, we think should be given to the instrument. We think the declaration set out a good cause of action. The Court will pardon me for asking it to note that the Supreme Court of Illinois rightly, as we think, made the terms as equally vital with the price, notwithstanding the fact that the exact language of the lease was "and by first giving to said Willard the first opportunity to purchase said premises, provided he will pay as much as any other person." This determination of the Supreme Court of Illinois was approved and followed by the United States Circuit Court of Appeals, Fifth Circuit (1905), in a suit between *Slaughter Mallet Land and Cattle Company* (141 Federal Reporter, p. 282). This action was also based upon a provision in a lease which provided: "It is also agreed and understood that the lessees herein shall have the privilege of releasing the said land again at the expiration of this lease in any rental price and on

terms offered and acceptable to Edwards County that may be made bona fide by any responsible party, but in the event that Edwards County should desire to sell the said lands herein mentioned at the expiration of this lease then in that event the lessees herein shall have the preference right to purchase said land at any bona fide offer made and acceptable to Edwards County by any responsible party; and the said lessees shall have a written notice giving them ninety days in which to purchase the said land after the expiration of the lease." In passing upon the legal efficacy of this provision Pardee, for the Circuit Court of Appeals, Fifth District, said:

"C. The option given to Devitt and Flato is not void for certainty. *Willard v. Tayloe*, 8 Wall. 564, 19 L. E. D. 501; *Hayes v. O'Brien* (Ill.), 37 N. E. 65-77; *Hitchcock v. Page*, 14 Cal. 331-444; *Marske v. Willard*, 169 Ill. 277, 48 N. E. 290.

Hayes v. O'Brien, *supra*, was a suit for the specific performance of a contract of lease in which an option was granted and the price was to be determined by subsequent offers to buy. The Court held that: 'Where no price is fixed in a lease contract, a provision is valid which gives the lessee a preference right to buy at a price offered by another.'

In *Marske v. Willard*, *supra*, it was held: 'A contract giving one party the privilege of purchasing lands upon certain conditions is not void for want of mutuality, on the ground that though the seller is bound upon those conditions the other party is not bound to purchase unless he desires.

'A written contract giving one party the first opportunity to purchase land, "provided he will pay as much as any other person," is not invalid as being partly in writing and partly in parol on the ground that the written contract does not specify the price to be paid or the terms and time of payment.'

We therefore conclude that the option granted to Devitt and Flato of the right to purchase at the expiration of their lease was fully within the authority of the Commissioners' Court of Edwards County, and the option as granted was not void as contrary to public policy - - - There are other assignments of error - - - as their decision did not materially affect the conclusion we have reached; which is, that under all the facts and circumstances of the case, and for the reasons herein given, the decree of the Circuit Court was substantially correct, and should be affirmed. And it is so ordered."

That the rule of law governing herein is the same in the English Courts is shown by the suit in Chancery between *Manchester Ship Canal Company v. Manchester Race Course Company*, before Farwell, Judge, is reported in English Law Reports, 1900, 2 Chancery Division, page 352, and whose judgment was affirmed on appeal by the Court of Appeal, whose judgments are reported in English Law Reports, 1901, Chancery Division, page 37. In this action, wherein the Manchester Ship Canal Company was plaintiff, the record shows that the plaintiff and defendant entered into an agreement which *inter alia* provided: "Three: If and whenever the lands and hereditaments belonging to the Race Course Company and now used as a race course, shall cease to be used as a race course, or should the aforesaid lands and hereditaments be at any time proposed to be used for dock purposes, then and in either of such cases the Race Course Company shall give to the Canal Company the first refusal of the aforesaid lands and hereditaments *en bloc*."

On October 20, 1899, the Race Course Company offered the property to the Canal Company for £350,000, subject to conditions.

At the time of this offer the Race Course Company were in negotiation for a sale to the Trafford Park States, Limited, which was only offering £250,000. Negotiations continued. In none of which would the Manchester Race Course Company disclose the real price and terms upon which it was able to sell, and by an agreement dated December 22, 1889, the Race Course Company agreed to sell the property to the Trafford Park Company for £280,000, subject to certain conditions therein peculiarly to the interest of the Race Course Company." Farwell, Judge, held that the clause above quoted was legally efficacious. At page 364, Farwell, Judge, said:

"Then comes the question as to the meaning of the words 'The Race Course Company shall give the Canal Company the first refusal of the aforesaid lands and hereditaments *en bloc*.' Now, a refusal, to my mind implies an offer. A thing is not in ordinary parlance refused before it is offered. I am therefore of the opinion that the Race Course Company are bound to make an offer to the Canal Company of the property, and this they have not done. Further, I hold that the refusal really means a refusal, not at an offer at any price that the Race Course Company choose to ask, but a refusal of an offer at the price which some other person is willing to give - - - -.

"I have so far dealt with the refusal; I now come to the question 'What is meant by the offer?' In my opinion the offer must be such as the Canal Company has power to accept. The Trafford Park Company were offering a sum of money and option, and a covenant, which option and covenant the Canal Company could not have given or performed. To make such an offer to the Canal Company would have been futile. It would have been idle to expect the Canal Company, a statutory company with limited powers, to accept or refuse an offer obliging them to give a straight

mile for a race course. The Race Course Company propose to get over that difficulty by saying that though they never told the Canal Company what terms were offered by the Trafford Park Company, those terms, having regard to the option, were in fact equivalent to over £350,000 cash, and it was therefore sufficient to offer the property to them at £350,000 without more. I have already expressed my opinion that that was not an offer at all, because the Canal Company were never told that anyone else was offering that sum, and they could not have been truly so told, because the Trafford Park Company were not offering that sum in cash, and to say that the Race Course Company could put their own value upon the option is idle."

On appeal to the Court of Appeal, 1901, 2 Chancery Division, page 37, at page 46, Vaughan Williams, Lord Justice, said:

"The main question in this action is whether or not, according to the true construction of the scheduled agreement, the defendants did give a 'first refusal of the race course land to the Canal Company.' There appear to be two possible meanings of the words first refusal; one is that they mean the opportunity of refusing 'a fair and reasonable offer' by the Race Course Company to sell the lands *en bloc* to the Canal Company; the other is that they mean the opportunity of refusing the land at a price acceptable to the Race Course Company offered by some person other than the Canal Company, which is what we understand by the term 'right of pre-emption.' In our judgment we think that the price of £350,000 was one which the Race Course Company did not really expect to get, and that the offer made by the letter of October 20, 1899, was not a fair and reasonable one. We also think it was not the duty of the Canal Company to make a counter proposal. That company was entitled to 'a refusal'

which, we agree with Farwell, Judge, in thinking, imports an offer on the part of the Race Course Company. In our judgment the evidence shows that at the very moment when the Race Course Company were offering the land to the Canal Company at £350,000 the Race Course Company had determined to sell to the Trafford Park Company for a less sum, and that in this sense the offer made by the letter of October, 1899, was not a fair and reasonable one. The contrast of figures is not so violent as in the supposed case where the Race Course Company, for the purpose of freeing themselves entirely from the obligations of clause three, offered at £1,000,000, and, having got their freedom by the continued refusal of that offer, subsequently sell at £100,000; but taking the consecution of events here, and the range of prices discussed at the previous negotiation between Davies for the Race Course Company and Wallace for the Canal Company, we have no more doubt than we should have had in the supposed case but that £350,000 was an offer made at a figure which was above the price which the Race Course Company were willing to take from the Trafford Park Company, and we do not think such an offer is an offer within the meaning of clause three, whatever construction is put upon it.

“We think that the words ‘first refusal’ in clause three import that the price at which the Race Course Company give the Canal Company the ‘first refusal’ is a price at which the Race Course Company will offer the land to other would-be buyers in the event of the refusal of the Canal Company to buy at that price. If there is no person negotiating a purchase it may not be easy to prove that the price offered to the Canal Company is above the price which the Race Course Company are willing to take from persons other than the Canal Company; but whenever this can be proved, it seems to me that there is a clear in-

fraction of the right of pre-emption given to the Canal Company by clause three. In the present case, however, there is no difficulty of proof - - - . This being so (at page 49), the Canal Company became entitled to a 'first refusal'; and, whatever those words may mean, the Canal Company, in our opinion, have not had a 'first refusal'; for if one takes, as we have done in this judgment, the construction of clause three most favorable to the defendants, the Race Course Company on the happening of either of the alternative conditions, came under the obligation to make a fair and reasonable offer to sell the lands to the Canal Company and this, in our opinion, for reasons which we have already given, the Race Course Company have never done. If, on the other hand, clause three means that the right of 'first refusal' is not to arise until some person or company other than the Canal Company makes an offer acceptable to the Race Course Company and that the Race Course Company will then come under an obligation to offer the land at the same price to the Canal Company. It seems clear that the Race Course Company have not done so. In either case, the fact that the Race Course Company offered and sold the lands to the Trafford Park Company at a less price than that at which they offered the lands to the Canal Company seems conclusive. The offer to the Canal Company was not fair and reasonable, because the Race Course Company were willing, at the very time of the offer, to take a less price from the Trafford Park Company, and alternatively the Canal Company never had the refusal of the offer made by the Race Course Company to the Trafford Park Company."

The learned Vice-Chancellor in the Court below, in deciding against the contention of Pirone, defendant-appellant, cites the case of *McClung Drug Company v. City Realty & Investment Company*

as decisive of this controversy. Counsel, on the contrary, considers that case in principle affirmative of our contention and easily distinguishable upon the facts, and counsel also calls the attention to this Court properly, he thinks, to the fact that the learned Vice-Chancellor in the Court below decided this same question both ways, and that therefore too much weight cannot be given to the second ruling of the learned Vice-Chancellor, squarely reversing his first ruling. As the record shows, p. 26, notice was given of motion to strike out the defense and counter-claim of the defendants, and upon the ground that the answers did not set forth any defense to the bill of complaint, and because the counter-claims did not set forth any contract enforceable in equity, and upon a coming on of this motion the learned Vice-Chancellor held that the pleadings did set forth a defense and that the counter-claim did set forth an enforceable contract (p. 29, State of the Case), which position we of course thought was right then and think was right now, notwithstanding the fact the learned Vice-Chancellor squarely reversed himself in his conclusions filed in this suit, p.

Counsel considers that by implication Vice-Chancellor Backes in *McClung Drug Company v. City Realty & Investment Company*, 91 N. J. Equity 216, at p. 218, squarely adopted the principles laid down in *Hayes v. O'Brien*, 149 Ill. 403, and that the Court of Errors and Appeals by affirming the decree appealed from in that suit unanimously in a *per curiam* decision for the reasons stated in the opinion filed in the Court below by Vice-Chancellor Backes has adopted as the law of this state the principles of the decision of *Hayes v. O'Brien*, *supra*, exactly as it heretofore by its unanimous *per curiam* decision had adopted the reasoning of Vice-Chancellor Bird in *Race v.*

Groves, 43 N. J. Equity, p. 284, so that it can be settled that the principles announced in those two suits in Equity, one in New Jersey and the other Illinois, has been adopted as the law of New Jersey by its highest court.

The instant case is easily distinguishable from *McClung Drug Company v. City Realty & Investment Company*. In that suit, according to the statement of Vice-Chancellor Backes, the struggle for the property was due chiefly to its recent increase in value, whereas the struggle in the instant case is to give force and effect to "an upright, downright and square agreement," to use a presidential phrase, entered into between the Cerratos and Pirone, and which was entered into for the purpose understood by both sides of protecting the confectionary business carried on on the premises, and for which Pirone paid a price that he would not otherwise have paid, because induced to do so by the clause giving him the first preference in case the property was sold (State of the Case, p. 112a, l. 25).

In *Hayes v. O'Brien*, *supra*, the Court *inter alia* said, "In the construction of contracts, the intention of the parties—to be ascertained from the words employed, the connection in which they are used, and the subject matter in reference to which the parties are contracting—must control; and Courts are powerless to interpolate terms and conditions into the contract to which the minds of the parties have not given assent. Courts will, however, look to the entire instrument, and if possible, give such construction that each clause shall have some effect, and perform some office (2 Parsons on Contract, 7th Edition, 633) and for this purpose will, as far as practical, view the contract from the position of the parties at the time

it was made, in order to understand their language in the sense in which it was used; *Wilson v. Roote*, 119 Ill. 384, 10 N. E. 204; *Wood v. Clark*, 121 Ill. 362, 12 N. E. 271, and such construction will be adopted, if it can consistently and reasonably be done as will render the whole contract operative." *Field v. Leiter*, 118 Ill. 21, 6 N. E. 877; *Holmes v. Bemis*, 124 Ill. 453, 17 N. E. 42; *Bishop on Contract*, 391-3.

Williston, in his law of contracts, states the same principles, and with apologies to the Court for giving citations to elementary principles, cites the following brief excerpts:

Section 603, at p. 1162, Williston said "A slightly different further standard may, however, be supposed for a bilateral transaction. This standard is the sense in which the party using the words should reasonably have apprehended that they would be understood by the other party."

In Section 605, p. 1163, the learned author says "In contracts of second class, the standard interpretation which the modern law tends to accept, and which is supported by sound principle, is that suggested at the end of Section 603; namely, the sense in which the party who used the words in question should reasonably have apprehended that the other party would understand them."

And in Section 607, p. 1167, Professor Williston said "According to the weight of authority and on principle, where the parties have assented to a writing as an expression of their agreement, or where a writing is required by law, the standard of interpretation is the local standard—that is, the natural meaning of the writing to parties of the kind who contracted at the time and place where the contract was made, and with such cir-

cumstances as surrounded its making. - - -" And further in the same section, p. 1168, the Professor continues "Aside from these exceptional cases, it will be true that in written as in oral contracts, language is to be given the meaning which the one using it apprehended or should have apprehended that the other party would give to it. Pollock indeed says that 'every question which can arise on the interpretation of a contract may be brought as the last resort under this general form.' "

And in continuing this subject of construction and interpretation, in Section 617 at p. 1194, Williston continues "The inquiry of a Court which has before it a writing demanding interpretation should be then - - -. What was the meaning of the writing at the time and place it was made between persons of the kind or class who were parties to it? The rules laid down to aid the Court in this inquiry are all subordinate to this main object. The general intent so far as it is manifested is more important than particular words." And in Section 618, at p. 1197, this great Master gives as one of the primary rules of interpretation: "3. The writing will be read as a whole, and every part will be construed with reference to the whole; and if possible it will be so construed as to give effect to its general purpose. The context and subject matter of a contract may show that in a particular sentence an ordinary word has an unusual meaning; or that a word whose meaning, taken by itself, is clear, has been inaccurately used. '*Noscitur a Sociis*' is an old maxim which summarizes the rule both of language and of law that the meaning of words may be indicated or controlled by those with which they are associated. 4. The circumstances under which a writing was made may always be shown. The question the Court is seeking to answer is the meaning of the

writing at the time and place when the contract was made; and all the surrounding circumstances at that time necessarily throw light upon the meaning of the contract. The importance of the rule and the fact that it is sometimes supposed to be applicable only in the case of an ambiguous writing makes necessary some discussion in a subsequent section as well as some definition of what is meant by surrounding circumstances." And again in Section 619, p. 1199, Professor Williston says "The Court will if possible give effect to all parts of the instrument and a construction which gives a reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless or inexplicable; and if this is impossible a construction which gives effect to the main apparent purpose of the contract will be favored. Indeed, in giving effect to the general meaning of a writing particular words are sometimes wholly disregarded, or supplied." And again in Section 620, p. 1202, in the same tenor the learned author continues "A construction which makes the contract lawful will be preferred over one which would make it unlawful; a construction which renders the contract valid and its performance possible will be preferred to one which makes it void or its performance impossible or meaningless; a construction which makes the contract fair and reasonable will be preferred to one which leads to harsh or unreasonable results. Therefore, construction of a contract which would lead to a forfeiture will not be favored." And let me conclude the citation of these elementary excerpts by citation to Section 621, p. 1203, where Williston says "Since one who speaks or writes, can by exactness of expression more easily prevent mistakes in meaning, than one with whom he is dealing, doubts arising from ambiguity of lan-

guage are resolved in favor of the latter; and as he will ordinarily be the promisee of the promise in question, it is sometimes stated that the contract, if ambiguous, will be construed in favor of the promisee."

Counsel contends that the instant case comes squarely within the principle of the statement of Vice-Chancellor Backes in *McClung Drug Company v. City Realty & Investment Company* and referring to *Hayes v. O'Brien* and *Race v. Groves*, *supra*, that: "In that each of them define the price to be the amount of a future accepted offer from another." It is respectfully submitted that viewing the relations of the parties at the time the lease was made, the purpose they had in mind, and the understanding, interpretation and reliance placed upon said clause by Pirone, all of which was personally known to the complainants at the time, and in the light of the subsequent behavior of the parties, the plaintiffs themselves testify that they understood they had to give Pirone a preference (p. 32, l. 26).

The first preference clause in the lease as written has the same legal efficacy and will have the same construction and interpretation as if the phrase read "Upon such terms and at the same price as any other person or purchaser might have offered therefor," and in *Hayes v. O'Brien*, *supra*, or "By first giving the said Willard the first opportunity to purchase said premises, provided he will pay as much as any other person" as in *Marske v. Willard*, *supra*, which option the Court of Illinois in *Marske v. Willard*, *supra*, held included not only the same price but the same terms as any other person, and as heretofore stated, the opinion of the Supreme Court of Pennsylvania is an authority upon all fours for that

proposition, that as stated, *Conemaugh Gas Company v. Jackson*, Pennsylvania Supreme Court, 40 Atlantic Reporter, 1003, *supra*, the Court said "The term preference seems to mean that favorably consideration which a bidder on equal terms with others, is entitled to over his competitors." The Standard Dictionary defines the word preference as follows:

"*Preference*: 1. The act of preferring, or the state of being preferred, estimation of one thing above another; choice of one thing rather than another.

2. That which is preferred; an object of favor or choice.

3. A priority of payment given by an insolvent debtor to or to a certain class of his creditors over others; also, priority of payment by operation of law; as the state *preference* for taxes."

And while it is true, I suppose, that this Court would not have gone so far as the English Court unanimously did go in *Manchester Ship Canal v. Manchester Race Course Company*, *supra*, it is respectfully submitted that the reasoning of that Court is wholly applicable to the instant case and is in perfect harmony with the principle laid down by Williston and all the cases, that the Court will, if possible, give effect to all parts of the instrument, and a construction which gives a reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless or inexplicable; and if this is impossible, a construction which gives effect to the main apparent purpose of the contract will be favored.

If counsel is right in his contention as to the law applicable to this case, then it was the duty of complainants to prefer Pirone above all others,

and this Court will surely take judicial notice of the distinction between a cash offer requiring a full cash payment (even if such offer was made, which Pirone denies) and one allowing such liberal terms as that given by the complainants to the Megaros, permitting the Megaros to secure a Building & Loan mortgage of \$15,000, and the assignment to complainants of a second mortgage on other lands in Newark to execute to complainants a purchase money mortgage of \$7,500, to run for five years with only the payment of \$500 of principal payable each year, which was to be a subsequent lien to the B. & L. mortgage of \$15,000, and only the balance remaining, about \$1,000, to be paid in cash, as against the \$27,500 actual cash demanded of Pirone. See articles of agreement, Exhibit C. 1, page 109, lines 10-40; and that the terms of this Megaro contract or offer were never communicated to Pirone is admitted by both complainants and summed up by the Court, page 57, line 37:

“The Court: There is no claim that they ever told him the terms.

Mr. Masucci: No.”

To counsel, *Foggs v. Price*, 145 Massachusetts 513, cited by Vice-Chancellor Backes in *McClung Drug Company v. City Realty & Investment Company*, 91 New Jersey Equity 216, at page 219, is very easily distinguishable, and even in that action the great jurist said, and very truly, too:

“It might be that the remedy would do substantial justice as against the lessor” but his difficulty was “in order to do it, a term would have to be added which is not in the contract” which is not our position at all, if we are right in thinking that we cannot within the broad principles of *Hayes v. O'Brien*, *Race v. Groves* and *Marske v. Willard*, in which last case although

terms were not mentioned in the option the Court rightly and properly and justly and pragmatically held that the terms of the offer were equally important with the price, and as was held in the Conemaugh case, *supra*, in which neither terms nor price were mentioned. A further distinction between the instant case and *Foggs v. Price*, *supra*, appears in this, that in the Massachusetts case Justice Holmes, as cited by Vice-Chancellor Backes at page 220 of *McClung* case, *supra*, said "The contract certainly does not contemplate a sale to somebody else as a mode of ascertaining the price at which the lessor will sell to the lessee." Whereas, in the instant case the method of obtaining an offer as to both price and terms is just exactly that, to wit, to obtain an offer from another as to price and terms acceptable to the complainants, exactly as in *Marske v. Willard*, and that as in that case and as Mr. Justice Holmes suggested in *Foggs v. Price*, the complainants have now by their contract with the Megaros fixed the price and the terms for the sale of said premises to Pirone, with a possible exception of the second mortgage provision, which is not vital, because the equivalent in cash can be easily substituted.

In a recent case before Ross, Judge, in the New York Supreme Court, between *Spitzli v. Guth*, 183 New York Supplement 743, in a suit for specific performance to enforce an option in a lease where the refusal of the lessor to live up to the terms of the lease was working a great hardship upon the lessee, as in the instant case, Ross, Judge, at page 746 said *inter alia* "There being a valid contract upon a sufficient consideration which the defendants could not revoke during the time given to exercise the option enforceable in equity" with citations and continued

in *Simon v. Ettgon*, 213 New York 589, on page 595, 107 N. E. 1066. On page 1067, Warner, Judge, uses the following language: "Equity looks through the form to the substance and purpose of the agreement and moulds its decree in accordance with what the parties may fairly be presumed to have intended. Every contract implies good faith and fair dealing between the parties to it."

It is very respectfully submitted that in looking through the form of the conduct of the complainants to the substance of the behavior of the complainants, this Court will have no difficulty in perceiving that the offer of \$27,500 cash money, if made at all to Pirone, was a mere camouflage of the real offer made to the Megaros whereby the complainants offered to sell the premises in controversy to them for a mere nominal cash consideration, or as the real estate men colloquially say "on a shoe string" and that this Court will mould its decree in accordance with what the parties may fairly be presumed to have intended, and that this Court will join the New York Court of Appeals in saying "Every contract implies good faith and fair dealing between the parties to it."

May Term, 1924.

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