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Bill of Complaint.

Filed Dec. 20, 1928.

In Chancery of New Jersey.

To The Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey. 10

The complainant, Catherine Dotto, executrix under the last will and testament of Eugene Dotto, deceased, of the City of Newark, in the County of Essex and State of New Jersey, respectfully shows that:

1. On May 1, 1924, Pietro Ciamboli and Maria Ciamboli, his wife, of the Town of West Orange, County of Essex and State of New Jersey, being indebted to Emilio Laudati in the sum of Forty-eight Hundred (\$4800.00) Dollars, executed to the said Emilio Laudati, a bond of that date with the conditions thereunder written, that if the above bounden, Pietro Ciamboli and Maria Ciamboli, his wife, their heirs, executors, or administrators, should well and truly pay or cause to pay to Emilio Laudati, his heirs, executors, administrators or assigns the just and full sum of Forty-eight Hundred (\$4800.00) Dollars, on the 1st day of May, 1928 and interest thereon to be computed from May 1, 1924 at and after the rate of 6% per annum to be paid semi-annually, without any fraud or other delay, then the said obligation is to be void, otherwise to remain in full force and virtue. 20 30

And it was thereby expressly agreed, that should any default be made in the payment of the said interest or of any part thereof on any day whereon the same was made payable as therein expressed, 40

Bill of Complaint.

and should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be thereafter imposed or acquired upon the premises described in the mortgage accompanying said bond, and become due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition, or lien remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of said periods as the case may be, the aforesaid principal sum of \$4800.00 with all arrearage and interest thereon, shall, at the option of the said Emilio Laudati, or his legal representatives become due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

2. To secure the payment of said bond, the said Pietro Caimboli and Maria Ciamboli, his wife, executed to Emilio Laudati a mortgage of even date with the bond and thereby conveyed to Emilio Laudati, in fee, the lands hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the bond, which mortgage having been first duly acknowledged and the certificate of acknowledgment having been duly endorsed thereon, was on March 24, 1925 recorded in the Essex County Register's Office in Book Q 53 of Mortgages page 263-265.

Bill of Complaint.

3. The mortgaged premises are described as follows:

All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Town of West Orange, in the County of Essex and State of New Jersey.

BEGINNING in the Northerly line of Condit Place at a point therein distant fifty-seven feet and fourteen hundredths of a foot Easterly from Longview Street; running thence (1) along Condit Place South sixty-four degrees fifty-eight minutes East fifty feet; thence (2) North twenty-five degrees two minutes East one hundred and thirty-four feet and ninety-three hundredths of a foot; thence North sixty-three degrees twenty-eight minutes West fifty feet and one hundredths of a foot; thence South twenty-five degrees two minutes West one hundred and thirty-six feet and twenty-four hundredths of a foot to the BEGINNING.

4. Said mortgage contained an agreement that should any default be made in the payment of the interest or of any part thereof on any day whereon the same is made payable as therein expressed and should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be thereafter imposed or acquired upon the premises described in said mortgage, and become due and payable and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition, or lien, or any or either or them remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods

Bill of Complaint.

as the case may be, the aforesaid principal sum of Forty-eight Hundred Dollars (\$4800.00), with all arrearage of interest thereon, shall at the option of the said Emilio Laudati, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired,
 10 anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

5. On June 1, 1925 the said Emilio Laudati assigned all the right, title and interest which he had in the above bond and mortgage to Eugene Dotto by assignment of mortgages, recorded in the
 20 Essex County Register's Office on June 9, 1925 in Book 173 of Assignments page 258.

6. The said Eugene Dotto died on or about December 31, 1927, leaving a last will and testament, wherein and whereby, he appointed the said Catherine Dotto, executrix, with full power to sell, mortgage and so forth. The said Catherine Dotto was duly authorized to take upon herself the administration of the Estate of the said Eugene Dotto,
 30 deceased, by letters testamentary issued by the Surrogate of Essex County on January 13, 1928.

7. On May 1, 1928 there fell due the entire principal sum due on the said mortgage.

Complainant has elected that the whole principal sum on the said mortgage shall now be due, with interest accrued thereon.

8. The said Pietro Ciamboli and Maria Ciamboli, his wife, have always been in possession of
 40 the said mortgaged premises.

Bill of Complaint.

9. The sum of \$4800.00 with interest thereon is due upon complainant's bond and mortgage.

Complainant is without adequate remedy in the Courts of Law and therefore prays:

1. That Pietro Ciamboli and Maria Ciamboli, his wife, who are the defendants in this suit, may answer this bill of complainant and each statement therein made; 10

2. That an account may be taken of the amount due on Complainant's mortgage.

3. That the defendants, or one of them may be decreed to pay complainant the amount so found due, with interest and costs, by a short day to be appointed by this Court; and that in default of said payment, they and each of them be debarred and foreclosed of all equity of redemption in said lands; or 20

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to complainant the amount so found due on his mortgage, with interest and costs.

5. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 30

PHILIP J. SCHOTLAND
Solicitor for and of Counsel
with Complainant.

Answer.

1925, assigned all his right title and interest to Eugene Dotto, and that the first knowledge that the defendants had of any change of ownership of the said mortgage, was from a letter that they received from one Peter C. Zazzali by mail on April 30, 1928.

6. The defendants have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6, and leave the plaintiff to her proof thereof. 10

7. The defendants deny that on May 1st, 1928 the entire principal of the said mortgage had become due and payable, because of the fact that the defendants had from time to time made payments on the aforesaid mortgage mentioned in paragraphs 1 and 2, until the only amount remaining due on the said bond and mortgage was the principal of \$600.00, and that they had paid all the interest that had from time to time become due on the said mortgage; and defendants now allege that they are only indebted on the aforesaid mortgage for the sum of \$600.00 together with interest from September 8, 1927, and that they have offered to pay the aforesaid sum of \$600.00 together with interest, and that they are ready and willing to pay the aforesaid sum of \$600.00 together with interest from the 8th day of September, 1927. 20 30

8. Defendants admit they are in possession of the aforesaid premises.

9. The defendants deny that there is due on the aforesaid bond and mortgage the sum of \$4800.00, but allege there is only due on the aforesaid bond and mortgage, the sum of \$600.00 together with in- 40

Answer.

terest from September 8th, 1927, and that they are ready and willing to pay the said sum of \$600.00 together with interest from the 8th day of September, 1927.

O. C. BIANCHI,
Solicitor of Defendants.

10

Amended Answer.

Filed June 20, 1929.

70-682

IN CHANCERY OF NEW JERSEY.

20

Between
CATHERINE DOTTO, Executrix under last Will and Testament
EUGENE DOTTO, deceased,
Complainant,
and
PIETRO CIAMBOLI and MARIA
CIAMBOLI,
Defendants.

On Bill, Etc.
Amended
Answer.

30

The defendants amending the answer heretofore filed in the above entitled cause, say that:

FIRST DEFENSE.

Defendants did pay the sum of \$4200.00 on account of the principal of the Bond and Mortgage mentioned in the Bill of Complaint to Emilio Laudati, who was the mortgagee at the time of the making of the said Bond and Mortgage, and de-

40

Amended Answer.

fendants allege that the said Emilio Laudati was authorized by his assignee, Eugene Dotto, to receive payments on the principal and interest. Defendants further allege that at the time that they made payments on the principal and interest to the said Emilio Laudati, they had no knowledge or information of the fact that an assignment of the mortgage had been made to the said Eugene Dotto. Defendants further allege that the said Emilio Laudati did make payments of the interest and of the principal received from them to the said Eugene Dotto, and the said Eugene Dotto having received payments of interest and principal from Emilio Laudati, has ratified and acquiesced in the acts of the said Emilio Laudati, and having so ratified and acquiesced in the acts of the said Emilio Laudati, the complainants are now barred from recovering from the defendants, the interest and principal they have heretofore paid to the said Emilio Laudati.

SECOND DEFENSE.

Defendants further allege that the said mortgage was assigned from Emilio Laudati to Eugene Dotto as security for a loan made by Dotto to Laudati, and that the said loan for which the said assignment was made has been paid; that the complainants have no right title or interest in the said Bond and Mortgage as there is nothing due and owing to them as a result of the assignment made to Dotto from Laudati.

O. C. BIANCHI,
 Solicitor of Defendants.

Replication.

Filed April 1, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between	}	On Bill, Etc. Replication.
	CATHERINE DOTTO, Executrix un- der last Will and Testament		
	EUGENE DOTTO, deceased,		
	Complainant,		
	and		
	PIETRO CIAMBOLI and MARIA CIAMBOLI, Defendants.		

20 The Complainant joins issue on the answer of the defendants.

PHILIP F. SCHOTLAND,
Solicitor of Complainant.

30

40

Order of Reference.

Filed April 2, 1929.

IN CHANCERY OF NEW JERSEY.

Between CATHERINE DOTTO, Executrix un- der last Will and Testament EUGENE DOTTO, deceased, Complainant, and PIETRO CIAMBOLI and MARIA CIAMBOLI, Defendants.	}	On Bill, Etc. 10 Order of Reference.
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This matter being opened to the Court by Philip J. Schotland, Solicitor of the Complainant, and it appearing that Ovidio C. Bianchi, Esq., Solicitor for the defendants has consented hereto, 20

It is, on this 2nd day of April, 1929, on motion of Philip J. Schotland, Solicitor for the Complainant ORDERED that the above entitled cause be referred to Hon. J. H. BACKES, one of the Vice Chancellors of this Court to hear the same for the Chancellor and to report thereon for him and to advise what decree or order should be made therein. 30

E. R. WALKER.

I hereby consent to the entry of the foregoing order.

O. C. BIANCHI,
Solicitor of Defendants.

Order.

Filed April 9, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between CATHERINE DOTTO, Executrix un- der the last Will and Testa- ment of EUGENE DOTTO, Complainant, and PIETRO CIAMBOLI and MARIA CIAMBOLI, Defendants.	}	On Bill, Etc. Order.
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20 The above stated cause having been referred to me, one of the Vice Chancellors of the State of New Jersey, dated the 2nd day of April, 1929, I do hereby designate Chancery Chambers in the Industrial Building, 1060 Broad Street, Newark, N. J., as the place and May 15, 1929 at ten o'clock in the forenoon, as the time for the hearing thereof. Dated April 9, 1929.

JOHN H. BACKES,
Vice Chancellor.

30 I hereby consent to the entry of the above order.
 O. C. BIANCHI,
 Solicitor of Defendants.

Order.

Filed May 28, 1929.

IN CHANCERY OF NEW JERSEY.

Between CATHERINE DOTTO, Executrix under the last Will and Testa- ment of EUGENE DOTTO, Complainant, and PIETRO CIAMBOLI and MARIA CIAMBOLI, Defendants.	}	On Bill, Etc. 10 Order.
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The above stated cause having been referred to me, one of the Vice Chancellors of the State of New Jersey, by order of the Chancellor of the State of New Jersey, dated the 2nd day of April, 1929, I do hereby designate Chancery Chambers in the Industrial Building, 1060 Broad Street, Newark, N. J., as the place and June 10th, 1929 at ten o'clock in the forenoon, as the time for the hearing thereof. 20

Dated: April 9th, 1929.

JOHN H. BACKES,
 Vice Chancellor. 30

I hereby consent to the entry of the above order.

O. C. BIANCHI,
 Solicitor of Defendants.

Notice of Hearing.

Filed May 29, 1929.

IN CHANCERY OF NEW JERSEY.

10	Between CATHERINE DOTTO, Executrix under the last Will and Testament of EUGENE DOTTO, Complainant, and PIETRO CIAMBOLI and MARIA CIAMBOLI, Defendants.	}	On Bill, Etc. Notice of Hearing.
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To OVIDIO C. BIANCHI,
 Attorney for Defendants.

20 Sir:

30 Please Take Notice that I will bring on the hearing of the above stated cause before his Honor J. H. BACKES, one of the Vice Chancellors of this Court, to whom the same has been referred, at the Chancery Chambers, 1060 Broad Street, Newark, N. J., on the 10th day of June, 1929, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, that being the time and place designated by the said Vice Chancellor for said hearing.

Dated May 15/29.

Yours respectfully,

PHILIP F. SCHOTLAND,
 Solicitor for Complainant.

Opinion.

Filed Dec. 26, 1929.

IN CHANCERY OF NEW JERSEY.

Between CATHERINE DOTTO, Executrix, etc., Complainant, and PIETRO CIAMBOLI and MARIA CIAMBOLI, Defendants.	}	Opinion.	10
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ON FINAL HEARING.

A mortgagor is charged with notice of a recorded assignment of his mortgage and if he pays the debt to the mortgagee after notice he is not entitled to credit. 20

For complainant—MR. PHILIP J. SCHOTLAND.

For defendant—MR. OVIDIO C. BIANCHI.

BACKES, Vice Chancellor:

The bill is to foreclose a real estate mortgage made by the defendant Ciamboli to one Laudati for \$4800., May 1, 1924, payable May 1, 1928. Laudati assigned the mortgage to Dotto, the complainant's testator, June 1, 1925, to secure a loan of \$2500. The documents were delivered and duly recorded and remained in the possession of the assignee or his estate. Ciamboli had no actual notice of the assignment and, in ignorance, paid all but \$600. of the mortgage debt to Laudati; \$866. before the assignment was recorded and \$3334 after, which Laudati pocketed. The money was 40

Opinion.

10 paid in small sums as Ciamboli was able to earn and save it. There is \$1800. due on the \$2500. loan—a memorandum found in Dotto's papers show three payments aggregating \$700. Laudati claims to have paid the Dotto loan in full and he gave at least three different and conflicting versions of how that was done, any of which, if the others were true, was obviously false; and to round out his string of falsehoods he says he was authorized by Dotto to collect the principal and interest and that he paid it over to him as he got it. The truth is not in him. He is both thief and liar and resorted to perjury to shield himself from the wrath of Ciamboli, fearing nothing from the dead Dotto. His testimony is without probative value.

20 Ciamboli was charged in law with notice of the recorded assignment, and payments made thereafter to Laudati cannot be credited on the mortgage debt. *Emery v. Gordon*, 33 N. J. Eq. 447; *Steadman v. Foster*, 83 N. J. Eq. 641.

The complainant is entitled to a decree for \$1800 and interest.

30

40

Final Decree.

and Thirty, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the Chancellor doth by virtue of the power and authority of this court, hereby order, adjudge and decree that the said mortgaged premises be sold to raise and satisfy the said sum of money so due to complainant, Catherine Dotto, executrix under the last will and testament of Eugene Dotto, deceased, that is to say, that a writ of Fieri Facias do issue for that purpose out of this court directed to the Sheriff of the County of Essex, commanding him to make sale according to law of the said mortgaged premises and that out of the money arising from such sale, he pay to the complainant, Catherine Dotto, executrix under the last will and testament of Eugene Dotto, deceased, or to her solicitor, said debt, interest and costs and in case more money should be raised by said sale than shall be sufficient to answer such payment, then such surplus be brought into this court to abide the further order of this court, unless otherwise previously disposed of by the order of this court; and that the said Sheriff shall make return without delay of his proceedings by virtue of the said writ.

30 And it is further ORDERED, ADJUDGED and DECREED, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of this decree;

40 It is further ORDERED, ADJUDGED and DECREED that the sum of \$200 be allowed and paid to the solicitor of the complainant as a counsel fee, and that the same be included in the taxed bill of costs and collected with the other items of said bill, and

Final Decree.

that the sum of \$25 the amount expended by solicitor of the complainant for searches be included in the taxed bill of costs and collected with the other items of said bill.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
Vice Chancellor.

10

Notice of Appeal.

Filed Jan. 17, 1930.

IN CHANCERY OF NEW JERSEY.

Between

CATHERINE DOTTO, Executrix under last Will and Testament
EUGENE DOTTO, deceased,

Complainant,

and

PIETRO CIAMBOLI and MARIA
CIAMBOLI, *et als.*,

Defendants.

On Bill, &c.

Notice
of Appeal.

20

30

The defendants, Pietro Ciamboli and Maria Ciamboli, hereby appeal from so much of the final decree advised by the Honorable Vice Chancellor, JOHN H. BACKES, in the above stated cause as declares that there is due to the complainants the sum of \$1800.00, together with lawful interest from November 1st, 1927, in the sum of \$229.50

40

Notice of Appeal.

making a total of \$2029.50, as the balance of principal and interest upon the mortgage which was the subject of foreclosure in the Bill of Complaint filed in this cause, and wherein the honorable Vice Chancellor John H. Backes, did decree that the premises which were described in the said mortgage mentioned in the said Bill of Complaint, be sold to raise and satisfy the said sum of money so due to the complainant, to the Court of Errors and Appeals in the last resort in all causes.

O. C. BIANCHI,
Solicitor of and Counsel
with the defendant.

20

30

40

Petition of Appeal.

10 ure in the Bill of Complaint filed in this cause, and wherein the Honorable Vice-Chancellor, John H. Backes did advise and decree that the premises which were described in the said mortgage mentioned in the Bill of Complaint, be sold to raise and satisfy the said sum of money so found due to the complainant. And your petitioner humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that:

The defendants did, by way of defense allege payment of the mortgage of \$4500.00 of the complainant, (excepting a balance of \$600.00), and they do respectfully submit that the testimony and proofs substantiate that defense.

20 Defendants contended that the testimony and proofs clearly established the absolute agency of one Emilio Laudati to receive and collect as agent for the complainant, both principal and interest on complainant's mortgage, part of which principal and interest as collected by the agent, complainant admitted receiving.

30 The defendants also contended by way of defense, that the complainant was estopped by her actions and demeanor in accepting payments of principal and interest, from denying the agent's authority, and that the complainant did not by any evidence whatsoever, establish that the agency was a limited one.

40 The defendants further contended that the doctrine, that a mortgagor is charged with notice of a recorded assignment of his mortgage, did not apply in this case, because of the fact that the assignee, the complainant here, admitted that she had received payments of principal and interest

Answer to Petition of Appeal.

of appeal of Pietro Ciamboli and Maria Ciamboli,
the above named appellants:

10 This respondent, not admitting the truth of all
or any of the matters in the said petition of appeal
contained, for answer thereto nevertheless admits
that a decree was on the 7th day of January, 1930,
made and entered in the Court of Chancery of
New Jersey, in the above-entitled cause, for the
purpose in said petition mentioned, and as therein
set forth, but as to the substance and form of said
decree, this respondent begs leave to refer thereto
when the same shall be produced.

This respondent is advised and believes that the
said decree is agreeable to equity; and she prays
that the same may be affirmed with costs to be
taxed in favor of this respondent.

20

PHILIP J. SCHOTLAND
Solicitor for and of Counsel
with Respondent.

30

40

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

KATHERINE DOTTO, Exp'r. etc.,
Complainant,

and

PIETRO CIAMBOLI, *et als.*
Defendants.

10

Transcript of shorthand notes of testimony taken in the above matter before his Honor JOHN H. BACKES, Vice Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of MR. PHILIP J. SCHOTLAND, for complainant, and MR. OVIDIO BIANCHI, for defendant.

20

The Court: Is there any estoppel you want to set up?

Mr. Bianchi: Yes, sir; that there was an agreement between Mr. Dotto by which this so-called mortgage was taken as collateral and that the consideration for that assignment was paid.

30

The Court: Is there any objection to an amendment?

Mr. Schotland: I haven't any objection to the facts being properly pleaded so that this case can be tried on its full merits. We do not want anything unjust.

The Court: Suppose we hold it.

Mr. Schotland: I offer the letters of ad-

40

Emelio Laudati—Direct.

ministration, bond and mortgage and assignment in evidence.

Papers marked Exhibits C-1, C-2, C-3 and C-4.

Complainant Rests.

10 EMELIO LAUDATI, sworn for defendants.

Direct-examination by Mr. Bianchi:

Q. Mr. Landati, you are the man who received the mortgage from Pietro Cianboli and wife? A. Yes, sir.

Q. And you transferred or assigned that mortgage of \$4800. to Eugene Dotto? A. Yes, sir.

20 Q. What was the occasion under which you assigned that mortgage to him?

Mr. Schotland: I object as not competent evidence.

The Court: For the purpose of establishing that it was handed to him as collateral security and the money for which it was given has not been paid, then it would be proper. Objection overruled.

30 Q. What was the occasion of the business between you and Mr. Dotto at the time you gave to him the mortgage? A. Mr. Dotto loaned me \$2500.

Q. Did you ever pay back that \$2500.? A. Yes, sir.

Q. Why did you transfer the mortgage to Mr. Dotto? A. Because he give me \$2500.

40 Q. And why did you give him the mortgage? A. Why I give him the mortgage? Security.

Emelio Laudati—Direct.

Q. Security for the money he loaned you? A. Yes, sir; for the \$2500.

Q. Did you get the mortgage back? A. No.

Q. After you had finished paying him that money did you have any other business transaction with him? A. Yes, sir.

Q. What was it?

10

Mr. Schotland: I think we are entitled not to simply have the statement made "I paid him back the money". We are entitled to have the proof of it.

The Court: You may either cross-examine or you may let the testimony stand and argue as to its sufficiency. I do not see why you should complain.

Q. After you had settled that business did you have any further business with him? A. Yes, sir; with Mr. Dotto, 1927 I had a contract agreement with Mr. Dotto to buy the property 91 Ashland Avenue, West Orange.

20

Q. Did you make an agreement in writing for the purchase of that property? A. Yes, sir.

Q. And was that property bought on the installment plan? A. No. For two years I have to give him a hundred dollars a month, plus interest, and after two years he will turn over the deed to me—Mr Dotto will turn the deed over to me.

30

Mr. Schotland: I would suggest that you put the agreement in evidence. It is in writing.

Mr. Bianchi: I offer the contract.

Paper marked Exhibit D-1.

Q. At the time that you made this agreement 40

Emelio Laudati—Direct.

with Mr. Dotto, and in which this mortgage is spoken of, did you owe Mr. Dotto any money on the—was there any money due Mr. Dotto from the loan of \$2500? A. No; it was paid at that time.

Q. At the time this agreement was made did Mr. Dotto give you any money? A. No.

10 Q. Outside of the \$2500 which you had received from him in 1925 did Mr. Dotto advance to you any money on this mortgage? A. No, sir.

Q. Why, after you had paid \$2500. back to Mr. Dotto, did you not receive back the mortgage? A. Because we have that agreement and I give that security on the property 91 Ashland Avenue.

Q. In this agreement you gave him that mortgage as security? A. Security, yes, sir.

Q. As part of this agreement? A. Yes, sir.

20 Q. Did you collect from Cianboli on this mortgage? A. Yes, sir.

Q. Did Mr. Dotto ever collect any money from Cianboli on this mortgage? A. No, sir.

Q. How much did you collect? A. I collected \$4200.

Q. You collected it all but \$600.? A. Yes, sir.

Q. And the interest? A. Interest every six months; yes, sir.

30 The Court: Have you a record of how it was paid?

Mr. Bianchi: Yes, sir.

Q. You gave to Cianboli a receipt for each payment as made in this small book? A. Yes, sir.

Q. All the writings in this book— A. That is my own handwriting.

40 Q. Your own handwriting—your receipt? A. Yes, sir.

Emelio Laudati—Direct.

Mr. Bianchi: I offer it in evidence. Book marked Exhibit D-2.

Q. Did Mr. Dotto know you were receiving money from Cianboli on this mortgage? A. Sure.

Q. How did he know it? A. Because I will make the payment to him. Anytime I paid to him

10

The Court: You paid back the \$2500. by the moneys you got from Cianboli?

Witness: From Cianboli.

The Court: Is that what you say?

Witness: Yes, sir.

The Court: Did you get a receipt from Dotto?

Witness: I give him check.

The Court: Have you got the checks?

20

Witness: No; I ain't got the checks, no.

The Court: Where are the checks?

Witness: Well, last year——(interrupt-ed)

The Court: Where are the checks?

Witness: I destroyed them.

The Court: What bank did you draw them on?

Witness: On First National Bank West Orange.

30

The Court: Have you got the report of the bank?

Mr. Bianchi: No; I haven't that, your Honor.

Q. How did you pay back this \$2500? A. I paid him \$50. a month, plus interest, every month.

Q. Beginning when? A. Start 1925, up to 1927.

40

Emelio Laudati—Direct.

Q. How many months does that make? A. That was two years. The last payment was, I think, \$1300, all at once. Two years I paid \$1200 and the last check was for \$1300. or \$1400; I do not remember.

10 Q. Where did you draw that? A. On the First National Bank—he wasn't paid through the bank.

The Court: What?

Witness: That check he wasn't paid through the bank. That big check was—wasn't paid through the bank.

The Court: How was it paid?

20 Witness: Because I got a mortgage on some property in Keansburg and Mr. Dotto takes that money, \$1500.—I got a second mortgage on my lot.

Q. How did you pay this \$1300. you speak of? A. I say I got a mortgage—second mortgage on my lot in Keansburg.

Q. From whom? A. From Preziosi.

Q. And then what happened? A. Then Mr. Dotto take that \$1300 from that \$1500 I get.

Q. You gave it to him? A. I gave it to him.

Q. You handed it over to him? A. Yes, sir.

30 Q. When you got the \$1500. on this mortgage who handed the money to Dotto? A. Well, Dotto have the check from Preziosi because he was Preziosi's lawyer.

Q. Preziosi gave Mr. Dotto \$1300? A. Gave him \$1500.

Q. You got a credit of \$1300? A. Mr. Dotto took the \$1300. out of that and gave me \$200 balance.

40 The Court: Who is Preziosi, a lawyer?

Emilio Laudati—Direct.

Mr. Bianchi: No; he is a contractor.

The Court: Is he here?

Mr. Bianchi: No, your Honor. First time I heard about it.

The Court: You dispute the \$50. a month?

Mr. Schotland: Yes, sir.

The Court: And the \$1300? 10

Mr. Schotland: Yes, sir. As to another mortgage he paid \$50. a month. Here it is.

The Court: You do not deny getting these particular sums?

Mr. Schotland: That \$1300., is an absolute lie. We never got that. The moneys he says he paid—(Interrupted)

The Court: It can be determined by having this Preziosi here. Send word to him and have him here at two o'clock. 20

Q. How did you come to get this mortgage from Cianboli? You are in the building business? A. Yes, sir. I built a house.

Q. You built a house for Cianboli? A. Yes, sir.

Q. This second mortgage you took back as part payment? A. Yes, sir.

Q. Did you ever introduce Mr. Dotto to the Cianbolies? A. No, sir. 30

The Court: How do you know that Dotto knew that you were collecting the principal and interest from Cianboli?

Witness: Well, I told him.

The Court: When did you tell him?

Witness: I told him Cianboli promised to give me so much each month at the time when he gave me the \$2500., and he asked me how I can pay back, I said I will collect 40

Emelio Laudati—Cross.

from Cianboli and I will give it to you back.

Q. Are you the only one that ever collected interest from the Cianbolies? A. Yes, sir.

Q. On this particular mortgage?

The Court: And principal.

10

Q. And principal? A. Yes, sir.

Cross-examination by Mr. Schotland:

Q. Mr. Landati, you say you paid back the \$2500. that Mr. Dotto loaned you when you gave him the assignment of this \$4800. mortgage? A. Yes, sir.

20 Q. When did you pay it back? I pay him back —start from 1925 until 1927.

Q. Had you paid it back when you entered into the agreement Exhibit D-1? When you made this agreement with him had you paid back the money? A. That time it was paid, yes, sir.

Q. At that time it was paid? A. It was paid, the \$2500.

30 Q. I call your attention to the fact that the tenth paragraph of this agreement says: "It is further agreed that all the right, title and interest in the bond and mortgage of Pietro Cianboli assigned to Eugene Dotto, party of the first part, by Emelio Landati, party of the second part, shall pass to him absolutely and all the money received by Eugene Dotto or to be received on said bond and mortgage by the said Eugene Dotto after deducting the loans with interest shall be considered part of the consideration for this agreement." Do you
40 still say that you had paid him back the loans that

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he had made on that mortgage when you signed this agreement? A. Yes, sir. I paid that because he had my own check—he had all the checks.

Q. What loans was Mr. Dotto to deduct from the \$4800. mortgage before he credits the balance on this agreement? A. There wasn't any loans then.

Q. Why did you sign the agreement with that provision in it if you didn't owe him money then? 10
A. Because the understanding was he had another check to collect—the last check. He says, "In case you do not pay that check"—that is why he puts that in—he says "I will deduct it from the mortgage."

Q. What check was that? A. The balance on the \$2500.

Q. When was that \$1300. paid? A. When I got the money from Mr. Preziosi. 20

Q. When? A. That was 1927.

Q. What part of 1927? A. I can't remember the date.

The Court: Have you the mortgage? Have you the record of that Preziosi mortgage?

Mr. Schotland: I have the mortgage here.

The Court: What date does that bear?

Mr. Schotland: February 1st, 1927. This agreement is the following April. 30

Q. I show you a mortgage from Antonio Laudati to Preziosi. Is that the mortgage you are talking about? A. Yes, sir; that was the mortgage.

Q. That is the mortgage? A. Yes, sir.

Q. Your name isn't Antonio, is it? A. No. That is my brother.

Q. Then it was your brother— A. Yes, sir. 40

Emelio Laudati—Cross.

Q. —who got the mortgage from Preziosi? A. Yes, sir.

Q. And your brother sold that mortgage to Mr. Dotto, didn't he? A. That mortgage?

Q. Yes. A. No. He sold no mortgage at all.

10 Mr. Schotland: I offer the mortgage.
Paper marked Exhibit C-5 for identification.

Q. Is this the bond that goes with the mortgage? A. \$1500., yes, sir.

Q. That is the bond that accompanied this mortgage to secure the sum of \$1500? A. \$1500.

20 Mr. Schotland: I offer it.
Paper marked Exhibit C-6 for identification.

Q. Do you know your brothers' signature? A. Yes, sir.

Q. And do you know how Preziosi paid this mortgage back to your brother; that is how he paid the money on this mortgage to your brother? A. My brother?

Q. Yes. A. He never paid that mortgage at all.

30 Q. He never paid it? A. Because Preziosi got the two lots—my brother gave Preziosi the deed for those two lots.

The Court: He wants to know how Preziosi when he loaned the money—how he paid it back to your brother. Is that what you mean?

Mr. Schotland: Yes.

40 Q. How did your brother get this \$1500? A. He got it through Mr. Dotto.

Emelio Laudati—Cross.

Q. How did Mr. Preziosi pay the money over?

A. Well, I don't know. He got a check from Mr. Dotto.

The Court: Who did?

Witness: My brother got the check.

The Court: And that is the check that you say did not go through the bank.

10

Q. But Mr. Dotto kept that, which paid off the balance of the \$2500. that you owed him? A. That was only \$1300.

Q. That is what you said, the \$1300.—the balance out of this \$1500 mortgage—that is right, is it? A. Yes, sir.

Q. Now I show you six checks to the order of Anthony Laudati made by Eugene Dotto aggregating \$1500. Will you look at those checks and tell me if that is how Preziosi gave the money to your brother for that mortgage?

20

The Court: Do the five checks make it?

Mr. Schotland: Six checks. They account for the \$1500. proceeds of that mortgage.

Witness: I want to say three checks were retained by Mr. Dotto.

The Court: Dates and amounts?

Mr. Schotland: February 15, 1927, \$648.94, next is the same date \$351.04.

30

Witness: That was retained. I endorsed that check and give to Mr. Dotto.

The Court: What?

Witness: I endorsed that check, put my name on it and gave it to Mr. Dotto.

The Court: Give it to Mr. Dotto for what?

Witness: On the payment of that \$1300.

The Court: Is it so marked?

40

Emelio Laudati—Cross.

Mr. Schotland: One is endorsed by this witness.

The Court: Any further endorsement than that?

10 Mr. Schotland: The other one is endorsed by Antonio Landati and deposited—one of those deposited to Mr. Landati's account, not the other. The \$351.04 is deposited to Mr. Dotto's account; the other was evidently cashed by this witness, the \$648.

Q. You have handed me two checks, one for \$350.04, which was deposited, after being endorsed

— A. By my brother.

Q. By your brother—in Mr. Dotto's account?

A. Yes, sir.

20 Q. Do you know what that \$351.04 was for? A. No; because my brother give that to me.

Q. Why was it given to Mr. Dotto? A. Because he loaned the money to me. My brother loaned me that money to give to Mr. Dotto. That is why he gave me that check.

The Court: I thought you said that you borrowed the money. You borrowed the money from Preziosi?

30 Mr. Schotland: That was his direct testimony.

Mr. Bianchi: He is using his brother as himself.

The Court: He tells me that he borrowed this money.

Mr. Bianchi: This man borrowed the money and used the brother to accomplish it.

40 The Court: How did the brother lend

Emelio Laudati—Cross.

him his own money? I cannot understand it.

Q. What was this \$350.04 given to Mr. Dotto for? A. On payment of the \$1300., the last check I owed him on the \$2500. loan he give me.

Q. Why was the \$51.04—\$351.04? Why the \$51.04? What does that mean? A. That was the balance. 10

Q. Does that mean any interest or— A. No; after we figured—take all the expense out of that \$1500. They paid—taxes has got to be paid—that was the balance.

Q. You got a statement from Mr. Dotto on February 15, 1927, showing just how this \$1500. received from Preziosi was paid out, did you not? A. I never received no statement. My brother, he got the mortgage, not me. 20

Q. Was the property yours? A. It was mine and I turned it over to my brother.

Q. To hold it for you? You turned it over to your brother to hold it for you? A. No; just I give it to him because he says he had idea to build bungalow.

The Court: How did your brother come to raise \$1500 on his land—how did he come to raise \$1500. on your lot? 30

Witness: Not my lot. It was my lot before; then I turned the deed to him.

The Court: After you made the mortgage?

Witness: No; that was before.

The Court: Did you give your brother the lot free and clear?

Witness: Yes, sir; free and clear then. 40

Emelio Laudati—Cross.

The Court: And he made the mortgage on it?

Witness: He made the mortgage for me, because after I give him the lot—(Interrupted)

10 The Court: He lent you the \$1500. is that what you mean?

Witness: Yes, sir. I said to my brother I got to pay Mr. Dotto \$1300.

The Court: And you used this property to raise the money, is that your understanding?

Witness: Yes, sir.

20 Q. I show you a carbon copy of a statement, dated February 15, 1927, accounting for the mortgage from Antonio Landati to Preziosi. Did you ever see a copy of that statement before? A. No.

Mr. Schotland: I offer it.

Paper marked Exhibit C-7 for Identification.

30 Q. The first item on the statement C-7 for identification is to the Small Loan Association \$118.36, and one of these checks which I showed you bearing that date made to the order of Antonio Landati is endorsed over by Antonio Landati to the order of the Small Loan Association, \$118.36. Will you look at that check? A. I look.

Q. Do you know why that was endorsed over to the Small Loan Association? A. No. That was not my business.

Q. That was not your business. That is your brother's endorsement on that check? A. Yes, sir.

40 The Court: Is that brother here?

Emelio Laudati—Cross.

Mr. Bianchi: No.

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

Paper marked Exhibit C-8 for identification.

Mr. Bianchi: This is all news to me.

The Court: You haven't investigated. 10
This man would have told you the story.

Q. I show you check which appears—the second item on the statement Exhibit C-7 for identification, for \$250. to the order of Antonio Landati and endorsed by him to the order of Mr. Dotto. Do you know what that \$250 check was given to Mr. Dotto for? A. I think this check—

Q. This check was given to Mr. Dotto for his services as lawyer's fees, was it not? A. \$250? 20

Q. Yes. A. No.

Q. How much was paid Mr. Dotto for his services and lawyer's fees? A. I think he charged \$75.

Q. You think so. Do you know what this \$250. was for? A. That \$250?

Q. Yes. A. That was given in payment on the \$1300.—balance of the other check.

Q. On the payment of the \$1300? A. Yes, sir. 30

The Court: You have other checks here that you have identified as having been used to pay off the \$1300. Can you tell me why the amount was split up in the different checks?

Witness: I don't know. Mr. Dotto—

The Court: Was Mr. Dotto your lawyer?

Witness: Yes; he was my lawyer.

Emelio Laudati—Cross.

Q. The third item on the statement C-7 for identification refers to check for \$56.66. I show you check for \$56.66 made to Antonio Landati and endorsed by him to Oberlander, collector. Do you know what that check was used for? A. That was used for taxes.

10 Q. Yes. And you see that that had been, on this statement for two assessments. Now the fourth item. I show you check made the same date for \$75., endorsed by Antonio Landati, also to the order of Oberlander, collector, and call your attention that the fourth item on the statement accounting for this \$1500 says it is Oberlander for taxes, \$75. A. Yes, sir.

Q. Was that check used for taxes? A. Yes, sir.

20 Q. Mr. Landati, I call your attention to the fact that the fifth item on this statement Exhibit C-7 for identification says "E. Dotto for returned checks \$351.04, and I show you the check for \$351.04 made to the order of Antonio Landati and indorsed by him and then deposited by Mr. Dotto. Isn't that \$351.04 to make good returned checks of Antonio Landati to Mr. Dotto? A. My brother? Never.

30 Q. Or your checks? A. No, sir. That was to pay on the \$1300.

Q. You say that is not to make good your checks? A. No, sir. That was to make good that check of \$1300. I have to pay.

Q. Did your brother get a statement of this account? A. I don't think he did.

40 Q. You don't think he did? Now the last item on this statement is to Antonio Landati \$648.94, which is apparently the balance of this full \$1500. Who got the money on that check? A. Mr. Dotto.

Emelio Laudati—Cross.

Q. Where is his name showing he got the money on that check? A. Well, I turned it over to him.

Q. Didn't you cash that check and keep the money? A. I didn't out him through my bank.

Q. Did you cash the check and get the money?
A. No. This I signed and I gave to him—I give it to Mr. Dotto.

10

The Court: He wants to know whether you didn't cash the check and keep the money?

Witness: No. I never cashed that check.

The Court: Your dealings were with what bank?

Witness: The First National Bank of West Orange.

Q. I call your attention to the fact that this check for \$648.94 which you say you indorsed and gave to Mr. Dotto on account of the \$1300. that you claim to have paid him bears the indorsement of your brother on the back? A. Yes, sir.

20

Q. As the first indorser? A. Yes, sir.

Q. Your own personal indorsement right underneath? A. Yes, sir.

Q. And the bank stamp of the First National Bank of West Orange? A. Yes, sir.

30

Q. Which you say was your bank? A. Yes, sir; that is my bank.

Q. Do you still say that you gave that check to Mr. Dotto? A. No. No, I do not give that check to Mr. Dotto; no. I do not give this check to Mr. Dotto, no.

Q. You kept that money, didn't you? A. No; I cashed the check—now I remember. I cashed the check and next morning I bring over the cash money.

40

Emelio Laudati—Cross.

Q. To where? A. To Mr. Dotto's office.

Q. Did you get a receipt for it? A. I got the check. He gave me the \$1300. check, but he still held that \$1300—

10 Q. Where is the \$1300 check? A. I destroyed. After I paid what do I want to keep that check for?

Q. What was that check for? A. It was balance on the \$2500 loan.

The Court: When did you give him a check—When did you give Dotto a check for \$1300?

20 Witness: The time when I got the \$2500. Mr. Dotto take twelve—twenty-four—twenty-five checks from me, dated one each month. The first one was \$62.50.

The Court: You mean you got back from him the twenty-six checks?

Witness: Twenty-five. I give him twenty-five checks for \$2500.

The Court: One hundred dollars each?

30 Witness: No. One check was for \$52.50, the first. Second one was for \$62.25; third was for \$62; see? Reduced twenty-five cents each month.

The Court: When you paid him over this money, this \$700. how many checks had he?

Witness: \$700? I didn't pay only \$700.

The Court: When you paid him the cash—this cash of \$648. how many checks had he then?

Witness: One check, \$1300.

The Court: How did that come about?

40 Witness: Because I paid him the other checks from 1925.

Emelio Laudati—Cross.

The Court: How did you come to give him a \$1300 check when you gave him other checks for sixty-two dollars and some cents?

Witness: Two years was only \$1200 and \$50 a month and the \$1300 makes the \$2500.

The Court: How did you pay him the interest? 10

Witness: The interest I paid him every month. That is why he collected first time \$62.50, and then \$62.25, \$62. and \$61.75.

The Court: And so on down?

Witness: Down to the \$1300, was the last check.

The Court: Did that make up the full interest on the \$2500?

Witness: On \$2500 for two years. 20

Q. Now when did you borrow this \$2500 from Mr. Dotto? A. I cannot remember the date. It was in 1925.

The Court: When you gave the assignment?

Witness: Yes, sir.

Q. That is June 1, 1925? A. Some time like that. 30

Q. And you paid him, you say, this fifty dollars and the interest every week? A. Every month.

Q. Every month fifty dollars a month? A. Fifty dollars plus interest.

Q. Plus interest, every month? A. Regularly, yes, sir.

Q. Never skipped? A. No.

Q. From June 1st; and then there was a balance 40

Emelio Laudati—Cross.

due of \$1300 when your brother borrowed the \$1500. from Preziosi, is that right? A. Yes, sir.

Q. Will you show me how you paid \$1200. at the rate of \$50 a month from June 1st, 1925 to February 15, 1927? A. Well, it is pretty near two years.

10 Q. That is two years, is it? A. Sure.

Q. And you paid \$50 a month? A. I paid \$50 a month, plus interest.

The Court: Have you examined Mr. Dotto's bank account to find out whether there were any checks deposited for these odd sums, \$62.50?

Mr. Schotland: I have the full records.

20 The Court: Find any identification of them?

Mr. Schotland: Not in connection with this mortgage.

The Court: Did you find any identification except the checks?

Mr. Schotland: I have another mortgage on which they were paid. I have record of the payment of \$700.

30 Q. As a matter of fact didn't you pay, on account of this \$2500 loan, to Mr. Dotto—didn't you pay him \$200 on November 1st, 1925, by your check for that amount? A. \$200?

Q. Yes. A. Not on that loan.

Q. What did you pay it on? A. Well, I got a lot of transactions with Mr Dotto. I cannot remember what I give him \$200 for; not on the loan.

Q. Didn't you on May 1st, 1926 pay him \$250. on account of this loan? A. No, sir.

40 Q. And didn't you on November 1st, 1926, pay

Emelio Laudati—Cross.

him \$250. on account of this loan? A. No, sir.

Q. And didn't you on November 1st, 1927, pay six months interest on \$1800, balance of this \$2500, to Mr. Zazzelli here, \$54.00? A. No, sir; that was the insurance.

Q. That was insurance, the \$54? What insurance was that? A. On 91 Ashland Avenue—on the property 91 Ashland Avenue. 10

Q. What was the premium? A. Well, there was a balance due. Mr. Zazzalli got the policy out himself and he told me to pay that.

Q. Can you explain how it just happens to be \$54. which is six months interest on \$1800? A. That was balance on the policy I think, not interest on the mortgage.

Q. You remember speaking to Mr. Zazzalli Friday night? A. Yes, sir. 20

Q. Do you remember telling him that you had all the checks showing all the payments that you made? A. Yes, sir.

Q. What did you do with the checks since Friday night? A. I'll tell you. I looked for them and I found out that I destroyed every one last year—I burned them all up.

Q. When did you burn them up? A. Last year; 1928. 30

Q. 1928? A. Yes, sir.

Q. When did you find out that this case had been started in this court? A. What did you say?

Q. When did you find out that this foreclosure had been started on this mortgage? A. Until Mr. Cianboli come to me and told me.

Q. When did you find that out? A. About four or five months ago.

Q. Did you destroy those checks before or after 40

Emelio Laudati—Cross.

you found out this suit had been started? A. No; before.

Q. You destroyed them before, you remember?

A. It was the last part—

Q. You remember that now, do you? A. It was the last part of 1928.

10 Q. When you destroyed the checks? A. When I destroyed the checks, because I lost a lot of money in building and at that time I was half crazy, so I destroyed everything.

Q. The last part. You know this suit was started the last part of 1928; December 20th. A. That was on the first of 1928, I tell you, I destroyed all those things.

Q. I thought you said the last part? A. I said the first part of 1928.

20 Q. The first part, not the last part? A. No, the first.

Q. Why did you destroy them? A. I told you during 1927 I lost a lot of money in the building game, so I was half crazy at that time and I cleaned everything up—I burned everything up.

Q. You knew that Mr. Dotto died as the new year of 1928 came in, didn't you? A. I know Mr. Dotto died 1928; I can't remember the date.

30 Q. At the time that he died you knew of it, didn't you? A. I knew it two or three days after.

Q. Now did you destroy your checks after you knew that he died? A. No; they were destroyed before.

Q. He died on the first of January, 1928? A. Well, I cannot remember that.

40 Q. And you say you destroyed your checks in the early part of 1928? A. 1928. Some time in 1928.

Emelio Laudati—Cross.

Q. It was after Dotto died, wasn't it? A. Maybe. I don't know. I can't say.

Q. You knew you had some accounts with Dotto, didn't you? A. Yes, sir. I knew it was paid.

Q. Why did you destroy checks when you knew you had open accounts with him? A. I had no open account with him.

Q. Didn't you have any open account? A. No; not at that time, because the check was all paid for.

Q. I show you a mortgage, originally made by Cocozza and wife to Emelio Landati, that is yourself, is it not? A. Yes, sir.

Q. For \$4,000. A. Yes, sir.

Q I show you an assignment dated the 20th of August, 1924, made by you to Mr. Dotto of that mortgage. Do you recognize this mortgage and assignment? A. Yes, sir.

Q. This mortgage was payable at the rate of \$15 per week wasn't it? A. \$15 a week, yes, sir, from Cocozza.

Q. And Mr. Dotto loaned you \$2000 on this mortgage, did he not? A. Yes, sir.

Q. And this \$50 a month that you are talking about with interest, isn't that how you paid him back the \$2000 that he loaned you on this mortgage? A. That was a year before I got the \$2500; that was 1924 he loaned me the \$2000 on that mortgage.

The Court: You borrowed the \$2500 in 1925?

Witness: In 1925.

Mr. Schotland: I ask that this mortgage and assignment be marked.

Papers marked Exhibits C-9 and C-10 for identification.

Emelio Laudati—Cross.

Q. How do you say that you paid back this \$2000. A. That \$2000?

Q. Yes, that you got on this assignment Exhibit C9 for identification? How did you pay it back?

A. It was paid when I got the money from Mr. Cocozza.

10 Q. That is about \$50 a month or \$60 a month?

A. No. Mr. Cocozza, he got a new mortgage on his house through Mr. Dotto, \$7000—he got \$8400 I think, then he paid me and that \$2000 was paid.

Q. I ask you to look at this mortgage which has been marked Exhibit C-10 for identification and I call your attention to the fact that this mortgage shows that it was not cancelled until March 4, 1927? A. Yes, sir; that was the time Mr. Co-

20 cozza got the \$8400 and this mortgage was paid all at once.

The Court: The mortgage was paid all at once or the balance was paid all at once?

Witness: Well what was due on it.

The Court: Had he paid \$15 a week?

Witness: No.

The Court: Had he paid the \$15 a week?

Witness: No; he don't keep up those payments.

30 Q. He didn't keep up those payments? A. No, sir; not the \$15 a week; he told me he can't.

Q. Is it true that when you borrowed the \$2500 on the mortgage on which this suit is pending that you had already paid back Mr. Dotto the \$2000 that you borrowed from him on this mortgage C-10 for identification? A. No, sir.

Q. You hadn't paid him back? A. No.

40 Q. You owed him this \$2000? A. I still owed him them two thousand.

Emelio Laudati—Cross.

Q. At that time? A. At that time; yes, sir.

Q. And when did you pay back that \$2000? A. The time when Cocozza paid me that mortgage.

Q. How did you pay that \$2000? How? In what way? By check? A. No.

Q. How was it paid back? A. It was paid back—Mr. Dotto made the check to my order from the Cocozza mortgage and then I signed over to him again. 10

Q. And how much was that check for? A. That check—he make one \$2000 and give me the balance in cash—separate checks.

Q. Was it cash or check? A. No; check.

Q. That you say was in March, 1927? A. Later—some time that time.

The Court: Is Cocozza here? 20

Mr. Bianchi: No, your Honor.

Witness: I cannot remember when Cocozza got the mortgage.

Q. In May, 1925, didn't Mr. Dotto lend you an additional \$500 on this \$4000 Cocozza mortgage? A. Additional? No.

Q. May 19, 1925, didn't Mr. Dotto lend you \$500 more on the Cocozza mortgage? A. I never remember that. 30

Q. He did not? I show you a check dated May 19, 1925, for \$500, to your order, is that your indorsement on it? A. Yes, sir.

Q. Did you get that \$500? A. Well, the \$500—that was on account of that \$2500.

Q. Are you sure? A. It was on account of that \$2500.

Q. Are you positive? A. Well it must be that \$500— 40

Emelio Laudati—Cross.

Q. I want to know whether you are positive in claiming that that \$500 check was on account of the \$2500 on this mortgage? A. The mortgage was \$25—

The Court: June 1st and this is May.

10 Witness: I tell you—I can't remember what I got that \$500 for.

Q. Did he ever lend you any money before you assigned security to him? A. Yes, sir; lots of times.

The Court: Was he a sort of banker to you?

20 Witness: Well, any time I run short, because he knew I deal through his office—any time I run short to make payment more than once he lend me money—give me some personal check.

The Court: In 1924?

Witness: 1924, 1925—because most all my business I deal through his office.

30 Q. Now don't you remember you borrowed altogether \$2500 on the Coccozza mortgage from Mr. Dotto? A. No. I remember I signed \$2000—he loaned me \$2000 not \$2500. In 1925 he give me \$2500 on Cianboli mortgage.

Q. Now I show you the assignment which has been marked Exhibit C-9 for identification, assignment of the Coccozza mortgage; show me where you signed in there that that is for only \$2000.

The Court: Does it read for any sum?

Mr. Schotland: It assigns the whole \$4000.

40 Witness: Up here.

Emelio Laudati—Cross.

Q. In consideration of \$2000. That is right. Now, didn't you after that date—after August 20, 1924, and on May 19, 1925, borrow the additional \$500? A. No, sir; not on the Cocozza mortgage.

Q. Do you know what you did borrow this \$500 on? A. Maybe that \$500 on the Cianboli mortgage because I spoke to Mr. Dotto for the last two months before I get that loan. 10

Mr. Schotland: I ask that the check of May 19, 1925 be marked.

Paper marked Exhibit C-11 for identification.

By the Court:

Q. Tell me what the arrangement, if any, was as to collecting the interest or principal on the Cianboli mortgage. A. There was nothing at all, only I had to pay the \$2500 back. 20

Q. How was Cianboli to pay you? A. Cianboli pay me?

Q. What was the arrangement as to what Cianboli was to pay? A. Well, it was up to him. Unless he earned—some months give me \$50.

Q. As you went along? A. Some months \$100.

Q. What arrangement had you with Mr. Dotto? A. We had no arrangement at all. 30

Q. About collecting the mortgage. What arrangement had you with Dotto for collecting the money from Cianboli? A. No arrangement at all. He left everything up to me to collect that and pay the loan.

Q. You say he left it up to you. What did he have to say to show that he left it up to you? A. He told me—he says collect the money from Cianboli and pay me that loan. 40

Emelio Laudati—Cross.

Q. He told you to collect it? A. Yes, sir; I did collect all the time.

Q. Where did he tell you? A. Right in his office at the time.

Q. As you got the money from Cianboli you paid it over to Dotto? A. Yes, sir.

10 Q. Do you know whether Dotto knew that the money you were paying over to him was Cianboli's money? A. Sure he know it.

Q. How did he know it? A. I told him.

Q. What did you say to him at any particular time? A. I told him when Cianboli pay me something on the mortgage I will tell him.

Q. At the time when you brought him the money what did you say to him about it? A. I would tell him, "Mr. Dotto, I got some money for you; I
20 collect some money from Mr. Cianboli.

Q. You told him that? A. Yes, sir.

Q. Each time? A. Yes, sir.

Adjourned until June 20, 1929.

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IN CHANCERY OF NEW JERSEY.

Between
 CATHERINE DOTTO, Executrix un-
 der the last Will and Testa-
 ment of EUGENE DOTTO,
 Complainant,
 and
 PIETRO CIAMBOLI and MARIA
 CIAMBOLI,
 Defendants.

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Newark, N. J., June 20, 1929.

Before—HON. JOHN H. BACKES, Vice Chancellor.

APPEARANCES:

PHILIP J. SCHOTLAND, Esq., Solicitor for
 the Complaint; 20
 O. C. BIANCHI, Esq., Solicitor for the De-
 fendants.
 HYMAN BUSCH, Esq.

EMELIO LAUDATI, recalled as a witness on
 behalf of the defendants, testified further as fol- 30
 lows:

Cross-examination (continued) by Mr. Schotland:

Q. Mr. Laudati, you spoke of some checks that
 you gave to Mr. Dotto—\$62.50, the first month,
 \$62.25, the next month, the interest being twenty-
 five cents less each month—in which manner you
 paid off \$1,200 on account of the \$2,500 that Mr.
 Dotto loaned you on the Ciamboli mortgage. Who 40

Emelio Laudati—Cross.

made out those checks? A. Mrs. Dotto and myself.

Q. Didn't Peter Zazzale make out those checks?
A. Well, I find already made there what I send. I don't know who made it.

Q. Weren't those checks all made out at one time? A. Yes, sir.

10 Q. Weren't those checks a method of paying back to Mr. Ciamboli the money that he loaned you on the mortgage given by Cocozza which you assigned to him? Isn't that so? A. No, sir.

Q. I show you Exhibit C-10 for identification, being the mortgage given by Cocozza to you, dated June 25, 1924, and I show you the assignment of that same Cocozza mortgage, Exhibit C-5, dated August 20, 1924. A. Yes, sir.

20 Q. Wasn't it to repay the \$2,000 that Mr. Dotto loaned you on this Cocozza mortgage in August, 1924, that you signed that whole series of checks of \$50 each, with interest, to pay him? A. No, sir.

Q. What is that? A. No, sir.

By the Court:

Q. Yes, sir? A. No, sir. This mortgage—

Q. No, sir? A. No, sir. I said this mortgage

30 ———

Q. What date is the check? A. This is August 20, 1924.

By Mr. Schotland:

Q. Mr. Laudati, you have said that you destroyed all those checks for \$50 and interest. Is that right? A. Yes, I destroyed everything.

40 Q. Didn't you destroy them because on the face of each check was written "On account of Cocozza mortgage"? A. No, sir.

Emelio Laudati—Cross.

(Discussion between court and counsel.)

Q. I show you Exhibit D-1, which is the agreement that you made on the 2nd of April, 1927, with Mr. Dotto, to buy from him a piece of property on Ashland Avenue, West Orange, in which agreement you made the assignment of the Ciamboli mortgage—the mortgage in question here—absolute to Mr. Dotto as a deposit on the purchase price of that property. You have said that when this agreement was made you had already paid back to Mr. Dotto the whole \$2,500 that he had loaned you when you assigned the Ciamboli mortgage to him. Is that right? A. Yes, sir. 10

Q. I call your attention to paragraph six, which I did not notice at the last hearing, in the last part of which paragraph it says, "It is also hereby mutually agreed that the party of the first part"—that is, Mr. Dotto—"shall credit to this contract any moneys that he may collect from a certain mortgage given by Pietro Ciamboli to the party of the second part and assigned by the party of the second part to the party of the first part as security for other loans after deducting the amount of principal and interest on the other loans." If you had paid back the other loans, why did you sign an agreement providing that Mr. Dotto should first credit the moneys that he collected on the Ciamboli mortgage in payment of the other loans and credit the balance on his contract? A. Well, just I will answer that question. Because I used to do a lot of business with Mr. Dotto, and once in a while—I was in business a long time—I ran short of money. I used to go to him, and he lent me money, so I put that to his name. 20 30 40

Emelio Laudati—Cross.

By the Court:

Q. At the time when you signed that agreement was there any balance due from Ciamboli? A. Yes.

Q. How much? A. Why, \$1,200.

By Mr. Schotland:

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Q. A book has been produced here by the Ciamboli's, in which, they say, you wrote down the payments that you received. I show you the book. Is that all in your handwriting? Did you write all that? A. Yes, sir.

Q. You wrote all of that? A. Yes, sir.

Q. Will you now look at this and tell me when you received the first payment on account of the Ciamboli mortgage. A. (Referring to a book)
20 The first payment he made to me directly was on July 5.

Q. What year? A. 1925.

Q. July 5, 1925? How much? A. Thirty-five dollars.

Q. Thirty-five dollars? A. Yes, sir.

Q. On account of the \$4,800 mortgage? A. And \$487 I collected from the building and loan.

Q. What do you mean, that you collected from
30 the building and loan? A. Was money left over there after we assigned the second mortgage.

Q. After you assigned the second mortgage there was money left over? A. Yes.

Q. You collected from the building and loan how much? A. \$487.

Q. \$487 or \$478? A. \$487.

Mr. Bianchi: \$487 is right.

Q. You received, you say, \$35 on July 5? A.
40 \$35.

Emelio Laudati—Cross.

Q. That is 1925? A. Yes, sir.

The Court: When was the \$2,500 loan made?

Mr. Schotland: June 1, 1925. He made a mistake in testifying from his book.

Q. When did you receive that \$487? A. \$487? 10
Let me see. (Referring to a book) Oh, that was on July 5, 1924. 1924, not 1925, when I received the \$487.

Q. 1924? A. 1924, yes.

Q. When did you receive the \$35? A. Thirty-five was on July, the same year—1924.

Q. What else did you receive on account of the principal? A. On August 4, 1924, I received \$100. September 3, 1924, I received \$80. November 5, 1924, I received \$130. Then February 3, 20
1925, \$100. March 9, 1925, \$60.

Q. Did you give that money to Mr. Dotto? A. How I can give that money to Mr. Dotto, because I never give assignment that time? I give the assignment after.

Q. All right, go ahead. A. On April 7, 1925, I received \$60. May 2 I received \$60. June 1 I received \$100. July 7 I received \$100. August 13 I received \$100. 30

Q. That is— A. 1925.

Q. Yes. A. September 5—

Q. Just a moment. June 1, 1925, you received \$100? A. Yes.

Q. That is the same day on which you assigned the mortgage to Mr. Dotto, is it not? A. Well, the mortgage was assigned before.

By the Court:

Q. What was that? A. Was assigned two or 40

Emelio Laudati—Cross.

three days before. I assigned that mortgage.

Q. The day preceding June 1? It had been arranged before that? A. Yes, it was an arrangement before that.

By Mr. Schotland:

10 Q. I show you an assignment, signed by you on the 1st of June, Exhibit C-4. Does that refresh your recollection as to when you assigned the mortgage? A. Yes, sir.

Q. I notice on the back of this assignment, Exhibit C-4, that you acknowledge it on the 9th of June. A. Yes.

Q. That is the time when you acknowledged that that is your signature (indicating)? A. Yes.

20 Q. Is that the time when you got the money for this assignment—when you acknowledged it? A. I got the money before that.

Q. You had received the money before? A. Yes.

Q. When you signed and acknowledged this assignment you certified that there was \$4800 due on this mortgage? A. Yes.

30 Q. Look at the assignment. A. Well, I know, I told Mr. Dotto—the mortgage was \$4800 and the loan only twenty-five. I told him was about thirty-eight hundred paid—to be paid on it.

Q. You covenanted in this assignment that at the time when you made it Ciamboli owed on the mortgage forty-eight hundred dollars? A. No, sir.

Q. I am showing it to you. A. I say that to Mr. Dotto. He said he wants that assignment of the mortgage, because the mortgage call for \$4800.

40 Q. Why did you destroy the checks that you say you paid Mr. Dotto with? A. Well, I told you last time, too, why it was I destroyed it. I was

Emelio Laudati—Cross.

disgusted. I lost a lot of money in the real estate contracts and I burned all my record. I burned everything, not the checks only; everything I burned.

Q. You knew before Mr. Dotto died that they were disputing the amount owed on the mortgage, didn't you? A. I didn't know anything about that. 10

Q. You didn't? A. No.

The Court: Mr. Dotto died when?

Mr. Schotland: As 1928 was coming in. June 1, 1928. We don't claim the full \$4,800 represented by the mortgage in question; we claim that on June 1, 1928, when the mortgage was assigned to Mr. Dotto, it was assigned as security to repay to him \$2,500 which he had loaned to Emelio Laudati at or about that time, and that there has been repaid to Mr. Dotto by Laudati on account of that loan \$2,500 and \$700. The \$700 was repaid in this way: November 1, 1925, \$200; May 1, 1926, \$250; November 1, 1926, \$250. We are therefore only insisting on the balance of \$1800 as against the defendants here. The absolute assignment for the balance of the mortgage which Mr. Dotto had received in his lifetime under the agreement that has been offered in evidence by the defendant and marked Exhibit D-1, we are waiving. 20 30

The Court: You are waiving and you can't recover.

Mr. Schotland: I beg to differ with your Honor. We are waiving in order not to do anything inequitable to the Ciamboli's, because we have back the property upon which 40

Emelio Laudati—Cross.

that was supposed to have paid as a deposit.

The Court: Even though you have, before your second assignment all of these payments were made to this witness, and you only take what he could have assigned to you. That is the reason why you are waiv-

10

ing.
Mr. Schotland: I am not waiving it for that reason at all, because, in the first place, the assignment we took wasn't of an interest in the mortgage. We took an absolute assignment of the entire mortgage—of the \$4800.

The Court: When?

Mr. Schotland: On June 1, 1925, we took an absolute assignment of that mortgage.

20

The Court: But it was, in fact, an assignment of that mortgage to the extent that \$2500 of the mortgage was reimbursed.

Mr. Schotland: If we hadn't gotten \$2500 out of it, that is all that was coming. If we realized more, we would give the excess to Laudati. Your Honor must bear in mind that this was a second mortgage, and although the amount of it was \$4800, there was no certainty that in case Ciamboli did not pay and you foreclosed, we can realize as much as \$2,000. The assignment was an absolute assignment of record, and we were the owners of it, subject to turning back. At the time when I drew the bill I wasn't familiar with all of the facts connected with the agreement, Exhibit 1; therefore, I didn't waive the \$3,000 part which I am now waiving in open court.

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Emelio Laudati—Redirect.

By Mr. Schotland:

Q. Wasn't it written on the face of every one of those checks of fifty dollars, with interest, that they were in payment on account of the Coccozza mortgage?

The Court: He has already answered that. 10

A. No, sir, nothing on the Coccozza mortgage at all; just payable to Gene Dotto.

Redirect-examination by Mr. Bianchi:

Q. The transactions relative to the Coccozza mortgage were back in June, 1924, weren't they?

A. Yes, sir.

Q. At the time you paid this money you were in the building business? A. Yes. 20

Q. You were the owner of considerable land?

A. What is that?

Q. You were the owner of considerable land?

A. Yes, sir.

Q. And you lost it all, is that true? A. Yes, sir.

Q. Then you got in money trouble? A. I lost all in business. 30

Q. You became sick? A. Yes, after that.

Q. That is when you started to grow a beard, isn't it? A. Yes, sir.

Q. Did Mr. Dotto at any time tell you not to collect any money from Ciamboli? A. No.

Q. Did the Ciamboli's ever give any interest to Dotto? A. No, sir.

Mr. Schotland: I object to that.

Q. That you know of. 40

Emelio Laudati—Redirect.

Mr. Schotland: I object to this witness testifying as to what the Ciamboli's did.

The Court: (After discussion) Objection overruled.

Q. Did Mr. Dotto know that you were receiving money from Ciamboli that you were paying to him?

10 A. Yes.

Mr. Schotland: I object to that.

The Court: Objection overruled.

By the Court:

Q. How did he know? A. Because I told him any time I collected—any time I bring down the payment, "I will tell you. I will collect some money from the Ciamboli's."

20 *By Mr. Bianchi:*

Q. Aside from this book in which you put the receipt of the money from the Ciamboli's, do you know of any books that Mr. Dotto put any payments down in? A. No, sir.

Q. Do you know how the \$700 is made up that the complainant has admitted having received? A. Seven hundred dollars?

30 Q. You had a certain transaction of \$700? A. Not on the Coccozza mortgage.

Q. Do you know anything about any \$700 towards the \$2500 mortgage? A. No, sir.

Recross-examination by Mr. Schotland:

40 Q. Since the last hearing have you found out where and how you gave the \$1300 check to Mr. Dotto which you say paid back the \$2500 that he had loaned you for the Ciamboli mortgage? A. He don't give the check; I gave him the check for

Emelio Laudati—Recross.

\$1300; when my brother got \$1500 from Preziosi, I give the \$1300 to Dotto, some in check and some in cash, and he returned my check for \$1300, because he have the money in his possession.

Q. You gave him? A. I gave him. I took some money from the Preziosi mortgage.

Q. The last time you testified that the \$1300 check— A. Well, he have the check in his possession. 10

Q. Will you please let me ask the question. That \$1300 check you were supposed to turn over out of the Cocozza \$1500 mortgage he kept, and that that made up the balance of the \$2500. Do you remember testifying to that? A. I didn't say that; I say I paid \$1300 check because Mr. Dotto had in his possession.

Q. I show you six checks dated February 15, 1927, all drawn by Eugene Dotto to the order of Antonio Laudati, the total of them making up the \$1500 of the Preziosi mortgage. 20

The Court: As you allege.

Q. I show you these checks. Will you look at them and see if those are the checks by means of which the \$1500 that you borrowed through your brother from Preziosi was paid out by Mr. Dotto? A. Yes, sir. 30

Mr. Bianchi: I offer in evidence the checks, which are all dated February 15, 1927, and are numbered from 1360 to 1365, consecutively, serially, and inclusively.

(The papers referred to were received in evidence and marked Exhibit C-1 of 6/20/29).

Emelio Laudati—Recross.

10 Q. I show you Exhibit C-1 of today, and ask you to pick out which of those checks make up the \$1300 that you say you paid to Mr. Dotto. A. Not one check. I don't say I made a check for \$1300. I give a check to Mr. Dotto for \$1300 at the time he give me the loan. I made twenty-four checks for \$50, plus interest, and one check for \$13, \$1300, to be paid out at the last payment. At the time when I got this loan I give the money to Mr. Dotto, and Mr. Dotto give me that check back.

Q. Where did you get the \$1300 to give to Mr. Dotto to make good your check at the time when you got this loan from Preziosi? A. Well, I had some money in my bank.

20 Q. You drew some money out of your bank on that day? A. No.

Q. When? A. Was about three days or four days after, because Mr. Dotto give me a check for the balance. I had somewhat debts to pay to him, and he retained them, and the balance he said, "Well, bring down the rest of the money and pay that check for \$1300."

The Court: What date was that, please?

30 Mr. Schotland: This was on February 15, 1927.

Q. Now, Mr. Laudati, you say that one check Mr. Dotto took to make good for some checks of yours that you owed him? A. No, he took the expense out and some assessments, his salaries. He took all that out.

40 Q. Didn't he take out \$351.04 by check No. 1364 for some returned checks of yours? A. No, I don't know it.

*Andrew Preziosi—Direct.**By the Court:*

Q. How much of a check did you give him? A. I don't give him no check.

Q. You said that there wasn't enough and that you gave him a check to make up the \$1300. A. No, I didn't give him no check.

Q. What did you give him? A. I give him cash for the \$400 after. 10

Q. How much? A. Well, to make up the \$1300.

Q. How much was it? A. \$1300.

Q. Yes, but how much did you give him in cash to make it up? A. I think I bring cash around \$900 or \$1,000. I never remember that.

Q. Where did you get it? A. Well, I was in business.

Q. Where did you get the \$900 or \$1,000? A. Well, I was in business. I collect. 20

Q. Did you draw it out of the bank? A. No, I collect the money in business.

Mr. Bianchi: Is there any question about his having advanced \$1,500?

Mr. Schotland: I have put in evidence the checks disbursing the \$1,500 advance.

30

ANDREW PREZIOSI, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct-examination by Mr. Bianchi:

Q. You are a client of the law office of Mr. Dotto? A. Yes, sir.

Q. You advanced a sum of money of \$1,500 on a Laudati mortgage on Keansburg property? A. Yes, sir. 40

Peter Ciamboli—Direct.

Q. When did you do that?

The Court: The mortgage is in evidence.

A. February 7, 1927.

Q. How much did you advance? A. \$1,500.

Q. Do you know how the money was disbursed?

A. No, I don't.

10 Q. Whom did you give the money to? A. I made a check to Mr. Dotto, and he acted as attorney for Mr. Laudati and I.

PETER CIAMBOLI, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

20 (Mr. Andy Spinosa, First Criminal Court, Newark, N. J., sworn as interpreter.)

Direct-examination by Mr. Bianchi:

Q. Mr. Ciamboli, you made a mortgage to Mr. Laudati for \$4800? A. Yes.

Q. After making that mortgage did you make payments to him? A. Yes.

30 Q. Did you make payments of principal and interest? A. Yes, sir, I did pay all the time interest and principal.

Q. Did Mr. Laudati give you a receipt in any kind of book for that payment? Is this the receipt book for principal and interest that you paid? A. Yes, sir.

Q. Referring to Exhibit D-2. Did you ever pay interest and principal to any one else except to Mr. Laudati? A. No, only to Mr. Laudati.

40 Q. Did any one tell you at any time that Mr. Laudati had sold or transferred the mortgage on

Peter Ciamboli—Direct.

which you were making these payments? A. No, sir.

Q. What was the first time that you knew that this mortgage had been sold or transferred to Mr. Dotto? A. 1928.

Q. How did you come to know of it? Did you get a letter or something? A. I received a letter. 10

By the Court:

Q. From whom? A. I don't remember the name. I just saw the letter once.

By Mr. Bianchi:

Q. You cannot read or write, can you? A. No, sir.

Q. What did you do with these letters after you received them? A. I took them over to my lawyer, Mr. Bianchi. 20

Q. Do you know whether these are the letters that you received (handing papers to witness)? A. No, sir, because I don't know how to read and write. I only received one.

Q. Did your daughter look at the letters? A. Yes, sir.

Q. Did any one call at your home after you had received those letters? Did Mr. Zazzale, this gentleman here, call at your house after you had received those letters (indicating)? A. Yes, sir, once. 30

Q. Did you see him at any other time? A. No, sir.

Cross-examination by Mr. Schotland:

Q. Who did you pay the insurance premium to on this house? A. To the insurance man, the one who sent me the bill. 40

Peter Ciamboli—Cross.

Q. Who? A. I got the bill over there. I don't remember.

Q. Didn't you have a copy of the policy to secure the second mortgage? A. I got the certificate.

Q. Where is the certificate? A. With Counselor Bianchi.

10 Q. Where is the certificate for 1925? A. Maybe home. That is the only policy I have (indicating).

The Court: Did you call for a certificate?

Mr. Schotland: Yes.

The Court: Have it marked, then.

(The certificate handed by counsel for the defendants to counsel for the complainant is marked Exhibit C-2 for Identification of 6/20/29.)

20 Mr. Schotland: Will you let me have the certificate that was in force on June 1, 1925? I mean the duplicate of the one attached to the original policy.

Mr. Bianchi: What I give you is the only insurance policy I have.

Mr. Schotland: I offer in evidence an original policy issued as of May 19, 1924, expiring May 14, 1927.

30 The Court: That is the one that accompanied the mortgage at the foreclosure?

(The paper referred to was received in evidence and marked Exhibit C-3, of 6/20/29.)

The Court: It is payable to whom?

Mr. Schotland: The original is payable to Emelio Laudati, as mortgagee. A rider dated June 5, 1925, changing the interest of Emelio Laudati to Eugene Dotto, has been

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Peter Ciamboli—Cross.

put on. I now ask for the certificate of this rider.

The Court: Wouldn't there be an original certificate?

Mr. Schotland: No.

The Court: I think you are referring to a policy and a certificate.

Mr. Schotland: No, the mortgagee gets the original policy and the mortgagor gets a sort of an abstract, such as this, instead of holding the policy. That is the certificate I am referring to. They are usually made in duplicate.

10

By Mr. Schotland:

Q. I show you the second sheet of Exhibit C-3 for Identification of today and ask you whether there was another sheet pasted on there, which is now missing? A. I don't remember.

20

The Court: Mr. Schotland, is what you have here the owner's certificate on the insurance, specifying as to the contents of the property that is made payable to the mortgagee?

Mr. Schotland: Yes, sir.

The Court: Is that what you are referring to?

30

Mr. Schotland: Yes, sir.

The Court: Is the one that you have had marked for identification the original policy that you refer to as of May 19, 1924?

Mr. Schotland: It is not for that policy. The first sheet of Exhibit C-3 of today consists of two sheets—one a certificate, certifying to the existence of the original policy which was in force from May, 1924 to May,

40

Peter Ciamboli—Cross.

1927; the other, a certificate of insurance which, upon inspection, I see does not apply to the mortgage policy in question at all; it applies to the building and loan policy.

By Mr. Schotland:

10 Q. Where is the certificate for the policy of insurance that you paid for to secure the second mortgage, which ran from 1927 and is still in force? A. I got one over here, and maybe the other is home. I do not know.

Q. You paid the insurance premium, did you not? A. Yes.

The Court: Is there anything in the paper that charges him with notice?

20 Mr. Schotland: Yes, it recites that the interest is of Eugene Dotto.

The Court: Have you brought that paper home to this witness?

Mr. Schotland: He says he has the certificate at home.

The Court: He says that he may have the certificate prior to the 1927 policy, which may be the one that you have reference to. Has this policy been brought home to him up to the present time?

(Discussion.)

By Mr. Schotland:

Q. Mr. Ciamboli, did you get a bill for fire insurance from Mr. Dotto in 1927? A. I got one from the company. I got home every bill you want.

Q. You have them all home? A. I pay every bill and I have all the bills home.

40 Q. Didn't you ever see Mr. Dotto? A. No, only once.

Peter Ciamboli—Cross.

Q. When was that? A. May 6; on Sunday, May 6, at twelve o'clock.

By the Court:

Q. What year? A. 1928.

Q. Do you mean Dotto or the man sitting at the counsel table? A. This one over here (indicating).

The Court: (To spectator) Your name is—

A Voice: —Zazzale.

The Court: Which Mr. Zazzale?

A Voice: Stepson of Mr. Zazzale.

The Court: Mr. Zazzale is dead?

A Voice: Yes.

By the Court:

Q. Do you know Mr. Dotto? A. No. 20

By Mr. Schotland:

Q. You don't know Mr. Dotto? A. No.

By the Court:

Q. When you bought the property who was your lawyer? A. Mr. Davis.

Q. Didn't you meet Mr. Dotto in Mr. Davis' office at the time when you bought the property?
A. No, sir. 30

By Mr. Schotland:

Q. Didn't Mr. Dotto come to see you in 1926?
A. No.

The Court: It was not he who was seen; it was his wife.

*Peter Ciamboli—Redirect.**Redirect-examination by Mr. Bianchi:*

Q. Where is the house that this mortgage is on; on what street? A. 153, and I forget the street, because I am not living there.

Q. Is it Condit Place? A. Yes.

Q. That is West Orange? A. Yes.

10 Q. Where do you live? A. 36 White Street, West Orange.

Q. You live in a small house in the rear of that property on White Street? A. Yes, sir.

Q. What did this man, Mr. Zazzale, whom you pointed out as Mr. Dotto, state to you at the time he called at your home on May 6, 1928? A. He came in and he say: "I am the owner of the mortgage." Myself, I don't know that day who he was.

20 Q. Was there anything else said there? A. I took my book and I showed to him all what I had in the book.

Q. Did you make any more payments after that? A. No.

By the Court:

Q. Did he speak Italian to you? A. English, but I don't understand much.

30 The Court: Mr. Zazzale, are you Italian?
Mr. Zazzale: Yes, but I can't speak Italian very well.

By Mr. Bianchi:

Q. After Mr. Zazzale saw you didn't Mr. Laudati ask you to take the two houses on Ashland Avenue and to pay the Dotto estate before August?

40 Mr. Schotland: I object to anything that Laudati might have done afterwards.

Peter Ciamboli—Redirect.

The Court: It is not what Laudati did;
it is what this man did.

Q. (The last question was read by the reporter.)

A. No, sir.

Q. Didn't you and Mr. Laudati talk about that
at all? A. I did talk, but not on this subject.

Q. Didn't you and Mr. Zazzale talk about can-
cellating this mortgage? A. No, sir. 10

Q. Are you sure of that? A. Yes.

Mr. Bianchi: I want to offer in evidence
the two letters that we received from the
complainant, so as to fix it in mind.

(Discussion.)

20

LUCY CIAMBOLI, called as a witness on be-
half of the defendants, being duly sworn, testified
as follows:

Direct-examination by Mr. Bianchi:

Q. You are the daughter of Mr. and Mrs. Ciamboli? A. I am.

Q. Did you see these letters at any time (hand-
ing papers to the witness)? 30

By the Court:

Q. Did they come in the mail? A. Yes, they
did.

Q. To your father's home? A. Yes, they did.

Q. Did you read them? A. Yes, I did.

Mr. Bianchi: I offer these letters in evi-
dence. 40

Lucy Ciamboli—Direct.

(The letters referred to were received in evidence and marked Exhibits D-1 and D-2, of 6/20/29; the envelopes were marked Exhibits D-1A and D-2A of 6/20/29).

By Mr. Bianchi:

10 Q. Have you ever seen this gentleman, Mr. Peter Zazzale, before? A. I saw him May 6.

Q. What year? A. 1928.

Q. Where did you see him? A. At our home.

Q. Had you ever seen him at your home before that at any time? A. No.

Q. Did you hear a conversation between him and your father? A. Yes.

20 Q. Was that conversation concerning this mortgage or wasn't it? He talked about the mortgage?
A. Yes, he did.

Q. Have you ever heard anybody else talk with your father and mother at your home about that mortgage, aside from Mr. Laudati? A. No.

Q. Or at any other place? A. No.

30 MARIA CIAMBOLI, called as a witness on behalf of the defendants herein, being first duly sworn, testified as follows:

The Court: What are you going to prove with this witness—payments to Laudati?

Mr. Bianchi: Yes, sir.

The Court: Counsel cannot dispute them. That is already in evidence.

Mr. Bianchi: That is our case.

Peter Zazzale—Direct.

PETER ZAZZALE, called as a witness on behalf of the plaintiff herein, being first duly sworn, testified as follows:

Direct-examination by Mr. Schotland:

Q. Mr. Zazzale, you are the son of the executrix, Mrs. Dotto? A. Yes, I am her step son.

Q. And a step son of the late Mr. Eugene Dotto? A. Yes, sir. 10

Q. In 1925 what was your occupation? A. I was a law clerk in the employ of Mr. Dotto.

Q. Were you his stenographer at that time? A. Yes, sir.

By the Court:

Q. How long were you with him? A. Since 1924. 20

By Mr. Schotland:

Q. Until his death? A. Until his death.

Q. When did he die? A. December 31, 1927.

Q. Were you familiar with the transactions with Laudati regarding the Ciamboli mortgage? A. Yes, sir.

By the Court:

Q. Were you familiar with all of Dotto's business? A. Most of them. I took an acknowledgment of that mortgage. 30

Q. I do not mean that. A. Most of the transactions.

Q. How closely were you in touch with Mr. Dotto's business? A. Most of his transactions. He talked them over with me before he did anything, and I received all payments.

Q. You took care of his books and took care of 40

Peter Zazzale—Direct.

his accounts generally? A. Yes, sir.

Q. What was the character of his business? A. Real estate, mortgages, and civil cases.

Q. Principally with the Italian people? A. Principally with Italians.

10 Q. Where was his office? A. 185 Market Street, Newark; first floor.

Q. How old are you now? A. I am twenty-five years old.

Q. Are you admitted to the bar? A. Not yet. I am still clerking.

Q. Did you carry on Mr. Dotto's business after he died? A. Well, he didn't have much business then.

20 Q. Mr. Dotto's business. A. Yes, sir, with Mr. Schotland; under the supervision of Mr. Schotland.

Q. Did you finally straighten out Mr. Dotto's affairs? A. Yes, sir.

Q. Were they somewhat involved? A. This was the only one that was involved. I found out later it was.

Q. Was the office kept orderly? A. Orderly—very orderly. That is the only one we had any trouble with.

30 Q. Did you aid Mr. Dotto in the orderliness of his office? A. Yes, sir.

By Mr. Schotland:

40 Q. I show you Exhibit C-3 and Exhibit C-4, being the mortgage from Ciamboli to Laudati and the assignment from Laudati to Mr. Dotto. Were you present when the transaction represented by that assignment was closed (handing witness papers)? A. Yes, sir; I was a witness and I took

Peter Zazzale—Direct.

the acknowledgment as a notary public. Yes, I was present.

Q. Mr. Laudati says that notwithstanding that the assignment, Exhibit C-4, recites that there is \$4,800 due and owing on the bond and mortgage from Ciamboli, he told Mr. Dotto that payments had been made on it. What have you to say as to that? 10

The Court: Not what he has to say about it; does he know anything about it.

Q. Did any conversation take place between Mr. Ciamboli and Mr. Laudati as to the amount due on the Ciamboli mortgage at the time when you took the acknowledgment to that assignment? A. Yes, sir.

Q. What was that conversation? A. Mr. Dotto was present when I took the acknowledgment, and Mr. Laudati acknowledged that there was due on that mortgage the sum of \$4800, with interest. 20

The Court: Please!

Q. Did you ask him about it? A. Yes, I asked him about it.

Q. What did you say to him? A. I asked him the amount due on the mortgage at that time.

Q. What did he say? A. He told me that it was \$4,800, with interest. I drew that assignment myself. 30

By the Court:

Q. With interest from when? A. From the date of the mortgage.

Q. Interest was payable semi-annually? Are you quite sure that you asked him that? A. I can refresh my memory. 40

Peter Zazzale—Direct.

Q. Are you quite sure that he said interest for a whole year? A. Well, I wouldn't say exactly.

Q. Be a little careful and distinguish between what was actually said and what your conclusions are. Who asked you to draw that assignment?

A. Mr. Dotto did.

10 Q. Who told you to put \$4,800 in there as being due? A. We were together, and I asked Mr. Laudati, because I used to handle Mr. Dotto's affairs.

Q. You asked Mr. Laudati? A. Yes.

Q. What? A. What was due on the mortgage; and he told me \$4,800.

By Mr. Schotland:

20 Q. I show you an envelope. Can you identify that as having any connection with the papers connected with the Ciamboli mortgage? A. This was the envelope that contained the mortgage, bond, letters, assignment, and so forth, in connection with the Ciamboli mortgage.

By the Court:

Q. That was Mr. Dotto's cover? A. Yes, sir.

By Mr. Schotland:

30 Q. Whose handwriting appears on the face of it, showing moneys received? A. The first three items are Mr. Dotto's. The second two are mine.

Mr. Schotland: I offer this in evidence.

(The envelope referred to was received in evidence and marked Exhibit C-5 of 6/20/29.)

40 Q. Can you tell me whether it was the system employed by Mr. Dotto, in keeping track of the transactions to make the entries on the envelopes

Peter Zazzale—Direct.

containing the papers? A. That was the manner in which he kept track of the payments of the principal.

Q. Exhibit C-5 of today shows that \$700 had been paid on account of the Ciamboli mortgage to Mr. Dotto, does it not? A. Yes, sir.

Q. That is in Mr. Dotto's handwriting.

Q. Did you know about these payments being made at the time when they were made? A. I don't believe I did, not at the time when they were made; not those particular payments. 10

Q. The last two entries on this envelope in your handwriting? A. Yes, sir.

Q. What do they represent? A. Payments of interest. Six months' interest of \$1,800.

Q. Who collected that? A. I did.

Q. From whom? A. Mr. Laudati. 20

Q. Before you collected the interest from Laudati did you go to see any one else? A. I saw Mrs. Ciamboli in September, 1927 with her daughter, on the street—on White Street.

Q. What did you say to them?

By the Court:

Q. Which daughter? The one who was on the witness stand? A. I am not sure. I can't remember. She had a daughter with her. 30

Q. She had a girl with her? A. She had a girl with her. It was her daughter, she told me.

By Mr. Schotland:

Q. What conversation did you have with her? A. I told her that Mr. Laudati—that we had not received any interest and she told me that she had nothing to do with me—that is, through her daughter; I could not speak to her in Italian. 40

Peter Zazzale—Direct.

Q. Do you understand Italian? A. I understand it a little bit.

Q. But you can't speak it? A. I can't speak it, so I spoke through her daughter.

Q. Yes. A. And she took me to Mr. Laudati's place of business on Ashland Avenue.

10 Q. Who accompanied you? A. Myself. I was alone.

Q. She took you there. Who else was with you? A. She went along with the girl.

Q. Mrs. Ciamboli? A. And her girl.

Q. What took place there? A. Mr. Laudati promised that he would get the money down to me. He admitted that he had received the interest from her. Nothing was ever said about the principal.

20 Q. Did you know at that time that any principal had been paid? A. No, I did not.

By the Court:

Q. That was in September? A. In the fall of 1927. Mr. Dotto was sick then. He was in bed.

By Mr. Schotland:

30 Q. Were you familiar with the provisions of the mortgage regarding the dates when the principal is due? A. When principal is due?

Q. Were you at that time? A. At that time, yes.

Q. Do you recall whether or not any principal was due before the expiration of the mortgage? A. There was none due on the mortgage.

Q. Under the terms of the mortgage, I mean. A. Not under the terms of the mortgage.

40 Q. What did Mrs. Ciamboli say? She had nothing to do with you? A. She didn't know me.

Peter Zazzale—Direct.

She had nothing to do with us, and that she was giving the money to Laudati.

Q. What did you say? A. I said we were the owner of the mortgage, so we went over to see Mr. Laudati. He is about a half a block away from her home—his place of business was.

Q. Yes. A. And then he assured me that he would take care of the interest, and naturally, I— 10

Q. Did he take care of the interest? A. He gave it to me shortly afterwards.

Q. The full amount? A. Fifty-three dollars he gave me. He was short a dollar.

Q. The next item here is "Interest, February 21." What year is that? A. 1928.

Q. You have marked there "Interest, six months, due 1927, \$54". A. That was November 1, 1927. I collected it in February, after Mr. Dotto's death. 20

Q. Whom did you get that from? A. Mr. Laudati.

Q. What interest did that represent? A. Six months' interest due November 1 of \$1,800.

Q. When Mr. Laudati paid you that \$54 for the six months' interest due on November 1, 1927, did he make any claim that the \$1,800 had been paid back? A. He did not.

By the Court: 30

Q. When was the Preziosi mortgage of \$1,500? A. February 15, 1927.

By Mr. Schotland:

Q. I show you Exhibit C-7 for Identification. Was the original of that prepared by you on the typewriter (handing witness a paper)? A. It was prepared under my direction, this one was. We had a stenographer. 40

Peter Zazzale—Direct.

The Court: What is that?

Mr. Schotland: That is the statement showing disbursement by Mr. Dotto of the \$1,500 proceeds of the Preziosi mortgage to Laudati, corresponding to these checks.

By Mr. Schotland:

10 Q. What did you do with the original of that?

A. I don't remember. It must have been given to Mr. Antonio Laudati or Emelio—probably Emelio, because he was the one that was interested.

Q. This is the copy that you made at that time?

A. That is the copy, yes.

Mr. Schotland: I offer it in evidence.

20 Mr. Bianchi: I object to it on the ground that any special transaction between Mr. Laudati and Mr. Dotto cannot be binding on this defendant.

The Court: Establish it further.

Q. I show you Exhibit C-1 of this date. Do you know what those checks were for and what was done with them?

By the Court:

30 Q. Do you know that transaction? A. I drew those checks.

Q. Do you know the transaction? A. Yes.

Q. Explain it. A. Mr. Laudati, through his brother, Antonio Laudati, secured a mortgage on lots in Keansburg from Preziosi in the amount of \$1,500.

Q. The whole thing was transacted in your office? A. Through Mr. Laudati and myself.

40 Q. In your office? A. Yes, sir.

Peter Zazzale—Direct.

Q. Go on. A. These are the checks showing the way the money was disbursed.

Q. You drew those checks? A. Yes, sir, I drew those checks.

By Mr. Schotland:

Q. You dictated the statement? A. I dictated the statement. 10

Q. Showing how the money was disbursed? A. Yes, sir.

By the Court:

Q. How was the money disbursed? A. Well, according to these checks, if I may refresh my memory—

Q. What for? A. The check of \$118 was indorsed over to the Small Loan Association. Mr. Emelio Laudati had a loan at the Small Loan Association and this was in payment of that. A check of \$250, No. 1361, indorsed over to Mr. Dotto by Antonio Laudati was for services in connection with the loan. 20

By Mr. Schotland:

Q. Did Mr. Dotto keep that \$250 for services in this transaction? A. Well, not all of it.

Q. Did any one else share in that \$250? A. Well, Mr. Spinosa, the real estate man and broker. 30

Q. Yes. A. And Mr. Preziosi.

Q. How much of this \$250 did Mr. Dotto have? A. Fifty dollars he retained.

Q. Go on. A. Check of \$56.66, indorsed over to George M. Oberlander, who was the Tax Collector of Keansburg, by Mr. Laudati, was in payment of the taxes on the property. 40

Peter Zazzale—Direct.

By the Court:

Q. The checks were all made payable to one man? A. All to Antonio Laudati, Mr. Emelio Laudati's brother.

By Mr. Schotland:

10 Q. The mortgagor? A. The mortgagor.

By the Court:

Q. And indorsed by him over to the various parties? A. Yes. Check for \$75, payable to George Oberlander, Collector of Taxes, Keansburg. That was in payment of some assessments, I believe. Check of \$351, indorsed back to Mr. Dotto, was in payment of returned checks which Mr. Dotto had of Mr. Emelio Laudati on the Coccozza mortgage.
20 Checks were returned for insufficient funds. Check of \$648 was turned over to Mr. Antonio Laudati, which he cashed through Emelio Laudati, I guess.

Q. To whom? A. Mr. Antonio Laudati.

Mr. Schotland: That is, the mortgagor.

Q. That is the balance? A. That is the balance of the proceeds.

Q. According to your statement there? A. According to the statement.
30

Mr. Schotland: I now offer the statement in evidence.

(The paper referred to was received in evidence and marked Exhibit C-6 of 6/20/29.)

By Mr. Schotland:

Q. Now, Mr. Laudati has testified that he paid
40 Mr. Dotto \$2,500, which was loaned to him in ex-

Peter Zazzale—Direct.

change for the assignment of the mortgage in question, by a series of checks for \$50, principal and interest, payable monthly. What do you know about that? A. Those checks that Mr. Laudati spoke of—

By the Court:

Q. Do you know anything about them? A. Yes, sir. 10

By Mr. Schotland:

Q. What do you know about them? A. They were given in payment of the mortgage which was assigned to Mr. Dotto of Coccozza—Coccozza mortgage—on which Mr. Dotto had loaned Mr. Laudati the sum of \$2,500; first, \$2,000, and then an additional \$500. 20

By the Court:

Q. Have you any record of that? A. Yes, I have checks there.

By Mr. Schotland:

Q. I show you a mortgage marked Exhibit C-10 for Identification, bearing date June 25, 1924, made by Edward Coccozza and Lucia Coccozza to Emelio Laudati, to secure the sum of \$4,000, which has been stamped as cancelled of record on the 4th of March, 1927, having been receipted for cancellation, apparently, by Eugene Dotto. Do you recognize that as the mortgage you have just mentioned? 30

By the Court:

Q. Is that the mortgage you mean? A. That is the mortgage, yes, sir. 40

Peter Zazzale—Direct.

Q. The assignment of the mortgage? A. That is the assignment.

By Mr. Schotland:

10 Q. I show you an assignment marked Exhibit C-9 for Identification, dated the 20th of August, 1924. Do you recognize that as the assignment connected with this transaction? A. That is the assignment.

Q. Did you draw that assignment, too? A. Yes, that is my handwriting.

Q. The written parts are in your handwriting? A. Yes. I was a notary public then.

20 Mr. Schotland: I offer them in evidence. (Exhibits C-9 for Identification and C-10 for Identification were received in evidence as Exhibits C-9 and C-10 of 6/20/29.)

Q. At the time when Mr. Laudati assigned the Coccozza mortgage to Mr. Dotto, do you recall how much Laudati had loaned him? A. It was \$2,000 at that time.

Q. After that, did he advance any more money? A. The following year he had advanced an additional \$500. They had many transactions.

30 Q. How was it arranged that the \$2,000 was to be repaid to Mr. Dotto? A. I don't remember that, but I believe that when he gave—

The Court: No, no.

Q. Not what you believe. Tell us what you know. A. Dotto—

40 Q. What were the means employed for repaying the loan, do you know? A. I know it was payable in checks.

Peter Zazzale—Direct.

Q. Who made out the checks? A. I made the checks.

Q. How many checks did you make? A. I don't recall.

Q. Did you make the whole series? A. I made the series, yes, sir.

Q. How much were the checks for? A. They varied in amounts from \$62, and something, down. Reduced so much a month. Less interest each month. Interest was payable every month. 10

Q. Those checks were to be used in payment of what? A. Of that mortgage.

Q. Were there any checks of a similar nature in payment of the Ciamboli mortgage? A. No, sir, didn't call for any instalments.

The Court: Keep to the question, please. 20

Q. The only checks of \$50 principal plus interest that have been used, were used in connection with which mortgage? A. Coccozza mortgage.

Q. Did Laudati talk to you about this money after Mr. Dotto's death? A. Yes, sir.

Mr. Bianchi: I object.

Q Did. he say that he had repaid the \$2,500?

The Court: Objection sustained. 30

Q. What did he say?

(Discussion between counsel and court.)

Q. What conversation did you have with Mr. Laudati about this? A. I had many conversations.

Q. When was the first one? A. It started from September, 1927.

Q. What was that about? 40

Peter Zazzale—Direct.

(Discussion between court and counsel.)

Mr. Bianchi: I object.

The Court: Objection sustained.

10 Q. Mr. Laudati has testified that the \$54 that you receipted on Exhibit C-5 as six months' interest due November 1, 1927, was not paid as interest, but as a balance on a fire insurance premium on some policy. Did he pay you \$54 as a balance on some premium on some fire insurance policy?
A. That \$54 wasn't a payment on any premium.

Q. What was it a payment on? A. It was six months' interest due November 1. He paid it to me in February on the \$1,800 mortgage.

By the Court:

20 Q. Did you give him a receipt for it? A. No.

By Mr. Schotland:

Q. How did he pay it to you? By cash or by check? A. I believe it was by check, at his place of business.

Q. I show you an agreement, Exhibit D-1. Did you have anything to do with the drawing of that agreement? A. No, I had nothing to do with the drawing of it.

30 Q. Were you present when this transaction was arranged? A. I don't believe I was present, either.

Q. Have you searched through all the records of Mr. Dotto in connection with this transaction?
A. Yes, sir.

Q. Do you find anywhere any reference to having received anything beyond the \$700 shown on the envelope, the exhibit offered in evidence this morning? A. No, sir.

40 Q. Mr. Laudati has testified that about Febru-

Peter Zazzale—Direct.

ary 15, 1927, or a few days thereafter, he paid to Mr. Dotto, partly cash and partly checks, or a check and cash—in some way—\$1,300, to make up the balance of the \$2,500 for which he had given the assignment of the Ciamboli mortgage. Have you looked through the records of deposits and receipts for that period? A. Yes, sir.

Q. Do you find any such receipts? A. No, sir.

Q. Are there any such receipts? A. There are no such receipts.

Q. You have testified that you were present and made out the checks that were used as a means of disbursing the \$1,500 proceeds of the Preziosi mortgage. Was there anything said at that time by Mr. Laudati as to paying \$1,300 to Mr. Dotto? A. No, sir.

Q. Do you know of your own knowledge whether Mr. Dotto ever authorized Mr. Laudati to collect any principal on account of the Ciamboli mortgage? A. He never did authorize him to collect any principal.

Q. How do you know that? A. Mr. Dotto never knew there were any principal payments.

Q. How do you know that? A. I was familiar with those transactions.

The Court: This witness is going a great deal farther than a witness should go. Nobody realizes it better than the witness himself after he has spoken.

Q. Have you had any conversations with Mr. Laudati since Mr. Dotto's death, on that point? A. Yes, sir.

Mr. Schotland: Will your Honor permit me to have him testify as to that?

Emelio Laudati—Direct.

The Court: No. You may lay the foundation.

EMELIO LAUDATI, recalled as a witness on behalf of the complainant, testified further as follows:

10

Direct-examination by Mr. Schotland:

Q. Mr. Laudati, when this Ciamboli mortgage came due by its terms on May 1, 1928, did Mr. Zazzale come to see you and ask you to pay it? A. Not on May; he came around around June or July, about a month after.

Q. Yes. A. He asked me—

Q. He came around and asked you to do what?

20

A. To get the balance of that mortgage.

Q. To get the balance? A. Yes, sir.

Q. What balance did he ask you for? A. What came from Ciamboli?

Q. What balance did he claim was coming from Ciamboli? A. Well, I told him it was \$600. He claim that on agreement of Ashland Avenue property, because I didn't keep up my agreement. The house was empty. I didn't keep up my agreement. I told him to take it over.

30

Q. Didn't Mr. Zazzale ask that you get the \$4,800 due on this mortgage? A. No, sir.

PETER ZAZZALE, recalled as a witness on behalf of the complainant, testified further as follows:

Direct-examination (continued) by Mr. Schotland:

40

Q. When did you see Mr. Laudati? When was

Peter Zazzale—Recalled—Direct.

the date after the Ciamboli mortgage became due?

A. I used to see him every Sunday.

Q. When was the particular day on which you saw him after it became due? A. Well, it was about a month afterwards. About a month.

Q. Did you then ask him for the balance due on that mortgage? A. No.

10

Q. What did you say to him? A. I asked him for the full amount, the \$4,800.

Q. What did he say? A. Well, he told me to wait a while to give the Ciamboli's a chance, that they were poor people, and that they would be able to pay it maybe later on, so I didn't start any foreclosure proceedings. I left it up to him to arrange payment.

Q. When did you first find out that the Ciamboli's had paid a part or nearly all of the principal of this mortgage to Laudati? A. I didn't get any satisfaction from Laudati.

20

Q. Answer my question, please. When did you first find that out? A. Shortly after the due date, at the time of the conversation with Mr. Laudati. About that time.

By the Court:

Q. When was it, please? A. About the end of May, or June.

30

Q. Of what year? A. 1928.

By Mr. Schotland:

Q. Was that before or after your conversation with Mr. Laudati? A. About a week after.

Q. About a week after your conversation with Laudati? A. Yes, sir.

Q. Between the time that you found that out

40

Peter Zazzale—Recalled—Direct.

and the time that you started the foreclosure, what happened? A. Well, I saw Mr. Laudati several times after that and he informed me that he was trying—

Q. Never mind what he informed you. You saw the Ciamboli's after that? A. I only saw them once.

10

Q. You saw them after that and told them what was going on? A. I saw Mr. Laudati after that.

Q. Yes. A. And he informed me that he was trying to arrange a settlement with Ciamboli.

The Court: I think I am entirely mistaken as to my ruling before. I think you have a right to go into the conversations with Mr. Laudati that Mr. Laudati testified to. I have been confused between Laudati and Dotto.

20

Q. Just tell the Court the conversations and the full negotiations with Laudati after you discovered that the Ciamboli's had paid part of the principal to Mr. Laudati. A. Well, I used to go to Mr. Laudati's place of business practically every Sunday—I live close by there—after that, and he was informing me—

30

Q. What did he say? A. Well, he told me that he was trying to arrange a settlement with Ciamboli in this manner: He owned a house at 93 Ashland Avenue. We owned one at 91; that is, my mother did—the estate did. The one at 91 was the one for which he had a contract.

Q. The contract Exhibit D-1? A. Yes, sir; and he was trying to get the Ciamboli's, he told me at that time, to take those two houses and consider the equity in them and pay us the full \$4,800, and

40

Peter Zazzale—Recalled—Direct.

that is the reason I delayed the foreclosure. That was going on for quite a while, and I saw we didn't get any results. I started the foreclosure proceedings.

Q. Did he ever claim that he had paid back the money to your father, Mr. Dotto? A. Referring to the \$1,800? 10

Q. Yes. A. To the entire mortgage?

Q. Referring to the \$1,800. A. He never made any claim of any payment to my father of principal.

Q. When you made the demand for the \$4,800, on what did you base that demand? A. On the contract and the balance of \$1,800 due on that original loan of \$2,500.

Q. Did Mr. Laudati inform you whether or not the Ciamboli's were willing to take the Ashland Avenue houses and make good the mortgage? 20

Mr. Schotland (After discussion): I will withdraw that.

By Mr. Bianchi:

Q. At the time when you demanded the \$4,800, you had already acknowledged the receipt of \$700? A. Oh, yes.

Q. He had paid then \$700? A. Mr. Laudati. 30

Q. To whom? A. Mr. Dotto.

Q. On account of what? A. The \$2,500 loan.

Q. On what mortgage? A. On the Ciamboli mortgage.

Q. Mr. Dotto knew that that money was paid on the principal of that mortgage? A. By whom?

Q. By Laudati? A. Yes, sir.

By the Court:

Q. How do you know about these things? Are 40

Peter Zazzale—Recalled—Direct.

you guessing at them? A. No, sir, I was in touch with Mr. Dotto's business. I went with him and went around with him.

By Mr. Bianchi:

10 Q. Mr. Dotto didn't collect that money from Ciamboli himself? A. No, sir.

Q. Mr. Laudati collected it? A. I don't know whether he collected it or what he collected. I know he gave Mr. Dotto \$700.

Q. On account of that particular mortgage? A. Yes, sir.

Q. And Mr. Dotto received it? A. Yes, sir.

Q. You say there were three different payments? A. Three different payments.

20 Q. By him received in the interest of Mr. Dotto? A. Yes, sir.

Q. On this list that you presented in court there are no markings or writings showing payment of any interest. A. No, sir, except my own markings on the last two payments.

The Court: On this one here (indicating)?

Mr. Bianchi: Yes, sir.

30 *By the Court:*

Q. There are three items? A. If I look at it I can say.

By Mr. Schotland:

Q. Is there any writing on this envelope, Exhibit C-5 of this date, showing the receipt of interest by Mr. Dotto? A. No, sir.

*Peter Zazzale—Recalled—Direct.**By the Court:*

Q. Were you there when Laudati paid to Dotto the first item? A. The principal item?

Q. Yes. A. No, I wasn't.

Q. Or the second? A. No, sir.

Q. Or the third? A. No, sir.

Q. How do you know it? A. Mr. Dotto would explain it to me. I know all these transactions. 10

Q. We are not interested in what Mr. Dotto explained to you. We may be interested in what Mr. Laudati explained to you.

By Mr. Bianchi:

Q. Do you know whether this \$700 was paid in cash or by check? A. I don't know that.

Q. Have you any books kept by Mr. Dotto showing the receipt of this money, aside from this envelope? A. No, sir. 20

Q. Mr. Dotto kept no books, as a matter of fact, did he? A. He kept sort of a record in his diary.

Q. He had no books showing debits and credits for any of his clients? A. He usually marked it on the envelopes, as a rule, of the mortgages.

Q. Aside from a record of that kind, he kept nothing? A. He has a lawyer's diary in which he shows receipts every month. 30

Q. That is the particular diary that I examined with you yesterday at your office? A. Yes, sir.

Q. That shows a gross payment of \$700, or one payment of \$700? A. No, sir.

Q. Will you produce the 1927 diary? A. (The witness produced a book.)

Q. I call your attention to a page in the diary of 1927 with a notation as follows: "Emelio Laudati to Eugene Dotto, mortgage, \$2,500. Reduced 40

Peter Zazzale—Recalled—Direct.

\$700. Payable in instalments." A. That is correct. I showed that to you yesterday. This diary is 1927 diary, received in March.

By the Court:

10 Q. Under what date does it show? A. It has no date. It just shows "Received \$700."

By Mr. Bianchi:

Q. Is that in Mr. Dotto's handwriting or in yours? A. Mr. Dotto's.

Q. You never heard Mr. Dotto say to Mr. Laudati, "Don't collect any more money on that mortgage," did you? A. No, sir.

20 Q. Have you any books showing any more payments by Laudati to Dotto on account of this mortgage, aside from the \$700? A. The diaries may show payments of interest and monthly payments. I don't know.

By the Court:

Q. What? A. The diary may show the payments of interest.

Q. On what? A. On that mortgage.

Q. Of how much? A. I don't recall it.

30 Q. Well, show me. Look at it. A. I am not sure whether they are in there.

Q. Look. A. Well, there are six diaries.

Q. Look. A. Monthly. (The witness examined some books.)

Q. Look through them for interest payments from June 1, 1925. Come back at two o'clock.

(An adjournment was taken until two o'clock.)

Peter Zazzale—Recalled—Direct.

Afternoon Session.

PETER ZAZZALE, resumed the stand and testified further as follows:

By Mr. Schotland:

Q. Have you looked through Mr. Dotto's diaries since court adjourned? A. Yes, sir. 10

Q. Have you found any entries for the interest payments? A. No, sir, not by Mr. Dotto. One by myself.

Q. Which one? A. The one that is on the envelope, September, 1927.

Q. That you yourself had entered? A. I entered that, yes, sir.

By the Court:

Q. September, 1927? A. Yes, sir. 20

By Mr. Bianchi:

Q. Did you receive a check or cash for the \$54 that you spoke of? A. Which \$54?

Q. That you have marked on your envelope. A. February 1?

Q. "February 21, interest, six months, due November 1, interest, \$54." A. There may have been a check; I don't know. 30

Q. Have you any other notations by which you can tell whether that was interest? A. No, sir, just that notation down there.

By the Court:

Q. Have you a record of it in your cash book? A. No, sir, I just put it on that envelope.

Q. Have you any record of it in your diary? A. No, sir. 40

Peter Zazzale—Recalled—Direct.

By Mr. Bianchi:

Q. It says here, "Received February 21, interest, six months, due November 1, 1927, \$54." What year was that received in? A. Received in February, 1928.

Q. February, 1928? A. Yes.

10 Q. Why did you go to the Ciamboli's to get that money? A. Laudati was acting for them all the time. He was taking care of it.

By the Court:

Q. What do you mean by "acting for them all the time"? A. They would always go to him.

Q. You seem to have no other record of interest received. A. I have two records there—three records.

20

By Mr. Bianchi:

Q. Where are your other records? A. Those are the only records I have and the one in the diary—the first one.

Q. In the diary? A. The September record, the first one.

Q. September of what year? A. 1927.

30 Q. Previous to 1927 have you any interest payments in the diary? A. It shows no record in the diary. Mr. Dotto must have received it.

By the Court:

Q. Whom did he receive it from? A. Mr. Laudati.

By Mr. Bianchi:

40 Q. He received it in the checks that Mr. Laudati says he gave him of \$50, payment and interest, isn't that true? A. No, sir.

Peter Zazzale—Recalled—Direct.

Q. Did you make any protest against Laudati paying you this \$54? A. Did I make any protest?

Q. Telling him that you wouldn't accept the \$54?
A. I did not.

Q. You knew that he was in the habit of making such payments, didn't you? A. I didn't know that he made such payments.

10

Q. Why did you accept it if he wasn't the man who was the holder of the mortgage or the mortgagor? A. He was acting on behalf of Ciamboli. I don't know. He always told me that he would take care of it. They looked to him to take care of it.

By the Court:

Q. They paid him? A. Yes, they paid him, and he would give it to me. I would go up to him and get it from him. I would go up to his place and collect it from him.

20

Q. From whom? A. From Laudati.

By Mr. Bianchi:

Q. You went up there and collected what? A. \$54.

Q. That is the only time you ever went there and collected anything? A. Oh, no. I had gone there and collected money on the contract often.

30

By the Court:

Q. How often had you collected interest from him before? A. Two times before—three times I had collected—three.

Q. How long had Mr. Dotto collected from Mr. Laudati that you know of? A. I don't know of any time.

Q. The interest was paid regularly, wasn't it? 40

Peter Zazzale—Recalled—Direct.

A. Not regularly. He wasn't very regular with his payments.

Q. The interest was kept up, though? A. I imagine it was.

Q. But paid irregularly? A. Irregularly? A. Irregularly, yes, sir.

10 Q. On February 21, 1928, you admit that there was only \$1,800 due on that mortgage? A. That is all the interest I collected, was on the \$1,800.

By Mr. Bianchi:

Q. On February 21, 1928, you allege that you received \$54. How much was due on that mortgage?

The Court: \$1,800, he has said.

20 Q. \$1,800? A. \$1,800, plus security for the contract.

Q. Why did you, in writing to the Ciamboli's on April 30, 1928, state to them that the mortgage was payable in full on May 1, 1928? A. Because the mortgage was due on that date.

Q. You asked them for \$4,800. A. Yes, that is true.

30 Q. Yet you admitted on February 21, when you received the \$54, that there was only \$1,800 due? A. Mr. Dotto never told me to collect interest on the balance, because it was security for the contract.

Q. Why should you attempt, on April 30, 1928, to demand payment for \$4,800 when there was only \$1,800 due? A. There is \$4,800 due, according to the contract, and the balance on the \$2,500.

40 Q. Why did you take \$54 interest on \$1,800 if there was \$4,800 principal? A. Because Mr. Dotto wasn't to receive interest on the \$3,000. It was

Peter Zazzale—Recalled—Direct.

only held as collateral on the contract. He was not getting the interest.

Q. If that is so, on whose say-so did you go to Ciamboli and demand the interest on \$3,000? A. When?

Q. At any time. A. The only time I ever demanded any interest from Ciamboli was that particular occasion that I spoke of before, and I found

10

Q. That was on Sunday, May 6, 1928? A. I wouldn't say on Sunday. It was in June some time.

Q. Was it around 12:30, when they were having dinner? A. Yes, they were eating when I came in.

Q. Did you tell them then that all you wanted was \$1,800? A. No, sir.

20

Q. You never told them that you only wanted \$1,800? A. Ciamboli?

Q. Yes. A. No, sir.

Q. Have you any records whatsoever showing any other payments but these three? A. With reference to what? This mortgage?

Q. To this particular Ciamboli mortgage. A. In the diary I have this September record.

By the Court:

30

Q. A duplicate? A. A duplicate in my handwriting.

By Mr. Bianchi:

Q. In your own handwriting? A. Yes, sir, and the \$700 payment shows in the diary, as you showed before, that there is only \$1,800 due at that time.

40

*Peter Zazzale—Recalled—Direct.**By the Court:*

Q. Under what date was that placed? A. That was entered about March, 1927. The diary was received in March, the lawyer's diary.

By Mr. Bianchi:

10 Q. Don't you know that as a matter of fact during the year 1926 and the beginning of 1927 Mr. Laudati did make payments of \$50 on the principal and interest on this Ciamboli mortgage? A. No, sir.

Q. You don't know that? A. No, sir.

Q. You know that the Cocozza mortgage was paid in full in February, 1927? A. That is what the cancellation record shows.

20 Q. And you know that that is the month in which Cocozza secured a loan of \$8,400?

Mr. Schotland: That is March 4, 1927.

Q. March, 1927. A. He did get a loan from some building and loan. I don't know exactly.

Q. That is the time when this mortgage was paid? A. The balance, yes.

Q. So that transaction was closed in February or March, 1927? A. I believe in March.

30 Q. The new transaction, involving the purchase of the six-family house, took place in April, 1927, which is approximately the date of the agreement? A. Yes, sir.

Q. April 2, 1927; so at the time when this new agreement was made, on April 2, 1927, there was nothing due to Mr. Dotto on the Cocozza mortgage? A. No, sir.

40 Q. So if this list of checks, the statement from the bank, shows payment, such as Mr. Laudati has

Peter Zazzale—Recalled—Direct.

testified to, of \$62.25, \$61.75, \$61.25, \$61, \$60.75, \$60.50, and \$60, in 1926— A. From January?

Q. (Continuing) Does it in any way refresh your memory as to whether Laudati did or did not make payments such as he testified to? A. He may have on the Coccozza mortgage from January, 1926.

10

Q. What is that? A. I believe it started from January, 1926. You will find that on the bank record.

Q. You say that they were not on account of the Ciamboli mortgage? A. No, sir.

Q. Can you tell whether checks or cash were paid for these three payments? A. I couldn't tell you that.

Q. Is there any way by which you can tell? A. I believe they were checks, but I couldn't tell you.

20

Q. Don't you know, as a matter of fact, that Mr. Laudati gave you \$100 at the time of the payment of the \$54? A. I will refresh my memory by looking at the contract in my diary.

Q. (The witness was handed a book.) A. Have you got the contract, Mr. Schotland?

Mr. Schotland: Which contract?

The Witness: The contract of sale for the piece of property.

30

(Mr. Schotland handed some papers to the witness.)

The Witness: What is that date?

Q. February 21, 1928. A. February 21? No, I didn't receive any \$100.

Q. What? A. I didn't receive any \$100.

Q. Do these notations that you have here show any payment on February 21, 1928? A. No, they

40

Peter Zazzale—Recalled—Direct.

don't. I don't believe they do. I don't see any.

Q. What is that? A. I don't believe it does, no.

Q. Who made these notations in the book here? A. From August 3 they are mine. August 3, yes. The last four are mine.

10 Q. Who made the rest of them? A. Mr. Dotto.

Q. How does it happen that this particular payment of \$54 is not marked in the book with the rest of the notations? A. That has nothing to do with the contract; that is, the contract for the purchase of 91 Ashland Avenue. We probably received the checks at the same time, or something like that, because I was collecting on that contract, also.

20 Q. But you were collecting it on \$1,800 that you now allege is still due under this contract? A. Not under that contract; not the \$1,800. There is \$3,000 due under that contract, if you will read the clause there.

Q. What is the interest payable on? A. This interest is on the contract. It was reduced every month as he paid it. If you will read the terms of the contract you will see.

By the Court:

30 Q. I understand that at the time when that contract was drawn, of the \$4,800 there remained \$1,800 as security for Mr. Laudati's \$2,500 loan? A. Yes.

Q. And the remaining \$3,000 was security on this contract? A. Towards the contract. Anything collected on that \$3,000, he would be given credit on that contract. In other words, it would reduce that much.

40 The Court: The contract bears date when?

Peter Zazzale—Recalled—Direct.

Mr. Bianchi: April 2, 1927.

By Mr. Bianchi:

Q. On how much was the interest of \$72 payable?

A. The contract was \$15,000. It started with \$75 interest and it reduced as he made the \$100 payments on the principal.

10

By the Court:

Q. You understood that when Mr. Dotto made that contract there was \$4,800 on the Ciamboli mortgage? A. Mr. Dotto went to Europe in June or July.

Q. When did he make that contract? A. Before he went. He left everything in my hands. He came back a sick man. He was never in the office after he came back.

20

Q. You know that there was \$3,000 as collateral in that \$4,800? A. \$4,800 at that time. \$3,000 as collateral and \$1,800 on the loan.

Q. There was \$4,800 due from Ciamboli? A. Yes, sir.

Q. Did Mr. Dotto so understand it? A. Yes, sir.

Q. When, as to year, was the first interest item of \$27.50, under date of September 15, paid? A. 1927.

30

Q. October, 1927? A. The same year. That was the balance.

Q. And the one of February 21? A. 1928.

Q. In September Mr. Dotto was not attending to his business? A. He was sick.

Q. Answer my question. A. No, he wasn't.

Q. Not at all? A. He was not in the office? A. No, sir, he was at home.

40

Peter Zazzale—Recalled—Direct.

Q. At that time you understood and knew that Mr. Dotto had an assignment of the entire mortgage from Ciamboli? A. Yes, sir.

10 Q. Why didn't you collect all that interest due on the Ciamboli mortgage, instead of on September 15, 1927, collecting \$27.50, which is six months' interest on \$1,800? A. Mr. Dotto sent me there.

Q. What? A. Mr. Dotto was at home in bed and he sent me to Laudati.

Q. To collect what? A. To collect the interest on the \$1,800.

20 Q. Do you know why he, being the owner under the original assignment and under the second assignment of the \$4,800 mortgage, did not send you to collect the interest on \$4,800, instead of on \$1,800? A. Yes.

Q. Why? A. The \$3,000, he explained to me, was to be held as security for the contract price.

Q. Yes. A. And he wasn't to collect interest, because it was getting interest.

Q. Who was to collect interest if he wasn't? He was the assignee of the mortgage. Who was to collect the interest if he wasn't? A. I don't know.

30 Q. Tell us. You do know. He only asked for \$27.50 interest. He sent you to collect that from Mr. Laudati. A. He sent me to collect \$54.

Q. And you got? A. Two payments.

Q. Fifty-three dollars? A. Fifty-three dollars.

Q. Mr. Dotto sent you to get that collection? A. Yes, sir.

Q. They were due at that time? A. They were due in May.

Q. What did he tell you? Did he call your attention to the fact that they had not been paid?

40 A. Yes, sir.

Q. Why did he tell you to go to Laudati instead

Peter Zazzale—Recalled—Direct.

of to Ciamboli? A. Because Laudati was taking care of it for Ciamboli.

Q. All right. Who, as you understood it and as Dotto understood it, was to collect the interest in excess of that on \$1,800, on the \$4,800? A. I imagine Laudati was.

Q. Who was getting it? A. Mr. Laudati.

10

Q. Laudati was getting it? A. I don't know that.

Q. Mr. Dotto, when he sent you for this interest, didn't make any effort to collect interest in excess of that on \$1,800 due? The last instalment was due in May? A. No, he didn't, at that time; not at that time.

Q. Did you say to him, "The mortgage is for \$4,800 and the interest in May is on \$4,800 instead of on \$1,800"? A. I understood I was to collect interest only on the \$1,800.

20

Q. Or did you say to him or did he say to you, "The interest is on \$4,800 and not on \$1,800"? A. We never spoke about the interest; we only discussed the \$54. I asked him for \$54, and that is what he gave me.

Q. But the owners of the debt were the Ciamboli's. Tell me why you did not go to Ciamboli, who made this mortgage and who owed the interest? A. I did go to them at that time.

30

Q. In September, 1927? A. Yes. That is the time I met Mrs. Ciamboli on the street. It was in the evening.

Q. What? A. I met Mrs. Ciamboli in the evening. It was on the street. It was about six o'clock, I imagine.

Q. She said she had nothing to do with it? A. She said she had nothing to do with me.

40

Peter Zazzale—Recalled—Direct.

Q. Did you go to the Ciamboli's to collect the interest on the \$4,800? A. No, \$54.

Q. The only interest you understood, then, was on the \$4,800? A. On \$1,800 at that time.

Q. But they owed interest on the mortgage on \$4,800, as you understood it? A. Mr. Dotto told me to get \$54.

Q. But you understood that Ciamboli owed \$4,800 on the mortgage? A. Yes, sir.

Q. Consequently, you understood that they were paying interest on that amount, didn't you? A. I imagine so, yes.

Q. Why did you ask them for \$54, the interest on \$1,800, then? A. Because Laudati gave it to me.

Q. You understood that the Ciamboli's were paying their interest to Laudati on the \$4,800, yet Laudati was paying \$54 to you? A. Yes, sir.

By Mr. Bianchi:

Q. Would the fact that the ledger statements of the bank show payments in March, 1927, of \$54.75, and two in August, 1927, \$52.50 and \$50.25, change your opinion as to whether Mr. Laudati had or had not been paying interest on the principal of the Ciamboli mortgage?

Mr. Schotland: I object. In the first place, the question embodies facts not possibly within the knowledge of the witness.

The Court: Overruled.

A. No, sir, that wouldn't change my mind.

Q. You heard Mr. Laudati testify that he had made certain payments of \$50 and interest? A. Yes, sir.

Peter Zazzale—Recalled—Direct.

Mr. Schotland: I have called for the statements produced by the bank. I now offer them in evidence.

(The papers referred to were received in evidence and marked Exhibit C-7 of 6/20/29.)

By Mr. Schotland:

10

Q. Mr. Zazzale, Mr. Bianchi has called your attention to the fact that the ledger of the bank in which Mr. Laudati kept his deposits showed that there were disbursements of \$50, \$54, and so on, up to as late as August, 1927. If these disbursements represent checks to Mr. Dotto, do you know what they were for? A. I don't know whether they were paid to Mr. Dotto. I don't believe they were.

20

EMELIO LAUDATI, recalled, testified further as follows:

By Mr. Schotland:

Q. I show you a check dated August 20, 1925, to the order of Eugene Dotto, in the sum of \$1,457.25, which check bears no indorsement and shows that it never went through the bank. It is signed by you. Can you tell me what that check represented?

30

The Court: What date?

Q. August 20, 1925. A. I don't remember that, what transaction was this.

Q. Isn't this the check that you claim you paid to Mr. Dotto in order to make up the balance of

40

Emelio Laudati—Recalled—Cross.

\$2,500 payment? A. Not by 1925, because I pay him in 1927.

Q. Yes? A. And that check was due two years after, the check I gave him.

Q. When did you pay Mr. Dotto in 1927? A. When I got the loan from Coccozza.

10 Q. In February? A. No, it wasn't in February; it was March or April. I can't remember now.

Q. All the checks that you have identified are dated February 15, 1927, and show that they had been through the bank. I show you one to refresh your recollection. A. Well, maybe it wasn't February.

Q. You say that is when you paid him? A. I told you this morning I paid that—

20 The Court: When did he say he paid the mortgage in full?

Mr. Schotland: February, 1927.

Q. That was the date of the \$1,500 mortgage.

Mr. Schotland: That is what he says now.

The Court: What explanation have you for the payments in September and October of the year 1927, \$27.50 and \$25.50?

30 Mr. Schotland: He cannot explain those. (Further discussion between court and counsel.)

Q. Mr. Laudati, you paid Mr. Zazzale \$27.50 on September 15, 1927, did you not? A. No, sir.

Q. Didn't you pay him \$25.50 more on October 25, 1927? A. No, sir.

40 Q. Didn't he demand interest from you on \$1,800 and isn't that how you paid it to him? A. I never paid no interest.

Emelio Laudati—Recalled—Cross.

Q. Never? A. No.

Q. You paid him \$54 on February 21, 1928, did you not? A. No, sir; I was in his office, and he wasn't there, and I leave—

Q. You say that you didn't pay him \$54? A. Not \$54.

Q. Didn't you testify at the last hearing that you paid him \$54 and that it was a balance on the insurance premium? A. Maybe I did. I mean on the day when I gave him the \$100, I gave to the stenographer in the office. Mr. Zazzale wasn't there. I gave her \$100. 10

Q. Mr. Laudati, you have testified that you paid back \$2,500 that you borrowed on the strength of the Ciamboli mortgage by paying \$62.50 a month regularly, the interest each month being less. I show you your ledger account from your bank. Show me where there is any charge against your account for \$62.50, beginning with July 25 and going along monthly in amounts reduced twenty-five cents each month, to pay off the \$2,500 mortgage. A. Yes, I can explain that. 20

Q. Show me on your page in your ledger account. A. Excuse me, I will tell you, because when I got this \$2,500 from Mr. Dotto with the understanding that after six months I started giving \$60 a month, plus interest, so I started six months after that. 30

By the Court:

Q. So you started in January? A. Yes.

Mr. Schotland: January, 1926, he now says that he started payments.

By Mr. Schotland:

Q. Do you mean to say that you paid off \$1,200 40

Emelio Laudati—Recalled—Cross.

at the rate of \$50 a month in January, 1926, to February, 1927? A. No. I paid that and then I got some other checks, and we have a whole lot of transaction from Mr. Dotto. When I got \$4,000 from Mr. Cocozza in February, Mr. Dotto, he collected. He says, "Now you got a chance to give me some money on that loan"; so he took some money from the Cocozza mortgage.

10

Q. If you look at your ledger account you will see that you made your monthly payments long after February, 1927. Will you explain that?

Mr. Bianchi: I object to that. It is not a statement of fact.

The Court: It doesn't make any difference whether it is a statement of fact or not. This is cross-examination.

20

A. Well, that I can't tell you. I was in business. Maybe I made checks for that amount to somebody else after that.

By the Court:

Q. We are not interested in "maybe's". A. Well, I don't remember.

Q. Then say so. A. I can't remember who I made the checks.

30

By Mr. Schotland:

Q. Isn't the check for \$1,457.25, which I have shown you before, the check that you made out for the balance at the time when you borrowed the \$2,000, binding the Cocozza mortgage as security, when you made the whole series of checks to represent that \$2,000? A. No, sir, because I got—

40

Q. What is this check for, then? A. This check for?

Emelio Laudati—Recalled—Cross.

Q. Yes. A. I can't remember what that was for.

Q. You notice that the date is at about the same time as the date of the assignment that you gave to Mr. Dotto of the Cocozzo mortgage. Does that refresh your recollection any? A. I can't remember that. It was made August 20, 1925.

10

Mr. Bianchi: Cocozza is 1924.

Mr. Schotland: The Cocozza assignment is August, 1925.

The Witness: 1924.

Mr. Bianchi: 1924, the year before.

Mr. Schotland: We rest.

MARIA CIAMBOLI, recalled as a witness on behalf of the defendants, testified as follows:

20

Direct-examination by Mr. Bianchi:

Q. In September, 1927, did you have a talk with Mr. Zazzale on the street in front of your house?
A. No.

Mr. Bianchi: I want to call your Honor's attention to certain figures on this second sheet that correspond to Mr. Laudati's statement. I wanted to file my amended answer, setting up what I have attempted to estop by the witnesses here, by the transactions testified to by Mr. Zazzale, by the records, and by Mr. Laudati. Our defense is estoppel. The amended answer amounts to an estoppel on the part of the complainant from now coming forward and stating that Mr. Laudati wasn't authorized to receive the money.

30

40

Maria Ciamboli—Recalled—Direct.

The Court: What have you, up to now, set up?

Mr. Bianchi: I think that in my original answer I simply set up the fact that we didn't have notice of this assignment and that we had paid all of the money with the exception of \$600.

10 The Court: By the consent of, acquiescence in, or with the knowledge of—

Mr. Bianchi: I don't think that I set that out fully.

The Court: Is that what you want to set out?

Mr. Bianchi: In my defense, yes, sir.

The Court: And also set up the agency?

Mr. Bianchi: Yes, sir, in keeping with certain decisions in our State.

20 The Court: I will allow you to. You want to have your defense in keeping with the decisions and with the facts of the case.

Mr. Bianchi: With that exception, we rest.

(Further discussion between court and counsel.)

30

40

Exhibit C-1.

55-18

THE AMERICAN NATIONAL BANK

Newark, N. J. Feb. 15 1927 No. 1360

Pay to the Order of Antonio Laudati \$118 36/xx
 One Hundred Eighteen and 36/xx Dollars

EUGENE DOTTO. 10

Endorsed on Back:

Pay to the order of
 Small Loan Ass'n
 Antonio Laudati
 Pay to the order of
 American National Bank
 of Newark, N. J.
 Small Loan Association
 Andy Spinosa, Treas.

20

55-18

THE AMERICAN NATIONAL BANK

Newark, N. J. Feb. 15 1927 No. 1361

Pay to the Order of Antonio Laudati \$250 00/xx
 Two Hundred and Fifty & 00/xx Dollars

EUGENE DOTTO.

Endorsed on Back:

Pay to the order of
 Eugene Dotto
 Antonio Laudati
 for deposit.
 Eugene Dotto

30

40

Exhibit C-1.

55-18

THE AMERICAN NATIONAL BANK

Newark, N. J. Feb. 15 1927 No. 1362

Pay to the Order of Antonio Laudati \$56 66/xx
 Fifty Six and 66/xx Dollars

10

EUGENE DOTTO.

Endorsed on Back:

Pay to the order of
 Geo. W. Oberlander, Collector.

Antonio Laudati

Pay to the order of

Keansburg National Bank

Keansburg, N. J.

Borough of Keansburg

20

Geo. W. Oberlander, Collector.

Pay to the order of

Any Bank, Banker or Trust Company

(All prior endorsements guaranteed)

Keansburg National Bank,

55-468 Keansburg, N. J. 55-468

C. B. Lohsen, Cashier.

30

40

Exhibit C-1.

55-18

THE AMERICAN NATIONAL BANK

Newark, N. J. Feb. 15 1927 No. 1363

Pay to the Order of Antonio Laudati \$75 00/xx
 Seventy Five and 00/xx Dollars

EUGENE DOTTO.

Endorsed on Back: 10

Pay to the order of
 Geo. W. Oberlander, Collector.

Antonio Laudati

Pay to the order of
 Keansburg National Bank
 Keansburg, N. J.

Borough of Keansburg
 Geo. W. Oberlander, Collector.

Pay to the order of 20
 Any Bank, Banker or Trust Company
 (All prior endorsements guaranteed)
 Keansburg National Bank,
 55-468 Keansburg, N. J. 55-468
 C. B. Lohsen, Cashier.

55-18

THE AMERICAN NATIONAL BANK

Newark, N. J. Feb. 15 1927 No. 1364 30

Pay to the Order of Antonio Laudati \$351 04/xx
 Three Hundred Fifty One & 04/xx Dollars

EUGENE DOTTO.

Endorsed on Back:

Pay to the order of
 Eugene Dotto

Antonio Laudati
 for deposit.

Eugene Dotto. 40

Exhibit C-1.

55-18

THE AMERICAN NATIONAL BANK

Newark, N. J. Feb. 15 1927 No. 1365

Pay to the Order of Antonio Laudati \$648 94/xx
 Six Hundred Forty Eight & 94/xx Dollars

EUGENE DOTTO.

- 10 Endorsed on Back:
 Antonio Laudati
 Emelio Laudati
 Pay to the order of
 Any Bank, Banker or Trust Co.
 (All prior endorsements guaranteed)
 Feb 16 1927
 The First National Bank
 55-450
 20 West Orange, N. J.

Exhibit C-2.

- Know all Men by these Presents: That we, Pietro Ciamboli and Maria Ciamboli, are held and firmly bound unto Emilio Laudati, (Single), in the penal sum of Nine Thousand Six Hundred (\$9,600.00)
- 30 Dollars, lawful money of the United States of America, to be paid to the said Emilio Laudati, (Single), his executors, administrators or assigns: For which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals. Dated the First day of May One Thousand Nine Hundred and Twenty-four.
- 40 The Condition of the above obligation is such

Exhibit C-2.

that if the above bounden Pietro Ciamboli and Maria Ciamboli, their heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named Emilio Laudati, his executors, administrators or assigns, the just and full sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, on the First day of May which will be in the year One Thousand Nine Hundred and Twenty-eight, and the interest thereon, to be computed from May 1, 1924, at and after the rate of six per cent. per annum, and to be paid semi-annually, without any fraud or other delay, then the above Obligation to be Void, otherwise to remain in full force and virtue. 10

And it is hereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said Emilio Laudati, or his legal representatives, be 20
30
40

Exhibit C-2.

come and be due and payable immediately thereafter, although the first period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

10 his
PIETRO X CIAMBOLI (L.S.)
mark

her
MARIA X CIAMBOLI (L.S.)
mark

Signed, Sealed and Delivered
in the Presence of
Frank Alter
20 Joseph F. Geidon
(\$2.40 Documentary stamps, cancelled, affixed).

(Endorsements)

BOND

Pietro Ciamboli, *et ux.*,
To
Emilio Laudati, Single.

30 Amount \$4,800.00
Date, May 1st. 1924.
Due, May 1st. 1928.
Interest Payable semi-annually.

Exhibit C-3.

This Indenture, made the 1st day of May in the year of our Lord One Thousand Nine Hundred and Twenty-four.

Between Pietro Ciamboli and Maria Ciamboli, His Wife, of the Town of West Orange in the County of Essex and State of New Jersey party of the first part; and Emilio Laudati (Single) of the Town of West Orange, in the County of Essex and State of New Jersey party of the second part; 10

Whereas, the said Pietro Ciamboli and Maria Ciamboli, are justly indebted to the said party of the second part, in the sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, lawful money of the United States of America, secured to be paid by their certain bond or obligation, bearing even date with these presents, in the penal sum of Nine Thousand Six Hundred (\$9,600.00) Dollars lawful money as aforesaid conditioned for the payment of the said first-mentioned sum of Four Thousand Eight Hundred (\$4,800.00) Dollars, lawful money as aforesaid, to the said party of the second part, his executors, administrators or assigns on the First day of May which will be in the year One Thousand Nine Hundred and Twenty-eight and interest thereon, to be computed from May 1, 1924, at and after the rate of six (6) per cent. per annum, and to be paid semi-annually. 20 30

And it is thereby expressly agreed that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and 40

Exhibit C-3.

become due and payable, and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty
10 days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Four Thousand Eight Hundred (\$4,800.00) dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, any-
20 thing therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear,

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with
30 interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm,
40 unto the said party of the second part, and to his heirs and assigns forever,

Exhibit C-3.

All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of West Orange in the County of Essex and State of New Jersey.

BEGINNING in the Northerly line of Condit Place at a point therein distant fifty-seven feet and fourteen hundredths of a foot Easterly from Longview Street; running thence (1) along Condit Place South sixty-four degrees fifty-eight minutes East fifty feet; thence (2) North twenty-five degrees two minutes East one hundred and thirty-four and ninety-three hundredths of a foot; thence North sixty-three degrees twenty-eight minutes West fifty feet and one hundredth of a foot; thence South twenty-five degrees two minutes West one hundred and thirty-six feet and twenty-four hundredths of a foot to the BEGINNING. 10 20

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: 30

To Have and to Hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit and behoof forever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors or adminis- 40

Exhibit C-3.

trators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

10 And the said parties of the first part for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators and assigns, the said sum of money and interest, as mentioned above and expressed in the condition of the said bond.

20 And it is also Agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

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Exhibit C-3.

And the said parties of the first part the owners of the lands above described for themselves, their heirs and assigns, do further covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that they will pay in full, all taxes levied, or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto. 10

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written. 20

his
PIETRO X CIAMBOLI (L.S.)
mark

her
MARIA X CIAMBOLI (L.S.)
mark 30

Signed, Sealed and Delivered
in the Presence of
Frank Alter
Joseph F. Gerdin

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

Be it Remembered, That on this Fifteenth day of December in the year of our Lord One Thousand Nine Hundred and Twenty-four, before me, 40

Exhibit C-3.

the subscriber, a Notary Public of New Jersey, personally appeared Pietro Ciamboli and Maria Ciamboli, his wife, who, I am satisfied, are the mortgagors mentioned 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 Maria Ciamboli, wife as aforesaid, being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, Freely, without any fear, threats or compulsion of her said husband.

20

JOSEPH F. GERDON,

A Notary Public of New Jersey.

(Seal) My Commission expires March 31, 1926

Endorsed:

MORTGAGE

Pietro Ciamboli, et ux.,
to
Emilio Laudati, Single.

30

Dated, May 1st, 1924.

Received in the Register's Office of the County of Essex, N. J. on the 24th day of March, A. D., 1925, at 10:46 o'clock, in the forenoon and recorded in Book Q 53 of Mortgages for said County, on pages 263-265.

Howard S. Dodd,
Register.

40

Exhibit C-4.

Know all Men by these Presents, That Emilio Laudati, of the Town of West Orange, County of Essex and State of New Jersey, party of the first part; in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States of America, to him in hand paid by Eugene Dotto, of the City of Newark, County of Essex and State of New Jersey, party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his Executors, Administrators or Assigns a certain Indenture of Mortgage bearing date the First day of May, One Thousand Nine Hundred Twenty Four made by Pietro Ciamboli and Maria Ciamboli, his wife, on lands in the Town of West Orange, County of Essex, New Jersey, to secure the payment of the sum of Four Thousand Eight Hundred (\$4800.00) Dollars which mortgage is recorded in the Register's Office of the County of Essex in Book Q 53 of Mortgages, pages 263-265.

Together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To Have and to Hold the same unto the said party of the second part, his heirs, executors, administrators or assigns forever subject only to the proviso in the said Indenture of Mortgage mentioned: And do I hereby make, constitute, and appoint the said party of the second part; my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use and take

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Exhibit C-4.

all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made: And do hereby covenant, promise and agree, to and with the said party of the second part, that there
 10 is now due and owing upon the said Bond and Mortgage the sum of Four Thousand Eight Hundred (\$4800.00) Dollars.

In Witness Whereof, I have hereunto set my hand and seal the First day of June in the year of Our Lord One Thousand Nine Hundred and Twenty Five.

EMILIO LAUDATI.

Signed, Sealed and Delivered

in the Presence of
 20 Peter C. Zazzali.

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

Be it Remembered, that on this Ninth day of June in the year of our Lord One Thousand Nine Hundred and Twenty Five, before me the subscriber, a Notary Public of the State of New Jersey, personally appeared Emilio Laudati, who, I
 30 am satisfied, is the grantor 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 voluntary act and deed, for the uses and purposes therein expressed.

PETER C. ZAZZALI,
 A Notary Public of the
 State of New Jersey.

Exhibit C-4.

Endorsed:

ASSIGNMENT OF MORTGAGE.

 Emilio Laudati
 to
 Eugene Dotto.

Dated, June 1, 1925.

10

Received in the Register's Office of the County of Essex, N. J. on the 9th day of June A. D. 1925, at 1:02 o'clock, in the afternoon and Recorded in Book 173 of Assignments of Mortgages for said County, on page 258.

HOWARD S. DODD,
 Register.

20

Exhibit C-5 for Iden.

This Indenture, made the First day of February in the year of Our Lord One Thousand Nine Hundred and Twenty-seven

Between Antonio Laudati, single of the Town of West Orange in the County of Essex and State of New Jersey, party of the First Part:

30

And Andrew Prezioso of the City of Newark, in the County of Essex and State of New Jersey, party of the Second Part:

Whereas, the said party of the first part is justly indebted to the said party of the second part, in the sum of Fifteen Hundred (\$1500.00) Dollars lawful money of the United States of America, secured to be paid by a certain bond or obligation, bearing even date with these presents, in

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Exhibit C-5 for Iden.

the penal sum of Three Thousand (\$3,000.00) Dollars lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Fifteen Hundred (\$1500.00) lawful money as aforesaid, to the said party of the second part, his executors, administrators, or assigns, on the First
10 day of February which will be in the year One Thousand Nine Hundred and twenty-nine and interest thereon, to be computed from the First day of February One Thousand Nine Hundred and twenty-seven at and after the rate of six per cent. per annum, and to be paid semi-annually

And it is thereby Expressly Agreed, that should any default be made in the payment of the said interest or of any part thereof, on any day where-
20 on the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest remain unpaid and in arrear for the space of sixty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty
30 then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Fifteen Hundred (\$1500.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have ex-
40 pired, anything therein before contained to the

Exhibit C-5 for Iden.

contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now, this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the Borough of Keansburg in the County of Monmouth and State of New Jersey, formerly of the Township of Raritan, County of Monmouth and State of New Jersey:

Beginning at a point in the Westerly line of Laurel Avenue where the same intersects the Southerly line of Maplewood Avenue; thence Southerly and along the Westerly line of Laurel Avenue fifty (50) feet to the Northeast corner of Lot No. six (6); thence Westerly and along the Northerly line of lot No. six (6) one hundred and twenty (120) feet to the Easterly line of lot No. nine (9); thence Northerly and along the Easterly line of lot No. nine (9) fifty (50) feet to the Southerly line of Maplewood Avenue; thence Easter-

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Exhibit C-5 for Iden.

ly and along the Southerly line of the aforesaid Maplewood Avenue, one hundred and twenty (120) feet to the point and place of Beginning.

10 Being known and designated as lots Nos. seven (7) and eight (8) in Block E on map of West Keansburg Beach, County of Monmouth and State of New Jersey, made by Frank Osborne, Surveyor in 1913.

20 Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainderders, rents, issues, and profits thereof; And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances. To Have and to Hold, the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit and behoof, forever.

30 Provided Always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said conditions, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. And the said Antonio Laudati for himself, his heirs, 40 executors and administrators, does covenant and

Exhibit C-5 for Iden.

agree to pay unto the said party of the second part his executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

An it is also Agreed, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien, on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

And the said party of the first part, Antonio Laudati, his heirs, executors and administrators, does covenant and grant to and with the said party of the second part, heirs and assigns, that the said party of the first part, his heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

In Witness Whereof, the said party of the first

Exhibit C-5 for Iden.

part has hereto set his hand and seal the day and year first above written.

ANTONIO LAUDATI (L.S.)

Signed, Sealed and Delivered
in the presence of
Eugene Dotto.

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

Be it Remembered, That on this fifth day of February in the year of our Lord One Thousand Nine Hundred and Twenty-seven before me, Attorney at Law of the State of New Jersey, personally appeared Antonio Laudati, single, who, I am satisfied, is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

EUGENE DOTTO,
Atty. at Law of N. J.

Endorsed:

MORTGAGE.

30 Antonio Laudati, single
to
Andrew Prezioso.

Dated February 1, 1927.

Received in the Clerk's Office of the County of Monmouth on the 9th day of February A. D., 1927, at 10 o'clock in the forenoon, and Recorded in Book 808 of Mortgages for said County, on pages 413 &c.

40 JOSEPH McDERMOTT,
Clerk.

Exhibit C-5.

(Envelope)

Loan June 1st, 1925 \$2500.
 Int. due May 1st and Nov. 1st, with installment
 Nov. 1st 1925, rec'd \$200.
 May 1st, 1926, rec'd act. \$250.
 Nov. 1st 1926, due Princ. \$250.
 paid Ulear 4 with Int. 10
 Rec'd Sept. 15—on acct int.—27.50
 “ Oct. 25— 25.50
 Rec'd Feb. 21—int 6 mo Due Nov 1/27—\$54.
 Emilio Laudati
 to
 Eugene Dotto.
 Ciamboli mortgage at West Orange
 June 9, 1925—2 yrs. 20

Exhibit C-6 for Iden.

Know all Men by these Presents, That Antonio
 Laudati, single, held and firmly bound unto An-
 drew Prezioso in the sum of Three Thousand (\$3,
 000.00) Dollars lawful money of the United
 States of America to be paid to the said Andrew
 Prezioso, executors, administrators or assigns: 30
 To which payment well and truly to be made, I
 bind myself, my heirs, executors and administra-
 tors, firmly by these presents. Sealed with my
 Seal and Dated the First day of February One
 Thousand Nine Hundred Twenty-seven

The Condition of the above Obligation is such,
 That if the above bounden Antonio Laudati, his
 heirs, executors or administrators, shall well and
 truly pay or cause to be paid, unto the above
 named Andrew Prezioso, executors, administra- 40

Exhibit C-6 for Iden.

tors or assigns, the just and full sum of Fifteen Hundred (\$1500.00) Dollars the First day of February which will be in the year One Thousand Nine Hundred Twenty-nine and the interest thereon, to be computed from February 1, 1927, at the rate of six per cent. per annum, and to be paid semi-annually, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

10 And it is Hereby Expressly Agreed, That should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable, and should the said interest remain unpaid and in arrear for the space of sixty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Fifteen Hundred (\$1500.00) Dollars with all arrearage of interest thereon, shall, at the option of the said Antonio Laudati or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything

Exhibit C-6 for Iden.

hereinbefore contained to the contrary thereof in
anywise notwithstanding.

ANTONIO LAUDATI (L.S.)

Signed, Sealed and Delivered
in the presence of
Eugene Dotto.

BOND

10

Antonio Laudati, single
to
Andrew Prezioso

Dated February 1, 1927.

Amount, \$3,000.00
Date, February 1, 1927
Due, February 1, 1929
Interest Payable, semi-annually
Interest Rate, six.

20

Exhibit C-9.

Know all Men by these Presents, That I, Emil-
io Laudati, party of the first part, in considera-
tion of the sum of Two Thousand (\$2,000.) Dol-
lars lawful money of the United States of Ameri-
ca, to me in hand paid by Eugene Dotto, party
of the Second Part, at or before the ensealing and
delivery of these presents, the receipt whereof is
hereby acknowledged, have granted, bargained,
sold, assigned, transferred and set over, and by
these presents do grant, bargain, sell, assign,
transfer, and set over unto the said party of the

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Exhibit C-9.

second part a certain Indenture of Mortgage bearing date the Twenty Fifth day of June One Thousand Nine Hundred and Twenty Four made by Eduardo Coccozza and Lucia Coccozza, his wife, on lands in the Town of West Orange, Essex County, New Jersey, to secure the payment of the sum of Four Thousand (\$4,000.) Dollars, which mortgage is recorded in the County Register's office of the County of Essex, June 25, 1924, Daily No. 31. Together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To Have and to Hold, the same unto the said party of the second part, his heirs, executors, administrators or assigns for his and their use forever, subject only to the proviso in the said Indenture of Mortgage mentioned:

20 And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made: And I do hereby covenant, promise and

30 agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of Four Thousand (\$4,000.) Dollars with interest thereon.

In Witness Whereof, I have hereunto set my Hand and Seal the Twentieth day of August in the year of Our Lord One Thousand Nine Hundred and Twenty Four.

EMILIO LAUDATI. (L.S.)

Signed, Sealed and Delivered

40 in the presence of
E. W. Mascia.

Exhibit C-9.

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

Be it Remembered, That on this Twenty Second day of August in the year of Our Lord One Thousand Nine Hundred and Twenty Four before me, an Attorney at Law of the State of New Jersey, personally appeared Emilio Laudati, who, I am satisfied is the assignor in the within Deed of Assignment named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

Egidio W. Mascio,
 An Atty at Law
 of New Jersey.

ASSIGNMENT OF MORTGAGE

Emilio Laudati
 to
 Eugene Dotto.

Dated August 20, 1924.

Received in the Register's Office of the County of Essex, N. J. on the 22nd day of August A. D., 1924, at 1:44 o'clock in Book 166 of Assignments of Mortgages for said County, on pages 425.

HOWARD S. DODD,
 Register.

Exhibit C-10.

This Indenture, made the twenty-fifth day of June in the year of Our Lord One Thousand Nine Hundred and twenty-four

Between Eduardo Coccozza and Lucia Coccozza, his wife, of the Town of West Orange in the County of Essex and State of New Jersey of the First Part:

10

And Emilio Laudati, single, of the Town of West Orange in the County of Essex and State of New Jersey of the Second Part:

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Whereas, the said Eduardo Coccozza and Lucia Coccozza, his wife, justly indebted to the said party of the second part, in the sum of Four Thousand (\$4000.) dollars lawful money of the United States of America, secured to be paid by that certain bond or obligation, bearing even date with these presents, in the penal sum of Eight Thousand (\$8000.) dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Four Thousand dollars payable in installments at the rate of \$15.00 per week on the Wednesday of each and every week hereafter with interest on the unpaid balances at the rate of 6% per annum and the balance lawful money as aforesaid, to the said party of the second part, his ex-

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ecutors, administrators, or assigns, on the Twenty-fifth day of June, which will be in the year One Thousand Nine Hundred and twenty-eight, and interest thereon, to be computed from the twenty-fifth day of June, One Thousand Nine Hundred and twenty-four at and after the rate of six per cent. per annum, and to be paid semi-annually

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And it is thereby Expressly Agreed, that should any default be made in the payment of the said interest or payments or of any part thereof, on any day whereon the same is made payable, as

Exhibit C-10.

above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or payments remain unpaid and in arrear for the space of ninety days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of ninety days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Four Thousand (\$4000.) dollars with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now, this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released,

Exhibit C-10.

conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the Town of West Orange in the County of Essex and State of New Jersey,

10

Beginning at a point in the Westerly line of Ashland Avenue, which point is 226 feet northerly from the intersection of the said Westerly line of Ashland Avenue and the Northerly line of White Street; thence along the said Westerly line of Ashland Avenue North 32 degrees, 31 minutes East 33.71 feet; thence North 58 degrees 37 minutes West 150 feet; thence South 32 degrees 31 minutes West 33.71 feet; thence South 58 degrees 37 minutes East 150 feet to the point and place of BEGINNING.

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Being the same premises conveyed to the party of the first part by the party of the second part, by Deed bearing even date herewith and not yet recorded.

30

This mortgage being given to secure a part of the consideration of the above conveyance, and therefore, it is a purchase money mortgage. This mortgage is second in priority to a mortgage to the amount of Seven Thousand Dollars (\$7000) bearing date April 1st, 1924, held by the Roosevelt Building & Loan Association and recorded in the County Registers office book V-50 Mortgages, Page 382. Should any default be made in the payments of interest, principal or dues as provided for in the said prior mortgage of \$7,000.00 and should such interest principal or dues remain unpaid and in arrears for the space of thirty days,

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Exhibit C-10.

then and in that event the amount secured by the within mortgage shall become immediately due and payable, anything hereinbefore contained to the contrary notwithstanding.

Together with all and singular the tenements, hereditaments and appurtenances thertunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances. To Have an to Hold, the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever. 10 20

Provided Always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors, or administrators shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void, And the said Eduardo Coccozza and Lucia Coccozza, his wife, for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second 30 40

Exhibit C-10.

part, his executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

10 And it is Also Agreed, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid
20 for effecting the same shall be a lien on the said mortgaged premises added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

30 And the said party of the first part, Eduardo Coccozza and Lucia Coccozza, his wife, their heirs, executors and administrators, do covenant and grant to and with the said party of the second part, his heirs and assigns, that the said party of the first part, their heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

40 In Witness Whereof, the said party of the first

Exhibit C-10.

part have hereto set their hands and seals the day and year first above written.

EDUARDO COCOZZA (L.S.)

LUCIA COCOZZA (L.S.)

Signed, Sealed and Delivered
in the presence of

Eugene Dotto.

10

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

Be it Remembered, That on this Twenty-Fifth day of June in the year of our Lord One Thousand Nine Hundred and twenty-four before me an Attorney at Law of N. J., personally appeared Eduardo Cocozza and Lucia Cocozza, his wife, who, I am satisfied, are the grantors mentioned in the within Indenture, and 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 Lucia Cocozza being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, Freely, without any fear, threats or compulsion of her husband.

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EUGENE DOTTO,
Att'y at Law of N. J.

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Exhibit C-10.

Endorsed :

MORTGAGE

Eduardo Coccozza and Lucia Coccozza, his wife
to
Emilio Laudati, single.

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Dated June 25th, 1924

Received in the Register's Office of the County of Essex, N. J. on the 25th day of June, A. D., 1924, at 11:31 o'clock, in the forenoon, and Recorded in Book R 51 of Mortgages for said County, on pages 291-293.

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HOWARD S. DODD,
Register.

Mar. 4th, 1927.

This Mtge has been paid in full and satisfied, the register is authorized to cancel the same on record.

EUGENE DOTTO.

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(Stamped across face)

Cancelled of Record this 4 day of March, 1927.

HOWARD S. DODD,
Register.

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New Jersey Court of Errors and Appeals

Between

CATHERINE DOTTO, Executrix under the last Will and Testament of EUGENE DOTTO,

Complainant-Respondent,
and

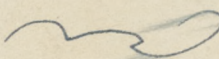
PIETRO CIAMBOLI and MARIA
CIAMBOLI,
Defendants-Appellants.

On Appeal
from Decree
of Court of
Chancery.

BRIEF OF DEFENDANTS-APPELLANTS.

Statement of Case.

This is an appeal from a decree of the Court of Chancery, directing the sale of the mortgaged premises which were the subject of the Bill of Complaint to foreclose, filed in this cause below by the complainant-respondent, wherein the said Pietro Ciamboli and Maria Ciamboli, were defendants. The said decree adjudges that there is due to the complainant-respondent the sum of \$1800.00 together with lawful interest from November 1st, 1927, as the balance of the principal and interest upon said mortgage. I feel that the conclusions of the Vice-Chancellor in his opinion which is printed in the state of the case on page 15-16, is erroneous, and that the decree formulated on said opinion, should be reversed.



Facts.

This is a suit to foreclose a certain mortgage executed by Pietro Ciamboli and Maria Ciamboli, his wife, to Emelio Laudati, dated May 1st, 1924, and recorded on March 4, 1925. The said mortgage secured a bond in the principal amount of \$4800.00 which was executed simultaneously with the said mortgage. The said bond and mortgage was due and payable on May 1st, 1928, together with interest at the rate of six per cent, semi-annually. On June 1st, 1925, the said Emelio Laudati assigned and delivered the said bond and mortgage to Eugene Dotto, which assignment was recorded on June 9, 1925. Catherine Dotto, complainant-respondent, in this cause, is the Executrix of the Estate of the said Eugene Dotto, he having died on December 21, 1927, leaving a Will, wherein he appointed the said Catherine Dotto, executrix, and she duly qualified.

Ciamboli's, the mortgagors, made payments from time to time on account of the principal and interest of said mortgage to Emelio Laudati, the mortgagee, paying to him in all, the sum of \$4200.00 plus interest, leaving a bance due on said mortgage of \$600.00 together with interest from September 8, 1927. (Complainant-respondent admits this fact.)

No actual notice of the assignment of the said mortgage was given to the Ciamboli's, until May 1st, 1928 which was the due date of the mortgage at which time they received a letter demanding payment of the full amount of the mortgage of \$4800.00, from Peter Zazzale, a step-son of Eugene Dotto.

The assignment of June 1st, 1925, from Laudati to Dotto, was to secure a \$2500.00 loan of which

Laudati has repaid \$700.00 on account of the principal, which money he had collected from Ciamboli's, with the knowledge and consent of Eugene Dotto. The complainant-respondent, admitted having received payments from Laudati, the original mortgagee, of both principal and interest on the said mortgage, after the assignment of the mortgage by Laudati to Eugene Dotto.

The complainant-respondent filed a bill to foreclose the said mortgage, setting up that there was due on the said mortgage the full sum of \$4800.00. After certain testimony was taken, the complainant-respondent realizing their position did, in open court, waive their claim to the full amount of the principal of \$4800.00 and set up a claim of only \$1800.00.

The defendants in answer to the said bill, set up as defenses that the complainant-respondent (or Eugene Dotto), had given to Laudati, authority as their agent to collect both principal and interest on the said mortgage from the Ciamboli's, and that the complainant-respondent is now estopped to deny the said agency, by reason of having accepted payments from Laudati of principal and interest that had been paid to Laudati by the Ciamboli's after the assignment of the said mortgage to the complainant-respondent (or Eugene Dotto).

ARGUMENT.

POINT I.

Where the assignment of a mortgage is not known to the mortgagor, and the mortgagee is authorized by the assignee to collect principal and interest on the mortgage, such payments as are made by the mortgagor to the assignor, after assignment, are valid as against the assignee.

The principal witness testifying in this cause was Emelio Laudati, the mortgagee and assignor. He testified (page 26-27), that he had received a personal loan from Eugene Dotto, who had been his attorney for many years, and that he gave to Dotto as collateral security for the loan, an out and out assignment of the Ciamboli mortgage of \$4820.00, and he testified in reply to questions asked of him by the court, (pages 51-52), that he had made an agreement with Dotto, that the said loan was to be paid back by him to Dotto, from payments that he was to receive from the Ciamboli's on the mortgage, and he testified to every detail of the transaction under examination by the court, as more fully appears in the state of the case on page 51-52.

There has been no denial that such was the arrangement, and there has been in fact, an admission by the complainant-respondent, that Laudati did pay money to Dotto, that he had collected from the Ciamboli's with Dotto's knowledge and acquiescence. Peter Zazzale, step-son of the deceased, Eugene Dotto, who is the only person who knew of the transaction, testified for the complainant-respondent as follows: (Page 93)

Q. At the time when you demanded the \$4800.00 you had already acknowledged receipt of \$700.00.

A. Oh, yes.

Q. He had paid the \$700.00.

A. Mr. Laudati.

Q. To whom?

A. Mr. Dotto.

Q. On account of what?

A. The \$2500.00 loan.

Q. On what mortgage?

A. On the Ciamboli mortgage.

Q. Mr. Dotto knew that that money was paid on the principal of that mortgage?

A. By whom?

Q. By Laudati.

A. Yes, sir.

This is the testimony of the only witness for the complainant-respondent who knew anything about the transaction between Laudati and Dotto. The only record of this transaction consisted of notations made upon an envelope, which envelope was introduced into evidence as Exhibit C-5, (page 135), and which envelope shows the receipt of \$700.00 by Dotto from Laudati on account of the principal of the Ciamboli mortgage.

There is no testimony whatsoever that the Ciamboli's had at any time made a single payment to any other person but Laudati. The Ciamboli's testified that they never knew of the assignment of the \$4800.00 mortgage from Laudati to Dotto and that the first time they ever had any knowledge of the said assignment, was when on May 1st, 1928, which was the due date of the mortgage, they received a letter from Peter Zazzale demanding payment of the sum of \$4800.00.

The complainant-respondent having admitted by their testimony that they received payments from Laudati on account of the mortgage, can they now

come into court and say, that Ciamboli's are the ones who shall suffer because of the failure of Laudati to pay over to Dotto, all of the money that he had collected from the Ciamboli's, after the complainant-respondent, or Eugene Dotto, had from time to time acquiesced in the acts of their agent, Laudati, and collected from the Ciamboli's interest and principal, and that they did acquiesce in his acts is evidenced by their admissions in their testimony of the receipt from time to time of various sums of money from Laudati, their assignor.

The mere fact that the complainant-respondent may have a good cause of action against Laudati for having converted to his own use, part of the money that he had received from the Ciamboli's as agent for Dotto, is no reason why the Ciamboli's should be made to suffer for Laudati's shortcomings. Laudati was complainant-respondent's agent, and not the defendants' agent.

POINT II.

The authority of an agent to do certain acts on behalf of his principal may be inferred from the continuation of the acts themselves, over such a period of time and the doing of them in such a manner, that the principal would naturally have been cognizant of them, and would have forbidden them if unauthorized.

The defendants contend that the testimony clearly establishes the agency of Laudati to collect both principal and interest, and that Laudati did, in fact, collect principal and interest with the acquiescence of Dotto.

Emelio Laudati, witness for the defendants, in reply to questions asked by the court testified as follows, (page 51-52) :

By the Court:

Q. Tell me what the arrangement, if any was as to collecting the interest or principal on the Ciamboli mortgage?

A. There was nothing at all, only I had to pay the \$2500.00 back.

Q. How was Ciamboli to pay you?

A. Ciamboli pay me?

Q. What was the arrangement as to what Ciamboli was to pay?

A. Well, it was up to him. Unless he earned—some months give me \$50.00.

Q. As you went along?

A. Some months \$100.00.

Q. What arrangement had you made with Mr. Dotto?

A. We had no arrangement at all.

Q. About collecting the mortgage? What arrangement had you with Dotto for collecting the money from Ciamboli?

A. No arrangement at all. He left everything up to me to collect that, and pay the loan.

Q. You say he left it up to you? What did he have to say to show that he left it up to you?

A. He told me—he says, collect the money from Ciamboli and pay the loan.

Q. He told you to collect it?

A. Yes, sir. I did collect all the time.

Q. Where did he tell you?

A. Right in his office at the time.

Q. As you got the money from Ciamboli you paid it over to Dotto?

A. Yes, sir.

Q. Do you know whether Dotto knew that the money you were paying over to him was Ciamboli's money?

A. Sure he know it.

Q. How did he know it?

A. I told him.

Q. What did you say to him at any particular time?

A. I told him when Ciamboli pay me something on the mortgage, I will tell him.

Q. At the time when you brought him the money, what did you say to him about it?

A. I would tell him, "Mr. Dotto I got some money for you; I collect some money from Ciamboli."

Q. You told him that?

A. Yes, sir.

Q. Each time?

A. Yes, sir.

This testimony and the testimony of Peter Zazzale (page 93) clearly establishes that Dotto did authorize and know that Laudati was collecting principal and interest from the Ciamboli's, and that he did acquiesce in the acts of his agent.

The testimony of the said Peter Zazzale, (page

90-91), goes further to prove that Dotto knew and acquiesced in the conduct of Laudati.

Q. When did you see Mr. Laudati? When was the date after the Ciamboli mortgage became due.

A. I used to see him every Sunday.

Q. When was the particular day on which you saw him after it became due?

A. Well, it was about a month afterwards. About a month.

Q. Did you then ask him for the balance due on that mortgage?

A. No.

Q. What did you say to him?

A. I asked him for the full amount of the \$4800.00.

Q. What did he say?

A. Well, he told me to wait awhile, to give the Ciamboli's a chance, that they were poor people and that they would be able to pay it maybe later on, so I didn't start any foreclosure proceedings. *I left it up to him to arrange payment.*

Zazzale's testimony "I left it up to him to arrange payment", was indicative of the complainant-respondent's attitude during this entire transaction. Further testimony of Zazzale (on page 99), goes further to substantiate defendants' contention.

By the Court:

Q. They (Ciamboli's) paid him?

A. Yes, they paid him, (Laudati) and he would give it to me. I would go up to him and get it from him. I would go up to his place and collect it from him.

Q. From whom?

A. From Laudati.

This testimony goes further to prove that Zazzale, who took care of this transaction for Dotto,

and Dotto, knew at all times that Laudati was collecting principal and interest from the Ciamboli's, and notwithstanding this situation, Dotto permitted and allowed Laudati to continue his fraudulent practices, and inferentially conferred authority upon Laudati to so act as his agent.

In *Dierkes v. Hauxhurst Land Company*, Court of Errors and Appeals, 80 N. J. Law, 369, it was held. "The authority of an agent to do certain acts on behalf of his principal, may be inferred from the continuation of the acts themselves, over such a period of time and the doing of them in such a manner, that the principal would naturally have become cognizant of them, and it would have forbidden them, if unauthorized."

There can be no doubt from the testimony, but that Dotto knew that Laudati was collecting the principal and interest on the mortgage that had been assigned to him, and had he desired to forbid his agent, Laudati, to collect the said principal and interest, he could have easily informed the defendants that he, and he alone, was the owner of the mortgage and was entitled to any payments that they might make on account of the same. Dotto's acquiescence in the acts of his agent established an agency between them which Dotto or his estate cannot, at this time, deny.

The recording of the assignment of the mortgage was not such notice to the mortgagors as would bar them from setting up as a defense to a suit to foreclose by the assignee, payments made by the mortgagor to the *mortgagee-assignor*, who in turn happens to be the *agent of the assignee*.

It is the contention of the defendants that the following cases hold that the question of authorization is one of fact, and not one of law, and that

the facts in the present case brings it within their rulings.

Lawson, *et al.*, v. Nicholson, 52 N. J. Eq. 821, wherein Chief Justice Beasley said: "If the agency claimed existed, it must have been by imputation of law from the circumstances incident to the transaction. It is a case ever regulated, and regulated wholly by the doctrine of estoppel, for the question always, in such investigations, is, has the obligee acted in such a way as to lead the obligor or his representative, reasonably to the conclusion that the alleged agent had the right to receive payment of the obligation? It is deemed that it is at all times to be regarded as a fact to be ascertained by a construction of the given circumstances, and not, as seems to be indicated in some of the authorities, as a thing to be regulated, in some instances by legal definitions. It is a matter of fact to be interpreted by such rules as are applied in other cases of the same class."

Dorman vs. West Jersey Title & Guaranty Co., 89 Equity, 579, where the court after practically reiterating all that Chief Justice Beasley had said in the case of Lawson, *et al.* vs. Nicholson in reversing the lower court, held: "That the agents' authority to receive the principal is not a question of law, but is to be regarded as a question of fact and a question for the jury."

In Reid vs. Dublier, *et al.*, 87 N. J. Law, 115, the Supreme Court in a case where the parties stipulated to waive the statute providing for the foreclosure of a mortgage before the commencement of an action on the bond, after going over the facts which included the question as to the authorization to receive payments after an assignment of a mortgage, concluded that the payment had been made to one who was apparently the

agent of the assignee and who had been in the habit of receiving payments of principal and interest, and decided the case as one purely of fact.

Dotto has admitted receiving some of the money that Laudati collected from the Ciamboli's, and his estate is now estopped from denying Laudati's authority to collect the principal and interest. If Dotto were alive he could not come into court and say, "I will admit that Laudati was my agent to collect part of the principal, but not all of the principal," without his first proving to the court that he had so limited Laudati's agency, of which there is no proof in this case.

POINT III.

Where a fraud has been perpetrated upon two innocent parties by a third person, the innocent party, through whose acts and conduct, the perpetration of the fraud was made possible, must stand the loss.

Both the complainant-respondent and the defendants-appellants are innocent victims of the fraud perpetrated by Laudati. The Ciamboli's have been certainly innocent of any wrongdoing or neglect of any nature whatsoever in this transaction, and there is no reason, either in law or in equity, why the Ciamboli's should be made to suffer for the easy and free manner in which Dotto carried on his business transactions with Laudati.

This fraud was perpetrated on both the Ciamboli's and Dotto, innocent parties, but it was made possible by Dotto's acquiescence in the fraudulent

acts and conduct of Laudati, and had Dotto used due diligence, this fraud would not have been possible. One of the parties must stand the loss, and equity puts it on Dotto and his estate, because of his conduct in this transaction.

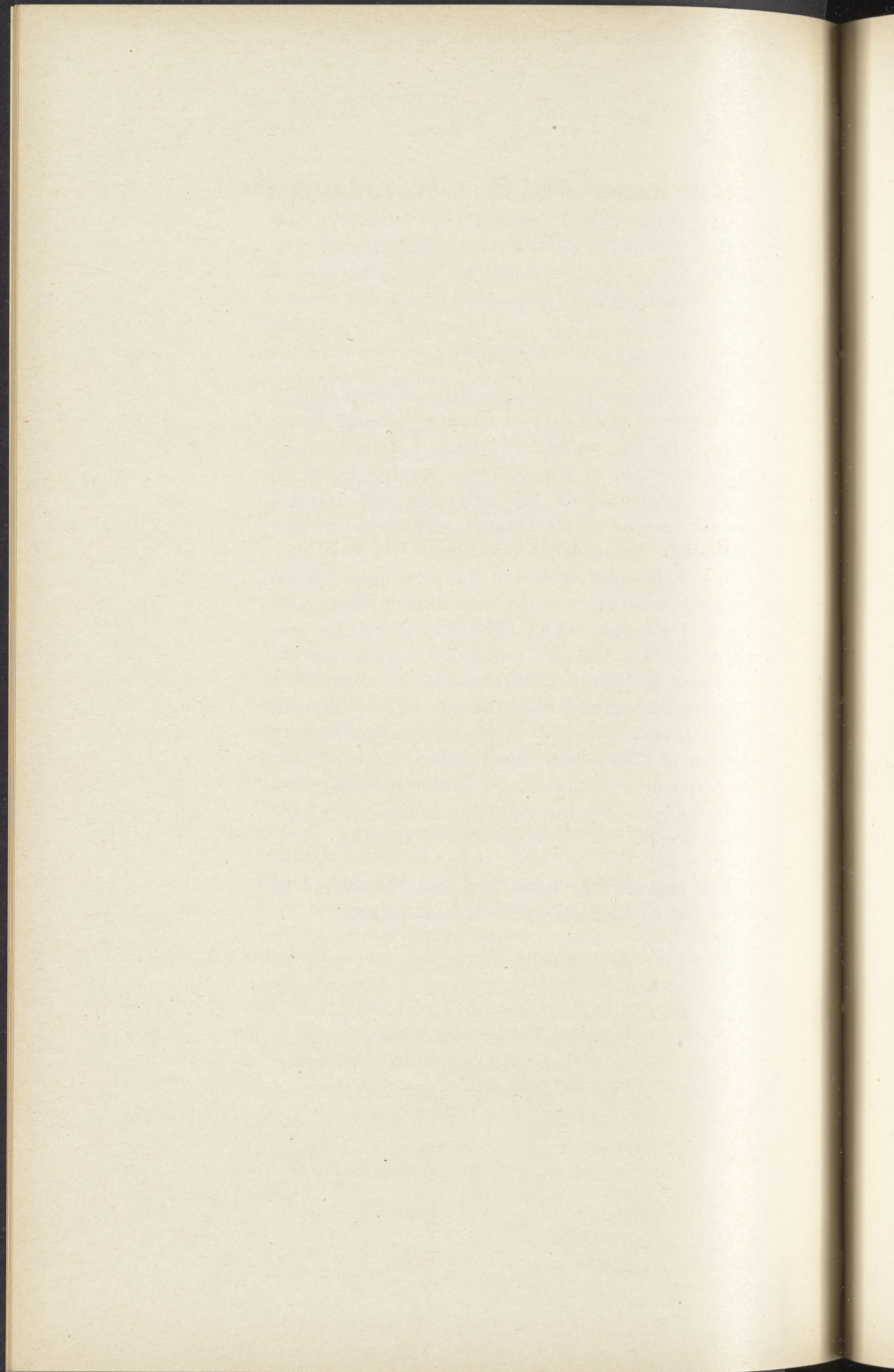
Conclusion.

In conclusion it is respectfully submitted that the decree of the Court of Chancery should be reversed, for the reason that said Emelio Laudati was authorized by his assignee, Eugene Dotto, to receive payments on the principal and interest from the defendant-mortgagors, and for the further reason that the said Emelio Laudati did make payments of the interest and of the principal received from the defendants to the said Eugene Dotto, and the said Eugene Dotto, having received the said payments from the said Laudati, knowing that the payments had been collected from the Ciamboli's, has ratified and acquiesced in the acts of the said Laudati, and having so ratified and acquiesced in the acts of the said Emelio Laudati, the complainant-respondent is now barred from recovering from the defendants, the principal and interest they have heretofore paid to the said Emelio Laudati.

It is respectfully submitted that the decree of the Court of Chancery should be reversed.

Respectfully submitted,

O. C. BIANCHI,
Solicitor for and of Counsel
with Defendants-Appellants.



New Jersey Court of Errors and Appeals

Between

CATHERINE DOTTO, Executrix under the last Will and Testament of EUGENE DOTTO, deceased,
Respondent,

and

PIETRO CIAMBOLI and MARIA
CIAMBOLI,
Appellants.

On Appeal
from the
Court of
Chancery.

BRIEF OF COMPLAINANT-RESPONDENT.

Facts.

On May 1, 1924 Pietro Ciamboli and Maria Ciamboli, his wife, executed and delivered to Emilio Laudati a mortgage on a certain tract of land known as No. 153 Condit Street, in the Town of West Orange, New Jersey, to secure a loan of \$4,800.00, payable May 1, 1928, with interest at the rate of six per centum, payable semi-annually (Exhibit C-3 State of the Case, pages 121-126). This mortgage was recorded on March 24, 1925. A bond was executed by the Ciambolis, simultaneously therewith to evidence the debt. The provisions for payment in the bond and mortgage were the same. On June 1, 1925 Emilio Laudati assigned the aforesaid bond and mortgage to Eugene Dotto, to secure a loan of \$2,500.00 from Dotto to Laudati. This assignment was recorded June 9, 1925 (Exhibit C-4, State of the Case, pages 127-128). By the express terms of said assignment, Laudati did

“covenant, promise and agree, to and with the said party of the second part (Dotto)

that there is now due and owing upon the said Bond and Mortgage the sum of Four Thousand Eight Hundred (\$4,800.00) Dollars." (State of the Case, page 128, lines 8-12).

On April 2, 1927 Laudati assigned his remaining interest in the Ciamboli bond and mortgage to Dotto, in full, to secure installment payments to be made to Dotto in the purchase of a property known as No. 91 Ashland Avenue, West Orange, New Jersey. This assignment is Exhibit D-1. The last paragraph of this assignment is:

"It is further agreed that all the right, title and interest in the bond and mortgage of Pietro Ciamboli assigned to Eugene Dotto, party of the first part by Emilio Laudati, party of the second part, shall pass to him absolute and all the money received by Eugene Dotto or to be received on said bond and mortgage by the said Eugene Dotto *after deducting the loans with interest* shall be considered part of the consideration for this agreement, and that in case the party of the second part shall fail to keep his promises, conditions and covenants shall also forfeit all the right, title and interest in said money received or to be received, even though it might be after forfeiture of this agreement, the reason being that the said amount has been considered as part of the deposit and consideration for this agreement." (State of Case, page 32, lines 29-39).

Laudati failed to keep up his payments, and forfeited the bond and mortgage to Dotto. However, the property which Laudati was to purchase by this agreement was recovered by complainant-respondent, and in view of the fraud that Laudati perpetrated on the Ciambolis, as will hereinafter appear, complainant-respondent waived this for-

feiture in open court, so as to do equity while seeking its aid, and relies solely on the assignment of June 1, 1925, which was to secure the \$2,500.00 loan. (State of Case, page 59, line 13, to page 60, line 40). Of this sum Laudati repaid to Mr. Dotto \$700.00 before Dotto's death, which occurred on December 31, 1927. His duly qualified executrix is Catherine Dotto, the complainant-respondent.

The object of this suit is the foreclosure of the aforesaid mortgage, which fell due on May 1, 1928. The defendants, by their amended answer, (State of Case, pages 8-9), set up two defenses to this suit: the first is that they paid Laudati \$4,200.00 on this mortgage without knowing of the assignment to Dotto, and that Laudati collected the \$4,200.00 as the agent of Dotto and paid it over to Dotto; the second is: that the assignment was made to secure the \$2,500.00 loan, that Laudati repaid the whole amount of said loan, and that therefore complainant-respondent has no further interest in this mortgage. It is admitted that \$600.00 is still due on this mortgage, and defendants tendered themselves ready and willing to pay the complainant-respondent the \$600.00 with interest from September 8, 1927. (State of Case, page 7, line 38, to page 8, line 6, Original Answer).

The final hearing in this suit was started on June 10, 1929, and not being completed on that date, was adjourned until June 20, 1929, on which date it was completed. By the final decree advised by the learned Vice Chancellor, it was ordered that the mortgaged premises be sold to satisfy to complainant-respondent the sum of \$1,800.00 with interest from November 1, 1927, which was the full amount claimed by complainant-respondent.

ARGUMENT.

I.

The recording of an assignment of a mortgage is notice to the mortgagor of the assignment, and payments thereafter made to the mortgagee cannot be credited on the mortgage against the assignee.

The assignment of the mortgage under foreclosure in this suit from Laudati to Dotto, was recorded on June 9, 1925. It is the contention of complainant-respondent that such recording was constructive notice to the Ciambolis, of Dotto's ownership of the mortgage, and that whatever they thereafter paid Laudati cannot be set up as payment on the mortgage. The learned Vice Chancellor, who decided this suit, stated that to be the law,—

“Ciamboli was charged in law with notice of the recorded assignment, and payments made thereafter to Laudati cannot be credited on the mortgage debt. (*Emery v. Gordon*, 33 N. J. Eq. 447; *Steadman v. Foster*, 83 N. J. Eq. 641).” (State of Case, page 16, lines 19-23).

and his decision is amply supported by authority,

“and such recording shall be notice from the time such assignment is left for that purpose; to all persons concerned that said mortgage is so assigned.” (Compiled Statutes—1910, page 3418 Section 32).

“That when any assignment hereafter made is not recorded, as in this act provided, any payments made to the assignor in good faith, and without actual notice of such assign-

ment, * * * shall be as valid as if said mortgage had not been assigned." (Compiled Statutes—1910, page 3418, Section 34).

In *Emery v. Gordon*, 33 N. J. Eq. 447, at 449, Chancellor Runyon decided:

"From the time when the assignment was left for record Gordon was chargeable with notice that the complainant was the owner of the mortgage (Rev. 708, Sections 32, 34) and his payments to Lowe after that time, on account of it, could only be allowed on the ground that Lowe was the complainant's agent."

In *Steadman v. Foster*, 83 N. J. Eq., 641, Parker, J., speaking for this Court, says:

"It was claimed at the hearing that the payments should be credited on the mortgage because the Fosters did not know of the assignment. But the Vice-Chancellor properly held that they were bound to know of it. *Leonard v. Leonia Heights Land Co.*, 81 N. J. Eq. 489, 89 Atl. 645, Ann. Cas. 1914-C, 749."

which last case is a decision of the Court of Errors and Appeals, to the effect that Sections 32 and 34 of the Mortgage Act are still law not having been affected in any way by Sections 53 and 54 of the Conveyancing Act.

Complainant-respondent is unable to find in the Brief filed on behalf of defendants-appellants, any attack on this interpretation of the statute, and assumes that its correctness is admitted.

II.

The learned Vice Chancellor did not err in finding that Laudati had neither paid his debt to Dotto, nor was he Dotto's agent to collect anything on account of the principal of the mortgage from the Ciambolis.

There were two factual issues raised by the defense made to this suit; Emilio Laudati testified at length as to both. As stated by defendants-appellants, he was the principal witness. The learned Vice Chancellor who heard the case, found, as to his testimony:

“Laudati claims to have paid the Dotto loan in full and he gave at least three different and conflicting versions of how that was done, any of which, if the others were true, was obviously false; and to round out his string of falsehoods he says he was authorized by Dotto to collect the principal and interest and that he paid it over to him as he got it. The truth is not in him. He is both thief and liar and resorted to perjury to shield himself from the wrath of Ciamboli, fearing nothing from the dead Dotto. His testimony is without probative value.”
(State of Case, page 16, lines 6-19).

An examination of the evidence, will, it is submitted, prove the propriety of this finding, and that the decision appealed from was correct and should be affirmed, for without Laudati's testimony there is no evidence of his alleged repayment of the loan, and no evidence of the alleged agency.

Throughout this case it must be borne in mind

that complainant-respondent represents a decedent who alone was cognizant of all the details of the transactions in question, and therefore she cannot put anyone on the witness stand to categorically deny the statements of Laudati, defendant's witness. However, the documents and records left by decedent tell a story that cannot be twisted or turned. And the inconsistencies, the contradictions and unbelievable explanations to be found in the testimony of the witness Laudati, whereby defendants seek to escape the effect of the documentary evidence, and of the statute controlling the case, only serve to emphasize the real truth.

Laudati admits the loan of \$2,500 and that the mortgage was assigned to secure this loan. (State of Case, page 26, Lines 12-33). He claims that prior to the agreement of April 2, 1927 this loan was repaid. He testified that he made the final payment of \$1,300.00 to Dotto out of a loan of \$1,500.00 made by one Preziosi to Antonion Laudati, a brother of Emilio Laudati, secured by a mortgage dated February 1, 1927, (State of Case, page 30, lines 21-30), but that he did not get back his mortgage on repaying the loan.

“Because we have that agreement and I give that security on the property, 91 Ashland Avenue.” (State of Case, page 28, lines 15-16).

He forgets that the agreement for the purchase of 91 Ashland Avenue is dated April 2, 1927, and that that is two months after the \$2,500.00 loan was supposedly repaid. He offers no explanation for leaving the mortgage with Dotto during those two months. But he insists that the loan had been fully repaid at the time the agreement of

April 2, 1927 was entered into. When the last paragraph of that agreement, which is as follows:

"10. It is further agreed that all the right, title and interest in the bond and mortgage of Pietro Ciamboli assigned to Eugene Dotto, party of the first part by Emilio Laudati, party of the second part, shall pass to him absolute and all the money received by Eugene Dotto or to be received on said bond and mortgage by the said Eugene Dotto after deducting the loans with interest shall be considered part of the consideration for this agreement, and that in case the party of the second part shall fail to keep his promises, conditions and covenants shall also forfeit all the right, title and interest in said money received or to be received, even though it might be after forfeiture of this agreement, the reason being that the said amount has been considered as part of the deposit and consideration for this agreement. (Exhibit D-1).

was read to him in open court his explanation is that he really did not mean it was all paid, but that there was still a check for \$1,300.00 due.

"Q. Why did you sign the agreement, with that provision in it if you didn't owe him money then? A. Because the understanding was he had another check to collect—the last check. He says "in case you do not pay that check"—that is why he puts that in—he says "I will deduct it from the mortgage.

Q. What check was that? A. The balance on the \$2500.

Q. When was that \$1300. paid? A. When I got the money from Mr. Preziosi.

Q. When? A. That was 1927.

Q. What part of 1927? A. I can't remember the date.

The Court: Have you the mortgage?

Have you the record of that Preziosi mortgage?

Mr. Schotland: I have the mortgage here.

The Court: What date does that bear?

Mr. Schotland: February 1st, 1927. This agreement is the following April.

Q. I show you a mortgage from Antonio Laudati to Preziosi. Is that the mortgage you are talking about? A. Yes, sir; that was the mortgage.

Q. That is the mortgage? A. Yes, sir."
(State of Case, page 33, lines 10-37).

But since the Preziosi loan was closed in February 1927 and the agreement was made in the following April, it seems rather impossible that he was to pay in the future with money he had received in the past; and especially so, since his story is that he had paid the money out of the Preziosi loan.

"Q. When was that \$1300. paid? A. When I got the money from Mr. Preziosi.

Q. When? A. That was 1927."

(State of Case, page 33, lines 19-21).

But to cap the climax, the statement of the closing of the Preziosi loan and the checks themselves do not show that \$1300.00 went to Dotto. \$118.36 was endorsed by Antonio Laudati to the Small Loan Association (State of Case, page 38, lines 27-40); \$250.00 was endorsed by Antonio Laudati to Mr. Dotto (State of the Case, page 39, lines 12-18); \$56.66 and \$75.00 were endorsed by Antonio Laudati to G. W. Oberlander, tax collector, and Emilio Laudati admits they went for taxes (State of Case, page 40, lines 1-8); \$351.04 was endorsed by Antonio Laudati to Eugene Dotto, and according to the statement of the transaction, this was to make good returned checks (State of Case,

page 40, lines 19-28), which Laudati denies; \$648.94 was endorsed by Antonio Laudati and Emilio Laudati and stamped by the First National Bank of West Orange, which Laudati admits was his bank (State of the Case, page 41, lines 20-32). Laudati testified at first, in reference to this check:

“Q. Now the last item on this statement is to Antonio Laudati \$648.94 which is apparently the balance of this full \$1500. Who got the money on that check?

A. Mr. Dotto.

Q. Where is his name showing he got the money?

A. Well, I turned it over to him.

Q. Didn't you cash that check and keep the money?

A. I didn't put him through my bank.

Q. Did you cash the check and get the money?

A. No. This I signed and I gave to him—I give it to Mr. Dotto.

The Court: He wants to know whether you didn't cash the check and keep the money.

Witness: No. I never cashed that check.”

(State of Case, page 40, line 37, page 41, line 14).

and then when he was confronted with the endorsements which contradicted his story so plainly, he changed it to this:

“Q. Do you still say that you gave that check to Mr. Dotto? A. No. No I do not give that check to Mr. Dotto; no. I do not give this check to Mr. Dotto, no.

Q. You kept that money, didn't you? A. No; I cashed the check—now I remember. I cashed the check and next morning I bring over the cash money.

Q. To where? A. To Mr. Dotto's office.

Q. Did you get a receipt for it? A. I got the check. He gave me the \$1300. check, but he still held that \$1300—"

(State of Case, page 41, line 33, page 42, line 5).

If either of these explanations were true there would be no need for a new one at the second hearing ten days later. But he does give a new explanation:

"Q. Where did you get the \$1300 to give to Mr. Dotto to make good your check at the time when you got this loan from Preziosi? A. Well, I had some money in my bank.

Q. You drew some money out of your bank on that day? A. No.

Q. When? A. Was about three days or four days after, because Mr. Dotto give me a check for the balance. I had somewhat debts to pay to him, and he retained them, and the balance he said, "Well, bring down the rest of the money and pay that check for \$1300."

The Court: What date was that, please?

Mr. Schotland: This was on February 15, 1927.

Q. Now, Mr. Laudati, you say that one check to Mr. Dotto took to make good for some checks of yours that you owed him? A. No, he took the expense out and some assessments; his salaries. He took all that out.

Q. Didn't he take out \$351.04 by check No. 1364 for some returned checks of yours?

A. No, I don't know it.

By the Court:

Q. How much of a check did you give him?

A. I don't give him no check.

Q. You said that there wasn't enough and that you gave him a check to make up the \$1300. A. No, I didn't give him no check.

Q. What did you give him? A. I give him cash for the \$400. after.

Q. How much? A. Well, to make up the \$1300.

Q. How much was it? A. \$1300.

Q. Yes, but how much did you give him in cash to make it up? A. I think I bring cash around \$900 or \$1,000. I never remember what."

(State of Case, page 64, line 14, page 65, line 16).

To sum up, his story of payment is either as he first says: by endorsing the checks for \$250.00, \$351.04 and \$648.94 of the Preziosi loan to Dotto, which is only \$1,249.98 and not \$1300.00; or as he says secondly, when he realizes the check for \$648.94 never went to Dotto's credit; by the first two checks and the proceeds from the checks for \$648.94 which Laudati claims he cashed and brought the proceeds down to Dotto the next morning; or as he says finally: by a cash payment of \$900.00 or \$1,000.00 a few days later in addition to what was retained by Dotto from the Preziosi loan. If either of the first two stories were true, why was \$1000.00 required to close the account which was only \$51.02 short? If the third story is true why was it told last? That none of these stories is true is proven not only by the fact that they cannot all stand together, but by the fact that Laudati never got back his bond and mortgage, and by the further fact, that in the agreement of April 2, 1927 (Exhibit D-1) Laudati admitted the obligation still was in force, and, also, by his bank statement which shows a deposit of \$648.94 on February 16, 1927.

This story of how the \$1300.00 balance of the \$2500.00 loan was paid, is scarcely more incredi-

ble than Laudati's tale of how the first \$1200.00 was paid.

"Witness: The time when I got the \$2500. Mr. Dotto take twelve—twenty-four twenty-five checks from me, dated one each month. The first was \$62.50.

The Court: You mean you got back from him the twenty-six checks?

Witness: Twenty-five. I give him twenty-five checks for \$2500.

The Court: One hundred dollars each?

Witness: No. One check was for \$52.50, the first. Second one was for \$62.25; third was for \$62.; see? Reduced twenty-five cents each month.

The Court: When you paid him over this money, this \$700., how many checks had he?

Witness: \$700.? I didn't pay only \$700.

The Court: When you paid him the cash—this cash of \$648. how many checks had he then?

Witness: One check, \$1300.

The Court: How did that come about?

Witness: Because I paid him the other checks from 1925.

The Court: How did you come to give him a \$1300 check when you gave him other checks for sixty-dollars and some cents?

Witness: Two years was only \$1200 and \$50. a month and the \$1300. makes the \$2500.

The Court: How did you pay him the interest?

Witness: The interest I paid him every month. That is why he collected first time \$62.50, and then \$62.25, \$62. and \$61.75.

The Court: And so on down?

Witness: Down to the \$1300., was the last check.

The Court: Did that make up the full interest on the \$2500.?

Witness: On \$2500. for two years.

Q. Now when did you borrow this \$2500 from Mr. Dotto? A. I cannot remember the date. It was in 1925.

The Court: When you gave the assignment?

Witness: Yes, sir.

Q. That is June 1, 1925? A. Sometime like that.

Q. And you paid him, you say, this fifty dollars and interest every week? A. Every month.

Q. Every month fifty dollars a month? A. Fifty dollars plus interest.

Q. Plus interest, every month? A. Regularly, yes, sir.

Q. Never skipped? A. No.

Q. From June 1st; and then there was a balance due of \$1300 when your brother borrowed the \$1500. from Preziosi, is that right? A. Yes, sir.

Q. Will you show me how you paid \$1200. at the rate of \$50 a month from June 1st, 1925 to February 15, 1927? A. Well, it is pretty near two years.

Q. That is two years, is it? A. Sure.

Q. And you paid \$50 a month? A. I paid \$50. a month, plus interest.

(State of Case, page 42, line 15, to page 44, line 12).

The key to this testimony is, where are these cancelled checks? Laudati tells us:

“Q. You remember speaking to Mr. Zazali Friday night? A. Yes, sir.

Q. Do you remember telling him that you had all the checks showing all the payments that you made? A. Yes, sir.

Q. What did you do with the checks since Friday night? A. I'll tell you. I looked

for them and I found out that I destroyed every one last year—I burned them all up.

Q. When did you burn them up? A. Last year; 1928.

Q. 1928? A. Yes, sir.

Q. When did you find out that this case had been started in this court? A. What did you say?

Q. When did you find out that this foreclosure had been started on this mortgage? A. Until Mr. Ciamboli come to me and told me.

Q. When did you find that out? A. About four or five months ago.

Q. Did you destroy those checks before or after you found out this suit had been started? A. No; before.

Q. You destroyed them before, you remember? A. It was the last part—

Q. You remember that now, do you? A. It was the last part of 1928.

Q. When you destroyed the checks? A. When I destroyed the checks, because I lost a lot of money in building and at that time I was half crazy, so I destroyed everything.

Q. The last part. You know this suit was started the last part of 1928; December 20th. A. That was on the first of 1928, I tell you, I destroyed all those things.

Q. I thought you said the last part? A. I said the first part of 1928.

Q. The first part, not the last part? A. No, the first.

Q. Why did you destroy them? A. I told you during 1927 I lost a lot of money in the building game, so I was half crazy at that time and I cleaned everything up—I burned everything up.

Q. You knew that Mr. Dotto died as the new year of 1928 came in, didn't you? A. I know Mr. Dotto died 1928; I can't remember the date.

Q. At the time he died you knew of it, did-

n't you? A. I knew it two or three days after.

Q. Now did you destroy your checks after you knew that he died? A. No; they were destroyed before.

Q. He died on the first of January, 1928? A. Well, I cannot remember that.

Q. And you say you destroyed your checks in the early part of 1928? A. 1928. Some time in 1928.

Q. It was after Dotto died, wasn't it? A. Maybe. I don't know. I can't say."

(State of Case, page 45, line 18, page 47, line 2).

He claims to have destroyed the cancelled checks, but the fact that he did had slipped his mind only three days before the hearing. He claims to have destroyed them in the last part of 1928; but finding that date incriminating, changes to the first part; and then tries to get back earlier than the first of January, but doesn't quite date. His claim was still possible until a transcript of his bank account was subpoenaed from the First National Bank of West Orange, which he admitted was his bank. The complete statement was made up by the bank, produced in court, and Laudati was confronted with it. *It shows no such charges as would be there if such a series of checks were paid.* The falseness of this whole story is only made more apparent when he tries to squirm out of this incontrovertible refutation:

"Q. Mr. Laudati, you have testified that you paid back \$2,500 that you borrowed on the strength of the Ciamboli mortgage by paying \$62.50 a month regularly, the interest each month being less. I show you your ledger account from your bank. Show me where there is any charge against your account for \$62.50, beginning with July 25 and

going along monthly in amounts reduced twenty-five cents each month, to pay off the \$2,500 mortgage. A. Yes, I can explain that.

Q. Show me on your page in your ledger account. A. Excuse me, I will tell you, because when I got this \$2,500 from Mr. Dotto with the understanding that after six months I started giving \$60 a month, plus interest, so I started six months after that.

By the Court:

Q. So you started in January? A. Yes.

Mr. Schotland: January, 1926, he now says that he started payments.

By Mr. Schotland:

Q. Do you mean to say that you paid off \$1,200 at the rate of \$50 a month in January, 1926 to February, 1927? A. No. I paid that and then I got some other checks, and we have a whole lot of transaction from Mr. Dotto. When I got \$4000 from Mr. Cocozza in February, Mr. Dotto, he collected. He says, "Now you got a chance to give me some money on that loan"; so he took some money from the Cocozza mortgage." (State of Case, page 111, line 16, page 112, line 11).

From regular monthly payments for almost two years, and a large final payment at the end, to monthly payments for a lesser period supplemented by additional funds as he got them, would be contradiction enough to brand any testimony as false, but between the two is sandwiched still a third version of how the \$2500.00 was repaid. Having forgotten the first story of \$50.00 payments monthly plus interest from June 1, 1925, and not yet thought of the explanation which was told ten days later at the second hearing, which was, similar payments but starting in January, 1926, he

tells of an entirely different method of repayment when questioned by the Court:

“By the Court:

Q. Tell me what arrangement, if any, was as to collecting the interest or principal on the Ciamboli mortgage. A. There was nothing at all, only I had to pay the \$2500 back.

Q. How was Ciamboli to pay you? A. Ciamboli pay me?

Q. What was the arrangement as to what Ciamboli was to pay? A. Well, it was up to him. Unless he earned—some months give me \$50.

Q. As you went along? A. Some months \$100.

Q. What arrangement had you with Mr. Dotto? A. We had no arrangement at all.

Q. About collecting the mortgage. What arrangement had you with Dotto for collecting the money from Ciamboli? A. No arrangement at all. He left everything up to me to collect that and pay the loan.

Q. You say he left it up to you. What did he have to say to show that he left it up to you? A. He told me—he says collect the money from Ciamboli and pay me that loan.

Q. He told you to collect it? A. Yes, sir; I did collect all the time.

Q. Where did he tell you? A. Right in his office at the time.

Q. As you got the money from Ciamboli you paid it over to Dotto? A. Yes, sir.

Q. Do you know whether Dotto knew that the money you were paying over to him was Ciamboli's money? A. Sure, he know it.

Q. How did he know it? A. I told him.

Q. What did you say to him at any particular time? A. I told him when Ciamboli pay me something on the mortgage I will tell him.

Q. At the time when you brought him the money what did you say to him about it?

A. I would tell him, "Mr. Dotto, I got some money for you; I collect some money from Mr. Ciamboli.

Q. You told him that? A. Yes, sir.

Q. Each time? A. Yes, sir.

(State of Case, page 51, line 18, to page 52, line 22).

Destructive as this wholly inconsistent testimony is to the whole defense of repayment, Laudati was compelled to inject it into the case. It is the only testimony which in any way supports the second factual defense, namely: that Laudati collected what he did collect as agent for Dotto. The collection is proved by a receipt book (Exhibit D-2) wherein Ciamboli's payments to Laudati amounting to \$4,227.81 are credited by Laudati. Of this amount \$3,074.25 was credited between June 1, 1925 and February 15, 1927. Laudati, according to one of his stories, was to pay Dotto what he collected from Ciamboli.

"A. He told me—he says collect the money from Ciamboli and pay me that loan".

(State of Case, page 51, lines 39-40).

He also states he did so:

"Q. As you got the money from Ciamboli you paid it over to Dotto? A. Yes, sir."

(State of Case, page 52, lines 7-8).

This defense of collection from Ciamboli by Laudati as agent for Dotto, and of faithful performance of the agency is open to attack from two sides. The first is, that if this was the way the \$2,500 was repaid, the other ways were not used, and the witness necessarily cannot be telling the truth each time. This has been considered above at length. The second attack is, that no agency existed.

Agency is proven by actual authorization or by implied authority. The evidence on actual authorization is:

“By the Court:

Q. Tell me what the arrangement, if any, was as to collecting the interest or principal on the Ciamboli mortgage. A. There was nothing at all, only I had to pay the \$2500 back.

Q. How was Ciamboli to pay you? A. Ciamboli pay me?

Q. What was the arrangement as to what Ciamboli was to pay? A. Well, it was up to him. Unless he earned—some month give me \$50.

Q. As you went along? A. Some months \$100.

Q. What arrangement had you with Mr. Dotto? A. We had no arrangement at all.

Q. About collecting the mortgage. What arrangement had you with Dotto for collecting the money from Ciamboli? A. No arrangement at all. He left everything up to me to collect that and pay the loan”.

(State of Case, page 51, lines 18-36).

The strongest case possible from such conversation, if it ever occurred, is, it is submitted, merely a suggestion of where the money to repay the loan was to come from. But whatever interpretation is to be put upon the meaning of the testimony, its weight is another question. This is the witness who denies the truth of every written document put in evidence by either side; who tells contradictory stories as to every point in his testimony; who cannot be believed in his story of agency and of turning over Ciambolis payments and telling Dotto they were such, if his story is believed that he paid by checks at regular intervals with one large final check, and who dares to do all this

only because he knows Dotto is dead and cannot get on the stand to contradict him.

But the documentary evidence offers convincing proof that Dotto did not in fact, know of payments by the Ciambolis, nor appoint Laudati his agent to collect any. *He, and not Laudati, held the bond and mortgage.* These instruments did not provide for installment payments of principal. The whole principal sum was due on May 1, 1928 and not before. Why appoint an agent to collect what was not to be paid? Laudati covenanted in the assignment to Dotto that the full amount of the principal secured by the bond and mortgage was still owing on June 1, 1925. (Exhibit C-4, State of Case, page 128, lines 8-12). The proofs establish that that was not the fact, that the covenant was broken, but the covenant under Laudati's hand and seal shows that he did not at the very same moment admit that the covenant was broken, and tell Dotto that there had been and were to be installment payments of the principal. Dotto left a memorandum (Exhibit C-5, State of Case, page 135), in his own handwriting, showing payments of \$700. on account of the \$2500.00 loan; one of \$200. on November 1, 1925, one of \$250.00 on May 1, 1926, and another of \$250.00 on November 1, 1926. These are entries against interest, and entitled to the highest credence. Laudati must necessarily deny these payments, because all of his stories are too far from the truth to in any way match up with them. These amounts do not coincide with the \$50 and \$100 payments made by Ciamboli to Laudati as shown by the receipt book. The fact is, the terms of the bond and mortgage, the covenant by Laudati, the payments to Dotto, overwhelmingly prove that Dotto never knew of payments by Ciamboli made or to be made; he

never knew because Laudati kept that from him, and he therefore never, in fact, appointed Laudati his agent to collect from Ciamboli. The attempt to establish this defense of agency by proof of actual authorization completely fails. The above excerpts from the testimony of Laudati and a consideration of the same demonstrates that the conclusion of the learned Vice Chancellor,

“The truth is not in him. He is both thief and liar, and resorted to perjury to shield himself from the wrath of Ciamboli, fearing nothing from the dead Dotto. His testimony is without probative value.” (State of Case, page 16, lines 15-19).

is more than justified.

Defendant is therefore compelled to try to prove the agency by implied authority.

The rule as to implied authority is laid down in *Law v. Stokes*, 32 N. J. L. 249, at 251, where Mr. Justice Depue, speaking for the Supreme Court, says:

“A principal is bound by the acts of his agent within the authority he has actually given him, which includes not only the precise act which he expressly authorizes him to do, but also whatever usually belongs to the doing of it, or is necessary to its performance. Beyond that, he is liable for the acts of his agent within the appearance of authority which the principal himself knowingly permits the agent to assume or which he holds the agent out to the public as possessing.”

Quoted with approval by this Court, in *Heckel v. Cranford Golf Club*, 97 N. J. L. 538.

It has been held that entrusting the agent with

the bond and mortgage does not prove agency to collect the principal sum due, even in a case where the interest was to be paid to the agent. *Lawson v. Nicholson*, 752 N. J. Eq. 821, where Mr. Chief Justice Beasley, speaking for this Court, says:

“That a person in possession of a bond is thereby shown to have the right to receive the moneys it calls for is a doctrine that has neither decision nor dictum for its sanction. If such a doctrine prevailed, it would deprive investments in such securities of much of their supposed safety. Such, fortunately, is not the law.”

To the same effect is *Dorman v. West Jersey Title & Guaranty Co.*, 92 N. J. L. 487. The instant case is even a stronger one for the complainant, because Dotto kept the bond and mortgage.

In the case of *Steadman v. Foster*, 83 N. J. Eq. 641, the mortgagee assigned the bond and mortgage and delivered them to the assignee, as was done in the instant case. He collected interest and remitted it to his assignee, but he also collected two payments of the principal and even got the assignee to sign a release which the mortgagor demanded after these payments. This court affirmed the decision in Chancery, that only insofar as the mortgagee was in fact the agent of the assignee, that is, to collect interest, was the assignee affected by payments made to the mortgagee.

The result of these decisions is that neither possession of the bond and mortgage nor possession coupled with the right to collect interest, nor the right to collect interest alone, nor the fact that the collector of interest is the mortgagee, that none of those, singly or collectively, amount to a holding out by the assignee of the mortgagee, or

of an attorney or anyone else as his agent to collect the principal due on the bond and mortgage. There is, therefore, under the rule of *Law v. Stokes*, 32 N. J. L. 249, nothing to the defendants' contention that Laudati was Dotto's agent to collect payments of principal, either, by implication or in fact. And it is Ciamboli, the defendant, himself, who gives the last push to this whole defense on his direct examination.

"Direct-examination by Mr. Bianchi:

Q. Mr. Ciamboli, you made a mortgage to Mr. Laudati for \$4800.? A. Yes.

Q. After making that mortgage did you make payments to him? A. Yes.

Q. Did you make payments of principal and interest? A. Yes, sir, I did pay all the time interest and principal.

Q. Did Mr. Laudati give you a receipt in any kind of book for that payment? Is this the receipt book for principal and interest that you paid? A. Yes, sir.

Q. Referring to Exhibit D-2. Did you ever pay interest and principal to any one else except to Mr. Laudati? A. No, only to Mr. Laudati.

Q. Did any one tell you at any time that Mr. Laudati had sold or transferred the mortgage on which you were making these payments? A. No, sir.

Q. What was the first time that you knew that this mortgage had been sold or transferred to Mr. Dotto? A. 1928."

(State of Case, page 66, line 24, page 67, line 8).

There is the truth by the innocent victim of Laudati's fraud. Laudati never said he was the agent, he never mentioned that Dotto had any interest in the mortgage, Ciamboli never knew of Dotto's interest until 1928. The receipt book shows that

the payments made before the supposed agency and after it, were receipted for by Laudati in exactly the same manner. If this is not a silent admission by Laudati that he knew he was not Dotto's agent, what could be? If the denial of the supposedly imposed—upon Ciamboli, that he ever supposed Laudati was an agent for anyone, does not disprove any holding out on the part of Dotto, what can?

It is submitted, therefore, that the conclusion of the learned Vice Chancellor of the absolute unreliability of the testimony of Laudati, was the only one possible, and that there was no evidence supporting the defenses that appellants attempted to establish.

(over)

III.

Defendants-appellants argue: as their third point:

“Where a fraud has been perpetrated upon two innocent parties by a third person, the innocent party, through whose acts and conduct, the perpetration of the fraud was made possible, must stand the loss.” (Brief of Defendants-appellants, page 12).

If this point could be raised in the instant case, it would avail the defendants nothing, for upon analysis it appears that Dotto was wholly without fault. He not only recorded his assignment, he also took the bond and mortgage into his possession. Nothing in either, gave him the slightest warning of any arrangement between Laudati and Ciamboli, that any installment payments of the principal of this mortgage, were ever to be made. On the other hand, the Ciambolis, through ignorance of the law and misplaced confidence in Laudati, ignored the records, paid without taking the slightest precautions against the very situation that did arise, ignored the possibility of an assignment of their obligation, and most foolishly of all changed the method of payment from that provided in the bond and mortgage. Every act of theirs was that of an honest but unwise man. This entire controversy springs from a single source—failure to search the records before making payments. This is the duty of the mortgagor, placed upon him by the doctrine of constructive notice. In shirking that duty, he becomes that one of the two innocent parties through whose acts and conduct the perpetration of the fraud was made possible, and therefore that one who must stand the

loss. This was decided by the learned Vice Chancellor, against the defendants, as a factual question.

Parkview B. & L. Ass'n v. Rose, 90 N. J. L. 614.

The stating and arguing of this point by the defendants, is, of course, an argument based on the assumption that Laudati was not the agent of the complainant, either express or implied; that being so, the case of Steadman, et al. v. Foster, et al, 83 N. J. Eq. 641, 92 Atl. 353, is dispositive of the instant case. This court, in an opinion by Justice Parker, holds that in that case:

“It was claimed at the hearing that the payments should be credited on the mortgage because the Fosters did not know of the assignment. But the Vice Chancellor properly held that they were bound to know of it. Leonard v. Leonia Heights Land Co., 81 N. J. Eq. 489, 89 Atl. 645, Ann. Cas. 1914-C, 749.”

The receipt book produced by the Ciambolis showed \$866.00 was paid off on this mortgage before Laudati assigned it to Dotto. Complainant-respondent, therefore, can claim no more than \$3,934.00 as principal still due on this mortgage. She only sought a decree for \$1,800.00 with interest for a shorter period than defendants-respondents tendered by their answer, to which, it is submitted, she was entitled.

It is respectfully submitted, therefore, that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel
with Complainant-Respondent.

