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## New Jersey Court of Errors and Appeals

*Between*

JOHN ANTONIO D'ELISA,  
*Complainant-Respondent,*

*and*

ROSA D'AMATO, INDIVIDUALLY,  
AND AS ADMINISTRATRIX OF  
THE ESTATE OF FRANCESCO  
D'AMATO, DECEASED, JOSIE  
IANELLI AND JOHN IANELLI,  
HER HUSBAND, DONATO  
D'AMATO AND CLARA D'AM-  
ATO, HIS WIFE, AND MICHAEL  
D'AMATO, NICHOLAS D'AM-  
ATO, ANGELO D'AMATO, ROSE  
D'AMATO AND ANGELINA  
D'AMATO AND WILLIAM G.  
BUMSTEAD, TRUSTEE, ETC.,  
*Defendants-Appellants.*

*On Bill.*

*On Appeal  
from  
Chancery.*

### BRIEF OF APPELLANTS.

The only point upon which the appellants rest in this appeal is the one of laches. The right of the respondent rests upon oral testimony given by respondent, John Antonio D'Elisa. Were it not for his testimony his suit for specific performance must have failed. The other witnesses produced by the respondent only tendered to corroborate certain details of the alleged contract or of its alleged performance; but nowhere is there evidence of establishing the contract or its performance except in the testimony of Mr. D'Elisa, the respondent. The

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testimony of D'Elisa, on pages 14 and 45, shows a different *manner* of making the alleged contract from that shown by the testimony of Bovasso, pages 67 and 71, and of Ariano, page 93. I can find nothing in the testimony of the witnesses other than D'Elisa, with reference to the alleged contract of sale that shows the identity of the lots. Thomas Sesta, on page 57, lines 33 to 35, denies hearing anything that would indicate the character of the lot. Bovasso, on page 67, at lines 34 to 36, states that he knows where the lots are; therefore, the only evidence as to identity of the lots is that of D'Elisa, and this evidence consists in large part from the character of his possession, and the receipt by him of the survey from D'Amato. The identity of the lots possessed by D'Elisa with those described in the survey, depends also solely upon the testimony of D'Elisa. There is also no evidence excepting that of the respondent as to the causes of the delay in procuring the deed for the property claimed to have been purchased. There are even no circumstances in evidence tending to corroborate the testimony of the respondent as to the reasons for the delay.

On page 21 of the State of the Case, commencing at line 3, and on page 43 commencing at line 40 and extending over to page 44, the respondent testifies that the last time he requested a deed from D'Amato was five or six years previous to the trial. He states that it was about the time that a new mortgage was given by D'Amato which mortgage, it is assumed by the witness, covered the lots alleged to have been purchased by him. On page 21 of the State of the Case the complainant-respondent at line 10 testified as follows:

“But I seen that the thing went on, a new mortgage was put on there, and I asked him

if he had a release, and he told me that he forgot all about it."

It also appears on the same page that Frank D'Amato died December 26th, 1913. At the time this new mortgage was given, the respondent had been in possession of the land for a number of years, and had erected buildings thereon, and that this possession was evidenced by fencing the lots and filling in and grading the lands and occupying the same in conducting a business thereon. So far as the evidence discloses, the mortgage that was alleged to have been given by D'Amato was subject to the rights of the respondent. *Wood vs. Price*, 79 N. J. Eq., 620; 79 N. J. Eq., 11. Therefore, its existence is not a circumstance from which the Court can infer an excuse for delaying to exercise his rights in demanding a deed. It is to be presumed that the respondent knew his rights at law and it is in evidence that he knew of the new mortgage. We might, therefore, infer, as a matter of fact, that his acquiescence was an admission against any claim of ownership in the property. I believe it does not appear in the evidence anywhere, that during the period of five or six years preceding the death of D'Amato, that the respondent made any further demand, directly or indirectly for a deed to the premises.

With this state of the evidence before us we can proceed to a discussion of the principles of law applicable thereto. In the first place I think we cannot apply that principle of law which excuses a delay on the part of the complainant-respondent by reason of the acts or conduct of D'Amato or his heirs-at-law.

There is a case in the State of New Jersey which seems to bear indirectly upon this point. This is the case of *Hall vs. Otterson*, 52 N. J. Equity, page 522, and which was affirmed on appeal in 53 N. J.

Equity. The heir of a married woman brought a suit to set aside a deed of trust of her separate property given to her husband, with power after her death to have the fee vested in her and diverted from her heirs. On page 538 there appears this statement:

“It is said that it would be inequitable to permit this suit to be maintained because, during the complainant’s delay in bringing it, witnesses have died and testimony has been lost. But it appears to me that Mr. Otterson has been himself guilty of laches in this regard. He being a lawyer of distinction must be assumed to have known that the law cast upon him the burden of proof hereinbefore indicated. It was within his power, by suit, to have perpetuated the testimony necessary to establish the deed as a valid gift, as well as within hers, either to have perpetuated the testimony necessary or to have brought suit to annul it; and he cannot invoke her delay in that regard as a bar to her action, because during the interval he has been deprived of testimony lost to him by his own neglect.”

This case is very different from the one in question because the burden of proof was on Otterson to establish his right. The delay of the complainant, Otterson, if there were such a delay, did not deprive him of testimony, because the burden of proof remained with him; and there were facts outside of the complainant’s testimony which established this burden of proof. In the present case the defendants-appellants have no burden of proof nor are there any extraneous circumstances established by independent and impartial evidence showing any duty or obligation or any burden upon D’Amato or his heirs-at-law with reference to this

title. The circumstance above indicated with reference to the new mortgage, is the only circumstance in the case relevant to the point, and is evidence against the complainant-respondent. His delay and acquiescence is an admission that he did not claim a fee or a right to a fee in the premises.

Now, therefore, we may pass to the principles of law which are a defense in this suit as established by the adjudicated cases in this State. In the suit of *McCartin vs. Traphagen*, 43 N. J. Equity, page 323, it was held that :

“He who delays asserting his rights until the proofs respecting the transaction out of which he claims his rights arose are so indeterminate and obscure that it is impossible for the Court to see whether what seems to be justice to him is not injustice to his adversary, has no right to relief.”

On page 337 the Court stated :

“Here the claim sought to be enforced is an extremely stale one; no attempt was made to enforce it until the person against whom it is mainly aimed was deprived of all power to resist it by death; nor until much, if not the entire body of the evidence which may have existed, tending to show that it was groundless, had, by the lapse of time, been either entirely destroyed or become so obscure as to leave scarcely a trace of the truth.”

The period of time in the above case was between fifteen and sixteen years. This case was cited with approval in the suit of *Tynan vs. Warren*, 53 N. J. Equity, page 313, and in the case of *Lutjen vs. Lutjen*, 64 N. J. Equity, page 773.

The case of *Van Houten vs. Van Winkle*, 46 N. J. Equity, page 380 clearly defined laches which

would be a defense against the assertion of a stale claim, on page 384, as follows:

“After he (suitor) has been informed of facts and circumstances which apprise him of the wrong, it is always dangerous and may be fatal to delay in pursuing the remedy which is open to him in equity for the lapse of time carries with it the memory and life of witnesses, the muniments of evidence and other means of proof, and where they have been lost during willful, negligent and unreasonable delay, that circumstance has uniformly been accorded great and frequently controlling weight against the complainant in the determination of a cause.”

The most recent case on the question of laches is *Soper vs. Sisco*, 95 Atlantic, page 1016, in which, on page 1020 the rule of laches was stated in the same language as that given in *McCartin vs. Trap-hagen*.

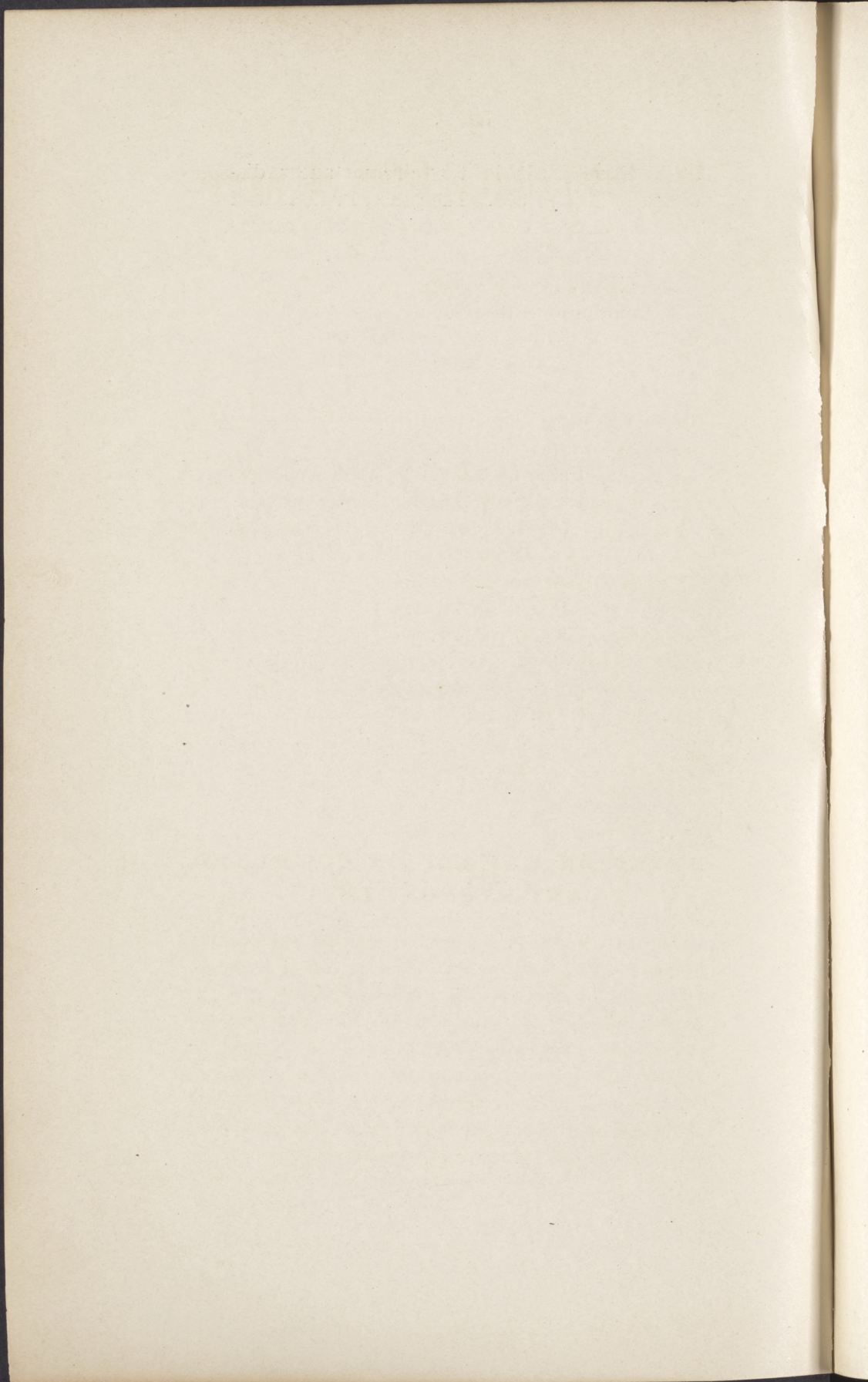
In the case of *Soper vs. Sisco* the suit was brought to set aside two deeds on the ground of undue influence, and a period of sixteen years had elapsed during which the lawyer who drew and took complainant's acknowledgment of the deed was dead and the lawyer who drew and took her acknowledgment on another deed had no reliable memory of the transaction and the complainant herself had reached such an extreme age that her mental faculty had become so far impaired as to render her testimony practically valueless. And the Court stated on page 1020:

“But if we were to take a different view and were also to assume that they (the defendants) have failed to bear that burden or the burden of showing absence of undue influence, still this complainant could not succeed in setting

aside these deeds in the circumstances disclosed by this record. The general rule is well settled, that he, who, without adequate excuse delays asserting his rights until the proof respecting the transaction out of which he claims his rights arose, are so indeterminate and obscure that it is impossible for the Court to see whether what is asserted to be justice to him is not injustice to his adversary, has no right to relief. \* \* \* We find no excuse for the delay."

The complainant-respondent in this case has everything in his power. His testimony is necessary to establish all the terms of the contract, the amount of the consideration and its payment and the terms and conditions. <sup>fig</sup> The defendants are without any protection whatever; for there was no other witness to the transaction and there are no circumstances which would tend to contradict or control the testimony of the respondent. This condition results entirely from the delay of the respondent, and without any excuse appearing except such excuse as he has seen fit to give. And even that excuse is not sufficient in law, because his rights were superior to the mortgage that was subsequently given by D'Amato.

FRANK BENJAMIN,  
*Counsel with Defendants-Appellants.*



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## **BRIEF ON BEHALF OF COMPLAIN- ANT-RESPONDENT.**

The bill in this case is filed against the widow, heirs at law and administratrix of Francesco D'Amato for the Specific Performance of an Oral Agreement for the sale of lands, entered into between said Francesco D'Amato in his lifetime, as vendor, and the complainant as vendee, for the consideration of Eight hundred dollars (\$800.00). The premises in question of which said D'Amato died seized in fee are situated in the City of Jersey City, County of Hudson and State of New Jersey, and

are described as follows: All those certain lots, pieces or parcels of lands and premises, which on a map entitled "Map of property of Mrs. Jane Van Horne, City of Bergen, County of Hudson and State of New Jersey, 1868," filed in the Clerk's, now Register's, Office, in said County, are known as all those parts of lots Nos. twenty-six (26), twenty-seven (27) and twenty-eight (28), in block No. thirteen (13), lying south of the middle of the Small Creek shown on said map. Also the right, title and interest of the said D'Amato to the Creek adjoining the foregoing premises.

The Agreement was discussed on August twenty-seventh, One thousand nine hundred and five, and the terms settled upon. Said D'Amato agreed to deliver to the complainant a full covenant and warranty deed of said premises, free and clear of all liens or encumbrances. On the following day, to wit, August twenty-eight, One thousand nine hundred and five, the vendee paid the vendor One hundred dollars (\$100.00), and it was then and there agreed that the vendee might immediately enter into possession and in pursuance thereof he so entered, and the next day began filling in and grading the lands, fencing the same and erecting buildings thereon and other improvements, amounting to almost double the sum paid for said lots. The complainant has continued in possession ever since, without any claim for rent or other charge, for use and occupation being asserted against him and without any claim whatever on the part of D'Amato to said premises.

The balance of the purchase price was paid by two (2) checks, of three hundred dollars (\$300.00) each, dated March twenty-second and March twenty-third, One thousand nine hundred and six, respectively, drawn by the complainant to the order of D'Amato, delivered to him and actually paid by

the bank upon which they were drawn, and the delivery of a horse by the complainant to D'Amato, at the agreed price of one hundred dollars (\$100.00).

There was on record a mortgage for thirteen thousand five hundred dollars (\$13,500.00), covering the premises herein described and other property dated June twenty-second, one thousand nine hundred and nine, and recorded in Liber six hundred sixty-eight (668), page four hundred twenty-four (424) of mortgages for Hudson County, executed by said Francesco D'Amato, and Rosa D'Amato, his wife, to William G. Bumsted, Trustee. The complainant from time to time asked D'Amato to give him a deed, but D'Amato explained first that he would do so when he discharged a mortgage covering the premises, and later, when about to discharge it and execute another, which would cover other property, he promised he would give the deed after cancelling the existing mortgage; again when asked for a deed he said by mistake he had executed the new mortgage, covering the premises in question and other property; and the matter was so put off by said D'Amato from time to time and thus it rested until after D'Amato's death, on December twenty-sixth, One thousand nine hundred and thirteen. The parties were close friends since boyhood and had confidence in each other. The said D'Amato left him surviving his wife, Rosa D'Amato, and the following infant children: his married daughter, Josie Ianelli, Donato D'Amato, Nicholas D'Amato, Michael D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato, his heirs at law. The heirs at law refused to give to complainant a deed, and suit was then started by the latter.

The Court advised a decree directing the heirs at law to specifically perform.

### POINT I.

**The Contract has been clearly, definitely and unequivocally proven, and having been fully performed by the complainant, this Court has power to decree specific performance, even though the contract be oral.**

*Wharton v. Stoutenburgh*, 35 N. J. Eq., 266-271-274.

*Young v. Young*, 45 N. J. Eq., 27.

*Clement v. Young-McShea Amusement Co.*, 69 N. J. Eq., 347-353.

*Atlantic City R. R. Co. v. Johanson*, 72 Eq., 332.

*Krah v. Wassmer, et al.*, 75 Eq., 109-112-114.

1 *Pomeroy's Eq. Juris.*, Sec. 103.

The theory upon which the authorities proceed in such cases is that, to refuse Specific Performance would work a fraud upon complainant.

*Nibert v. Baghurst*, 47 Eq., 204-207.

*Vreeland v. Vreeland*, 53 Eq., 387-389.

*Cooper v. Colson*, 66 Eq., 328-331-332.

In the case of *Cooper v. Colson*, above cited, Justice Fort, who delivered the opinion of the Court, says quoting Chancellor McGill on page 331:

Chancellor McGill says "that Equity will specifically enforce such a parol agreement at the instance of a complainant who shall have completely performed it upon his part is now established in this State beyond controversy. The remedy is afforded upon the ground that it will work a fraud upon him who, induced by the agreement, has, in

good faith, so performed it as to irretrievably change the situation of the parties to his disadvantage, to permit the other party to refuse fulfillment upon his part. It has had frequent recognition and application in adjudged cases in our courts." He cites

*Vreeland v. Vreeland,*

"As a general statement this language is unexceptionable."

The complainant's right being so clear in this case, as the Honorable Vice Chancellor stated in his opinion, to apply the doctrine of laches would aid in the perpetration of a fraud.

The defendants' sole contention on appeal, however, is that complainant is guilty of such laches as to bar him in his suit, and for that reason if this Court decides that the doctrine has application to the case, I find it necessary to cover that point.

## POINT II.

**It is well settled that this Court will never relieve a party from the consequences of his own negligence.**

*Cairo & Fulton R. R. v. Titus,* 27 N. J. Eq., 106.

*Phillips v. Pullen,* 45 N. J. Eq., 6.

*Krah v. Wasemer et al.,* 75 Eq., 109.

The testimony shows that the complainant and D'Amato were personal friends and knew each other since boyhood, that they called each other by their first name, that they had confidence in one another and relied on each others promises and word, indicating conclusively that each considered the other's word his bond, and that between them

ordinary business judgment was out of the question.

Complainant therefore had a right to take D'Amato's word from time to time as to the deed being delivered to him, and it was D'Amato's negligence that it was not, and the heirs at law in this suit standing in the position of D'Amato, cannot now overlook such negligence and defeat this suit on the ground of laches.

### POINT III.

**Again if the doctrine of laches is to be considered in this suit, a decree for specific performance being discretionary, the laches has been satisfactorily explained and excused by complainant.**

"Where the complainant's right to specific performance of a contract for the conveyance of certain lands accrued in the year 1877 and in that year the complainants were evicted from the possession of the lands under and by virtue of a judgment which was then recovered against them in ejectment at law, in favor of the defendants, and thereafter for nine years they failed to apply to this court to compel the Specific Performance of the contract or for other equitable relief, held: That unless their laches shall be satisfactorily explained and excused relief in this court will be denied them."

*Young v. Young*, 45 N. J. Eq., 27.

In that case the demurrer filed in the case was sustained because for nine years the defendants openly asserted a claim to the farm adverse to that of the complainants, which the court held amounted to acquiescence in the adverse claim.

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This is not our case in which D'Amato in his lifetime never asserted any claim adverse to that of complainant, either for the use or occupation of the premises or to the title thereof, on the contrary, by asking for the deed all the time, complainant always claimed ownership to D'Amato.

After the demurrer was sustained in the foregoing case, suit was started again and the Court held that complainant satisfactorily explained and excused the delay. The case is reported in 51 N. J. Eq., 491-498.

Vice-Chancellor Pitney said on page 497: "I conclude, therefore, that the facts as alleged in the amendment are substantially proven, and that the laches of the complainants has been sufficiently excused; provided, of course, that the defendants have not in the meantime altered their position irretrievably and have lost no serious advantage by the death of witnesses."

And on page 498, continuing, he says: "My conclusion upon the question of laches is that, if it be established by the proofs that Henry Young did encourage his son Jacob to make improvements upon his farm by a promise to him that he would give it to him at his death, as a proper share of his estate, and Jacob did make substantial and considerable improvements on the strength of it, then the equity of his heir-at-law to have the benefit of that promise has not been lost by the lapse of time, and that the delay in bringing the suit is accounted for by the circumstances before mentioned."

The complainants proved they had consulted counsel in reference to the facts, who undertook the work of collating the facts but was taken sick and remained ill for some time and subsequently died; then complainants consulted other counsel who also fell sick; that other suits arose between the parties to the suit and counsel advised com-

plainants they should not press their suit for Specific Performance, pending the progress of these various suits.

That the defendants have not in the meantime altered their position irretrievably and have lost no serious advantage by the death of D'Amato, is logical.

The complainant was positive in his testimony as to the contract as well as the witnesses who swore to some of the terms thereof and to admissions by D'Amato that he had sold the lots in question to his friend D'Elisa; the complainant besides was corroborated to some extent by documentary evidence such as the two checks of \$300.00 each and book of complainant showing the payments and the survey made especially for complainant by D'Amato and delivered by the latter to complainant; the testimony does not show that the memories of the complainant and his witnesses had become faded or weakened by time in any material aspects.

*Lutjen v. Lutjen*, 64 N. J. Eq., 773-780-781.

It ought to be noted here that the facts show complainant asked for deed the last time, four or five years before the filing of the bill, and since there never was a refusal to give it by D'Amato, the complainant thought, and logically so, he did not have to go to court, being in the position of having paid the full purchase price and being in possession.

*Young v. Young*, 51 Eq., 498.

Taking appellants' side of the case, even if D'Amato were living, his testimony could not have sufficed to overcome that of the complainant and his witnesses, nor sufficient for that matter to even

neutralize their testimony. How could he have explained the checks of three hundred dollars (\$300.00) each, the delivery of the horse for one hundred dollars (\$100.00), the continued possession for about nine years without any demand for rent and lastly, but not least, the improvements thereon worth about double the value of the lots? Was the eight hundred dollars (\$800.00) paid for use and occupation of the land indefinitely? Had not that amount already been eaten up by the nine years use and occupation? Did he expect that these improvements would be a gift to him when the land were returned to him by complainant? The defendants' theory does not seem plausible, to say the least.

Everything in the case proves clearly that the contention of defendants not only does not hold but savors of unreasonableness.

This covers the grounds of appeal advanced in the case by appellant.

### **FINALLY.**

**From what has been said and from the facts found by his Honor, the Vice Chancellor, the decree should be affirmed.**

It is found that there was: (1) full performance by the complainant; (2) the entry into possession of the lands with the assent of Francesco D'Amato; (3) complainant asked repeatedly for a deed; (4) the improvements of the lands by expenditures by the complainant to about an amount more than double the purchase price of the lands; (5) the failure of Francesco D'Amato to demand rent or other charge for the use and occupation

of the premises; (6) in fact, the utter abandonment of the premises to the complainant.

All of this makes the complainant's right so clear that to apply the doctrine of laches would aid in the perpetration of a fraud, but if to be considered then the complainant contends it has been satisfactorily explained and excused.

It is respectfully submitted that the decree entered in favor of the complainant be affirmed with costs in this court and in the court below.

Respectfully submitted,

ANTHONY BOTTI,  
Solicitor and of Counsel  
with Complainant-Respondent

[7619]

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### POINT III.

**Again if the doctrine of laches is to be considered in this suit, a decree for specific performance being discretionary, the laches has been satisfactorily explained and excused by complainant.**

"Where the complainant's right to specific performance of a contract for the conveyance of certain lands accrued in the year 1877 and in that year the complainants were evicted from the possession of the lands under and by virtue of a judgment which was then recovered against them in ejectment at law, in favor of the defendants, and thereafter for nine years they failed to apply to this court to compel the Specific Performance of the contract or for other equitable relief, held: That unless their laches shall be satisfactorily explained and excused relief in this court will be denied them."

*Young v. Young*, 45 N. J. Eq., 27.

In that case the demurrer filed in the case was sustained because for nine years the defendants openly asserted a claim to the farm adverse to that of the complainants, which the court held amounted to acquiescence in the adverse claim.

7

This is not our case in which D'Amato in his lifetime never asserted any claim adverse to that of complainant, either for the use or occupation of the premises or to the title thereof, on the contrary, by asking for the deed all the time, complainant always claimed ownership to D'Amato.

After the demurrer was sustained in the foregoing case, suit was started again and the Court held that complainant satisfactorily explained and excused the delay. The case is reported in 51 N. J. Eq., 491-498.

Vice-Chancellor Pitney said on page 497: "I conclude, therefore, that the facts as alleged in the amendment are substantially proven, and that the laches of the complainants has been sufficiently excused; provided, of course, that the defendants have not in the meantime altered their position irretrievably and have lost no serious advantage by the death of witnesses."

And on page 498, continuing, he says: "My conclusion upon the question of laches is that, if it be established by the proofs that Henry Young did encourage his son Jacob to make improvements upon his farm by a promise to him that he would give it to him at his death, as a proper share of his estate, and Jacob did make substantial and considerable improvements on the strength of it, then the equity of his heir-at-law to have the benefit of that promise has not been lost by the lapse of time, and that the delay in bringing the suit is accounted for by the circumstances before mentioned."

The complainants proved they had consulted counsel in reference to the facts, who undertook the work of collating the facts but was taken sick and remained ill for some time and subsequently died; then complainants consulted other counsel who also fell sick; that other suits arose between the parties to the suit and counsel advised com-

plainants they should not press their suit for Specific Performance, pending the progress of these various suits.

That the defendants have not in the meantime altered their position irretrievably and have lost no serious advantage by the death of D'Amato, is logical.

The complainant was positive in his testimony as to the contract as well as the witnesses who swore to some of the terms thereof and to admissions by D'Amato that he had sold the lots in question to his friend D'Elisa; the complainant besides was corroborated to some extent by documentary evidence such as the two checks of \$300.00 each and book of complainant showing the payments and the survey made especially for complainant by D'Amato and delivered by the latter to complainant; the testimony does not show that the memories of the complainant and his witnesses had become faded or weakened by time in any material aspects.

*Lutjen v. Lutjen*, 64 N. J. Eq., 773-780-781.

It ought to be noted here that the facts show complainant asked for deed the last time, four or five years before the filing of the bill, and since there never was a refusal to give it by D'Amato, the complainant thought, and logically so, he did not have to go to court, being in the position of having paid the full purchase price and being in possession.

*Young v. Young*, 51 Eq., 498.

Taking appellants' side of the case, even if D'Amato were living, his testimony could not have sufficed to overcome that of the complainant and his witnesses, nor sufficient for that matter to even

neutralize their testimony. How could he have explained the checks of three hundred dollars (\$300.00) each, the delivery of the horse for one hundred dollars (\$100.00), the continued possession for about nine years without any demand for rent and lastly, but not least, the improvements thereon worth about double the value of the lots? Was the eight hundred dollars (\$800.00) paid for use and occupation of the land indefinitely? Had not that amount already been eaten up by the nine years use and occupation? Did he expect that these improvements would be a gift to him when the land were returned to him by complainant? The defendants' theory does not seem plausible, to say the least.

Everything in the case proves clearly that the contention of defendants not only does not hold but savors of unreasonableness.

This covers the grounds of appeal advanced in the case by appellant.

### **FINALLY.**

**From what has been said and from the facts found by his Honor, the Vice Chancellor, the decree should be affirmed.**

It is found that there was: (1) full performance by the complainant; (2) the entry into possession of the lands with the assent of Francesco D'Amato; (3) complainant asked repeatedly for a deed; (4) the improvements of the lands by expenditures by the complainant to about an amount more than double the purchase price of the lands; (5) the failure of Francesco D'Amato to demand rent or other charge for the use and occupation

of the premises; (6) in fact, the utter abandonment of the premises to the complainant.

All of this makes the complainant's right so clear that to apply the doctrine of laches would aid in the perpetration of a fraud, but if to be considered then the complainant contends it has been satisfactorily explained and excused.

It is respectfully submitted that the decree entered in favor of the complainant be affirmed with costs in this court and in the court below.

Respectfully submitted,

ANTHONY BOTTI,  
Solicitor and of Counsel  
with Complainant-Respondent

[7619]

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**Bill of Complaint.**

Filed.

# In Chancery of New Jersey.

*To His Honor, Edwin R. Walker, Chancellor of the  
State of New Jersey:*

10

Humbly complaining, shows unto your Honor, your orator, John Antonio D'Elisa of the City of Jersey City, County of Hudson and State of New Jersey.

That Francesco D'Amato on the twenty-seventh day of August, one thousand nine hundred and five, was the owner of certain premises in the City of Jersey City, County of Hudson and State of New Jersey, described as follows:

All those certain lots, pieces or parcels of land and premises which on a map entitled, "Map of property of Mrs. Jane Van Horne, City of Bergen, Hudson County, N. J., 1868," filed in the Clerk's, now Register's Office, in said county, are known as all those parts of lots numbers twenty-six (26), twenty-seven (27) and twenty-eight (28) in Block number thirteen (13) lying south of the middle of the small creek shown on said map, also the right, title and interest of the said D'Amato to the creek adjoining the foregoing premises.

20

That your orator on or about the twenty-seventh day of August, one thousand nine hundred and five, entered into an oral agreement with Francesco D'Amato for the purchase by your orator from said Francesco D'Amato of the foregoing premises, of which said Francesco D'Amato was seized in fee simple, for the sum of eight hundred dollars, which was to be paid to the said Francesco D'Amato by your orator; that said Francesco D'Amato agreed to de-

30

40

*Bill of Complaint.*

liver to your orator a full covenant and warranty deed of said premises, free and clear of all liens or encumbrances, and that your orator enter into possession of same at once, at that time.

That thereafter your orator did pay said sum to said Francesco D'Amato for said premises as follows:

10 On the twenty-eighth day of August, one thousand nine hundred and five, the sum of one hundred dollars; on March twenty-sixth, one thousand nine hundred and six, your orator paid the sum of three hundred dollars and on the twenty-third day of March, one thousand nine hundred and six, the amount of three hundred dollars, the balance of one hundred dollars being paid in the form of a horse which was sold to the said Francesco D'Amato aforesaid, by your orator, they having agreed upon the value thereof, the said sum of one hundred dollars,  
20 all of which was received and accepted by said Francesco D'Amato.

And your orator further shows that immediately after the making of the aforesaid oral agreement, he took possession of the said premises, at the request and consent of said Francesco D'Amato and filled said lots with ground and fenced them; that he then began making improvements thereon and expended large sums of money in the erection of cow barns with concrete floors and sewer connections, a large and two  
30 small stables, two shanties, one with three rooms attached, a lumber shed with concrete manure boxes and a rag shop and toilet, all of which now exist on said lots and premises, for the erection of which your orator has expended large sums of money, to wit, the sum of three thousand dollars, all in reliance upon the performance of the aforesaid agreement by said Francesco D'Amato; that your orator continued in possession thereof and is still in possession.

40 Your orator further shows that on the twenty-second day of June, one thousand nine hundred and

*Bill of Complaint.*

nine, said Francesco D'Amato, and Rosa D'Amato, his wife, executed to one William G. Bumsted, trustee of the share of Susan S. Westervelt under the last will and testament of Stephen B. Vreeland, deceased, a mortgage acknowledged before James B. Northrup, a Master in Chancery of New Jersey and recorded in Liber 668 of Mortgages for Hudson County, page 424 for the sum of thirteen thousand five hundred dollars covering the premises herein described and other property, and that the said mortgagee, William G. Bumsted, trustee of the share of Susan S. Westervelt under the last will and testament of Stephen B. Vreeland, deceased, now claims by virtue thereof to have some lien or encumbrance upon said premises, but your orator charges that he has purchased said lands and premises free and clear of all liens or encumbrances, and the said Francesco D'Amato should have paid and satisfied said mortgage.

10

20

Your orator further shows that said Francesco D'Amato deceased, died on the twenty-sixth day of December, one thousand nine hundred and thirteen, leaving him surviving his wife Rosa D'Amato, who has been appointed administratrix of the estate of said Francesco D'Amato by the Surrogate of Hudson County, his married daughter Josie Ianelli, wife of John Ianelli, Donato D'Amato, an infant nineteen years of age married, whose wife's name is Clara D'Amato, also an infant twenty years of age, Michael D'Amato, an infant son seventeen years of age, Nicholas D'Amato an infant son, age ten years, Angelo D'Amato an infant son, age seven years, Rose D'Amato an infant daughter, age five years, and Angelina D'Amato an infant daughter, age two and one-half years, his heirs at law to whom by law said premises descend.

30

And your orator further shows that there is sufficient personal property and real property included in the estate of the said Francesco D'Amato, deceased,

40

*Bill of Complaint.*

to pay off so much of the said mortgage as affects the premises herein described and obtain a release therefor.

10 That Rosa D'Amato as the widow of Francesco D'Amato claims to have an interest or estate in said premises in dower or otherwise, but your orator charges that any alleged interest or estate of said Rosa D'Amato is subject to your orator's rights in the premises.

That John Ianelli as the husband of Josie Ianelli claims to have an interest or estate in said premises in right of courtesy or otherwise, but your orator charges that any alleged interest or estate of said John Ianelli is subject to your orator's rights in the premises.

20 That Clara D'Amato as the wife of Donato D'Amato claims to have an interest or estate in said premises in dower or otherwise, but your orator charges that any alleged interest or estate of said Clara D'Amato is subject to your orator's rights in the premises.

And your orator has requested of said heirs on numerous occasions the said full covenant and warranty deed agreed to be delivered to your orator, by said Francesco D'Amato, with which request they have refused to comply.

30 Your orator further shows that he has done and performed all things necessary and proper to be done or performed by him to obtain the execution or entitle him to call for the execution on the part of the said heirs of Francesco D'Amato, deceased, and Rosa D'Amato the widow of said Francesco D'Amato of the oral agreement entered into between your orator and said deceased, as aforesaid.

40 And your orator well hoped that the heirs would deliver said deed, but they have refused to do so, all of which actions of the said heirs are contrary to equity and good conscience, and tend to manifest injury, wrong and oppression of your orator in the premises.

*Bill of Complaint.*

Inasmuch therefore as your orator is without adequate remedy at law and cannot have adequate relief except by the aid of this Honorable Court.

To the end therefore that the said Rosa D'Amato, individually and as administratrix of estate of Frank D'Amato, deceased, Josie Ianelli, John Ianelli, her husband, Donato D'Amato and Clara, his wife, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato, and Angelina D'Amato but without oath true, full and complete answer make to all and singular the premises, and each fact above stated the same as if here repeated and they and each of them particularly interrogated; and that the said Rosa D'Amato, individually and as administratrix of estate of Frank D'Amato, deceased, Josie Ianelli, John Ianelli, her husband, Donato D'Amato and Clara D'Amato, his wife, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato may be compelled by the decree of this Honorable Court, specifically to perform the said agreements of Francesco D'Amato, deceased, with your orator and execute, acknowledge and deliver to your orator a deed of conveyance to said premises free and clear of any and all encumbrances and that they be compelled to pay to the said William G. Bumsted, trustee of the share of Susan S. Westervelt under last will and testament of Stephen B. Vreeland, deceased, a sufficient sum to release said premises from said mortgage held as aforesaid and that said William G. Bumsted, trustee as aforesaid, be compelled to accept same and deliver up the mortgage for cancellation or to execute a release of the mortgage on the premises herein described and that your orator have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpœna

*Bill of Complaint.*

issued out of and under the seal of this Honorable Court directed to the said Rosa D'Amato, individually and as administratrix of estate of Frank D'Amato, deceased, Josie Ianelli and John Ianelli, her husband, Donato D'Amato and Clara D'Amato, his wife, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato, and  
 10 William G. Bumsted, trustee of the share of Susan S. Westervelt under the last will and testament of Stephen B. Vreeland, deceased, defendants, therein and thereby commanding them at a certain day and under a certain penalty to be and appear before your Honor at this Honorable Court, then and there to answer the premises and to stand to, abide by and perform such order and decree as to your Honor shall seem meet and shall be agreeable to equity and good  
 20 conscience.

And your orator will ever pray.

ANTHONY BOTTI,  
*Solicitor and of Counsel.*

30

40

*Bill of Complaint.*

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON. } *ss.*

John Antonio D'Elisa, the within named complainant, being duly sworn according to law, on his oath, saith that he has read the above Bill of Complaint and knows the contents thereof and that the same is true of his knowledge, except as to the matters that are therein stated to be on his information and belief and as to those matters, he believes it to be true. 10

JOHN ANTONIO D'ELISA.

Sworn and subscribed to before  
 me this 5th day of November,  
 1914.

JACOB J. SINGER,

*Attorney at Law of the  
 Supreme Court of New Jersey.*

20

Subpœna returnable November 13, 1914.

30

40

**Answer to Bill of Complaint.**

**Joint and Several.**

Filed

IN CHANCERY OF NEW JERSEY.

10 *Between*

JOHN ANTONIO D'ELISA,  
*Complainant,*

*and*

ROSA D'AMATO, INDIVIDUALLY, AND  
AS ADMINISTRATRIX OF THE ES-  
TATE OF FRANCESCO D'AMATO,  
DECEASED, JOSIE IANELLI AND  
JOHN IANELLI, HER HUSBAND,  
DONATO D'AMATO AND CLARA  
20 D'AMATO, HIS WIFE, NICHOLAS  
D'AMATO, ANGELO D'AMATO,  
ROSE D'AMATO AND ANGELINA  
D'AMATO AND WM. G. BUM-  
STED, TRUSTEE, etc.,

*Defendants.*

*Joint and  
Several.*

*Answer of  
Michael  
D'Amato,  
et als.*

30 The joint and several answer of Michael D'Amato,  
Donato D'Amato, Clara D'Amato, Angelina D'Amato,  
Nicholas D'Amato, Rose D'Amato and Angelo D'Am-  
ato, infants under the age of twenty-one years, by  
Rosa D'Amato, their guardian, to the Bill of Com-  
plaint of John Antonio D'Elisa.

These defendants respectively answering say, that  
on the fourteenth day of December, nineteen hundred  
and fourteen, by an order entered in the above en-  
titled cause, Rosa D'Amato was appointed guardian  
*ad litem* for each of said defendants in said suit.

*Answer to Bill of Complaint.*

And these defendants further answering say that they severally admit that Francesco D'Amato, the father of said defendants, died on or about the twenty-sixth day of December, one thousand nine hundred and thirteen, and that these defendants are heirs-at-law of said Francesco D'Amato.

And these defendants further answering say that they have no knowledge, information or remembrance sufficient to form a belief of the matters and things set forth in the complainant's bill of complaint, otherwise than as herein stated. 10

And these defendants being infants of tender years, submit themselves to the judgment of this honorable court, and pray that their interest be protected and saved to them.

BLAKEMAN & SCARANO,  
*Solicitors for Defendants.* 20

30

40

*Answer to Bill of Complaint.*

Endorsed :

IN CHANCERY OF NEW JERSEY.

*Between*

JOHN ANTONIO D'ELISA,

*Complainant,*

10

*and*

ROSA D'AMATO, INDIVIDUALLY, AND  
 AS ADMINISTRATRIX OF THE ES-  
 TATE OF FRANCESCO D'AMATO,  
 DECEASED, JOSIE IANELLI AND  
 JOHN IANELLI, HER HUSBAND,  
 DONATO D'AMATO AND CLARA  
 D'AMATO, HIS WIFE, NICHOLAS  
 D'AMATO, ANGELO D'AMATO,  
 ROSE D'AMATO AND ANGELINA  
 D'AMATO AND WM. G. BUM-  
 STED, TRUSTEE, etc.,

20

*Defendants.*

The Joint and Several Answer of Michael D'Amato,  
 Donato D'Amato, Clara D'Amato, Angelina D'Amato,  
 Nicholas D'Amato, Rose D'Amato and Angelo  
 D'Amato, infants under the age of twenty-one years,  
 by Rosa D'Amato, their guardian, to the Bill of Com-  
 30 plaint of John Antonio D'Elisa.

BLAKEMAN &amp; SCARANO,

State Bank Building,

Newark, N. J.

*Opening.*

IN CHANCERY OF NEW JERSEY.

*Between*

JOHN ANTONIO D'ELISA,  
*Complainant,*

*and*

ROSA D'AMATO, INDIVIDUALLY,  
AND AS ADMINISTRATRIX, etc.,  
*Defendant.*

*On Bill, etc.*

*Minutes of*

*Final*

*Hearing.*

10

Appearances :

Anthony Botti, Esq., for the complainant.

Messrs. Blakeman & Scarano, for the defendant,  
Rosa D'Amato.

Chas. D. Thompson, Esq., for the defendant, Wm.  
G. Bumsted. 20

Before Hon. John Griffin, Vice-Chancellor.

Chancery Chambers, Jersey City, N. J., May 12,  
1915.

The case for the complainant.

*Mr. Botti.* I suppose I can just proceed by calling my witnesses, if your Honor please?

*The Vice-Chancellor.* Yes. There is one thing I want to suggest to you; it is this—you set up a contract in your bill between the decedent and the complainant; now does it appear in your bill, as I understand it, that you allege a contract to which the wife became a party. Now, how can you get a decree against the wife? 30

*Mr. Botti.* Why, I suppose, if your Honor please, that I cannot; and if a decree is made in this matter, I suppose—

*The Vice-Chancellor.* How can you get a decree for a full covenant, warranty deed, when the very instant the deed is made the covenant will be 40

*Opening.*

broken, because the wife's dower right will not be conveyed? Is not the most you can get in this suit a decree that the heirs give a bargain and sale deed for such title as they may have?

*Mr. Botti.* And subject to the dower right of the wife.

*The Vice-Chancellor.* Yes, and subject to anything that may be against them.

10

*Mr. Botti.* I will have to proceed on that theory.

*The Vice-Chancellor.* I am not trying to govern counsel on it, I am only suggesting that as a feature of the case which I assume you have looked into.

20

*Mr. Botti.* Yes, I have looked into it; and I think there is a case (I cannot recall it just now) which holds that the wife cannot be compelled to join in a matter of this sort unless she signed the contract; but I will endeavor to show, in the course of the testimony, that she saw these improvements being made, and she saw Mr. D'Elisa in possession of these premises, and never raised any objection, and never said anything to Mr. D'Elisa about it, although she was put on her guard, and should have known, or should have made inquiries as to the possession.

30

*The Vice-Chancellor.* Why should she? However, that is a matter for argument later.

*Mr. Thompson.* May I be heard. If your Honor please, I appear representing Mr. Bumsted, trustee, who is one of the defendants. I have no complaint against the complainant at all, but in this matter the parties came to Mr. Bumsted and undertook to buy out his mortgage, and agreed to pay him \$25.00 for costs and services in this matter, and they said they would send a check. They got the mortgage, but they have done nothing; they have not paid us; and they are here at-

40

*John A. D'Elisa, direct.*

tempting to go on, and yet have made no final settlement with us. I want the Court's attention brought to the matter before we go into the trial.

*The Vice-Chancellor.* Well, your mortgage covers this other property, doesn't it?

JOHN ANTONIO D'ELISA, sworn.

*Direct examination by Mr. Botti.*

10

Q Mr. D'Elisa, are you the complainant in this suit?

A Yes, sir.

Q Where do you live?

A Now I live at 212 Beacon avenue.

Q Jersey City?

A Yes, sir.

Q Did you know Mr. D'Amato?

A Yes, sir.

20

Q Frank D'Amato?

A Yes, sir.

Q How long did you know him?

A Well, since we were little boys.

Q And did you ever have any transaction with him in reference to certain premises?

A Yes, sir.

Q Do you remember about when you had this transaction?

A It was in 1905.

30

Q Do you remember what month?

A In the month of August, about.

Q August?

A Yes, sir.

Q And tell the Court what the transaction was that you had with Mr. D'Amato?

A Yes, sir. Now, on the 27th of August, 1905, I was round a place they call Dumbs, around on Marsellis street and Bright, and this Mr. D'Amato I was looking for to see if I could locate a few lots for sale;

40

*John A. D'Elisa, direct.*

so Mr. D'Amato seen me around there, and he called me over; he says "John, what are you doing around here?" I says, "Well, Frank, I am looking around if I can locate a few lots around this section that I will try to buy." He answered, "Well, if that is the case, I can sell you three lots here." I says, "Where?" He says, "Right here at Marsellis street." I said, "All right, John." So the following day he told me that  
 10 he would call up to my place and make an agreement about those three lots. I said, "All right." So he did; the following day he called at my place of business on 390 First street, and we made an agreement about those lots.

Q Was there a written agreement, or oral?

A No, a verbal agreement—no writing.

Q What was the conversation that you had that day?

A The conversation was this—I asked him what  
 20 did he ask me for those three lots; he says, "Well, I will ask you nine hundred dollars." I says, "Well, Frank," I says, "if I give you eight hundred dollars won't that be satisfactory to you?" He says, "Well, we ain't going to fight over the matter, whether it is nine hundred or eight hundred—why, between you and I we ain't going to fight about it." Then he asked me if I could let him have one hundred dollars of that. I says, "Yes." And then I asked him when we were going down to a lawyer to get these papers ready; he  
 30 says, "Well, at any time that we have time; some day I will call on you and we will go down and get the deed ready." I says, "All right." So he came in the office and I gave him one hundred dollars. Then I asked him when I—

*The Vice-Chancellor.* Was the one hundred dollars in cash?

A I couldn't very well remember; I think it was in cash, your Honor; I think it was in cash. Then I  
 40 asked him when could I take possession of those lots,

*John A. D'Elisa, direct.*

that I wanted to finish and fill them up and put the fence around them; he says, "Well, you can start tomorrow, if you wish." I says, "All right." So the following day I went right on and looked after this land. I finished the grading—

*The Vice-Chancellor.* There is no property mentioned so far.

Q The lots you speak about are the lots which we are asking for in this suit, aren't they? 10

*Mr. Blakeman.* I object to that, as leading.

Q Well, what lots were they, Mr. D'Elisa?

A They were in the direction of Marsellis street, right facing Marsellis street.

Q And what other street?

A At Bright.

Q Did Mr. D'Amato give you anything to show which property it was?

A Well, not right there and then, but afterwards he did. 20

Q I show you what purports to be a survey, and ask you where you got this?

A I got that from Mr. D'Amato.

*Mr. Scarano.* Wait a moment, Mr. D'Elisa; let me see that, please.

(The witness complies.)

Q And how long after this alleged oral agreement in your place of business at 390 First street did you get that from Mr. D'Amato? 30

A Well, not very long after, because he had a surveyor there already to survey some land that he bought about that time, and he told me that he was going to make a survey for me for those three lots, and this was what was ordered by him and made for me, for these lots mentioned in here.

Q And can you give us an idea how long after it was, Mr. D'Elisa? You say, "Not very long,"—that is not definite—about how long? 40

*John A. D'Elisa, direct.*

A That I cannot very well recollect. It was not very long after that.

Q Well, was it a year, or a month?

Q About two or three months after.

Q And you say you took possession on the 28th of August, the day after you made that agreement?

A Yes, sir, on the 29th of August I took possession.

10 Q When you took possession what did you do on those lots?

A Well, I started to finish and fill up and fence around them.

Q And since you took possession on the 29th day of August, 1905, have you done anything on the lots?

A Yes, sir.

Q What have you done?

A Well, the most of the ground is all built up now by stables.

20

*The Vice-Chancellor.* Is there any objection?

*Mr. Blakeman.* No.

*The Vice-Chancellor.* Then the bill can be amended so as to state that the second payment was made on March 22nd instead of March 26th, 1906.

Q How much did you give Mr. D'Amato at that time?

30 *The Vice-Chancellor.* Did he say it was paid by check?

*Mr. Botti.* Yes, sir.

*The Vice-Chancellor.* Where is the check?

Q Have you the check with you?

A Yes, sir.

Q Produce the check, for the first three hundred, on March 22nd?

A (The witness produces a check which he hands to examining counsel.)

40

*Mr. Botti.* I offer the survey first, and then I offer this check.

*John A. D'Elisa, direct.*

(The survey is admitted in evidence without objection, and is marked Exhibit C. 1.)

*Mr. Blakeman.* It seems to me, your Honor, as there is a subscribing witness to this (referring to the check) that the witness should be produced, or accounted for, before the signature of the deceased, Frank D'Amato, is admitted in evidence.

*The Vice-Chancellor.* Would that be so, if the check was delivered by Mr. D'Elisa? 10

*Mr. Blakeman.* Not as to the delivery of the check, but I am drawing attention to the endorsement on the back of the check.

*The Vice-Chancellor.* I think, as the check was delivered to D'Amato, and the money was paid upon it, as appears by the endorsements, that the burden of proof would be on Mr. D'Amato to show that he did not draw the money. It is apparent from the check itself, is it not, that the bank paid it? 20

*Mr. Blakeman.* I do not suppose there is any presumption arising from bank endorsements on checks, but I think where there is an endorsement by a witness, the endorsement will have to be proved by the witness; because it appears here that D'Amato did not sign it, because it is signed with a cross.

*The Vice-Chancellor.* I will admit the check at the present time, at least to the extent of showing the delivery of the check to D'Amato. 30

(The check was thereupon marked Exhibit C. 2.)

Q When, after March 26th did you again pay—

*The Vice-Chancellor.* You have not shown that the bank paid this check.

Q Mr. D'Elisa, where did you get that check (Exhibit C. 2) from, as it is now? 40

*John A. D'Elisa, direct.*

A From the bank.

Q In your balances, which you get each month?

A Yes, sir.

Q And was your account charged with that three hundred dollars?

A Yes, sir.

10 Q When did you next pay anything to Mr. D'Amato on account of this property?

A On the following day; on the twenty-third.

Q And did you pay by check?

A Yes, sir.

Q How much did you pay then?

A Three hundred dollars (producing a check).

Q Is that the check that you have before you?

A Yes, sir.

Q And that was delivered to Mr. D'Amato?

A Yes, sir.

20 Q And came back, the same as the other check, from the bank?

A Yes, sir.

Q And your account was charged in the sum of three hundred dollars for that check?

A Yes, sir.

*Mr. Botti.* I offer that check in evidence, if your Honor please.

30 *Mr. Scarano.* I enter the same objection to that as to the other, your Honor; it is signed by a mark, by a witness.

*The Vice-Chancellor.* The same ruling will be made upon it as upon the last check.

(The check was thereupon marked Exhibit C. 3.)

Q Now, that made it seven hundred dollars you paid all together on account of the lots?

A Yes, sir.

40 Q When was the other one hundred dollars paid by you to Mr. D'Amato, if it was; and in what form?

*John A. D'Elisa, direct.*

A Well, the other hundred dollars I gave him a horse for, a carriage horse, and it was priced between me and him at a hundred dollars; and that was on account of the same thing.

Q And he agreed, as I understand, that the value of the horse was one hundred dollars?

A Yes, sir.

Q Now, after you paid him this money did you ask him for a deed of the property? 10

A At the same time when I gave him the three hundred dollars on the 22nd, I asked D'Amato when we would go down to see to get those papers right and ready; he says "Well, as soon as we have a little time we will go down to the lawyer and get the deed." I said "All right"; and the following day he came to get the other three hundred dollars. Well, I didn't say anything at that time; but a few weeks after that I met him again, and I asked him if he would go down to get those deeds for these three lots, and his answer was, "Well," he says "John, there is a little mortgage on the plot, and I can't very well give you the deed now; but as soon as we pay this thing off I will give you the deed." That was all at that time. 20

Q Now, why did you wait so long, Mr. D'Elisa, without insisting on your deed?

A Well, we had been so close friends I didn't want to more or less insist upon it; I ought to, but at the same time our friendship was too thick to ask him any further than what I did. 30

Q Well, how many times did you ask him about it—for the deed?

A Well, a good many times.

Q Well, how many times is that—"a good many?"

A Well, there was the time we made the agreement, the first day; and then the thing went on until he got more money of me, and then I asked him again, and he told me the same thing; then a few weeks after that he told me that there was a little mortgage on it, 40

*John A. D'Elisa, direct.*

but he didn't tell me that first off. When we made the agreement he said he sold me those lots free and clear of all, of everything.

Q While you were making these improvements on the lots did you ever see Mrs. D'Amato, the wife of Mr. D'Amato?

A I seen Mr. D'Amato most all of the time, and also the wife; she lives right there on the corner of  
10 Centre and Bright.

Q How far away is that from these three lots?

A Well, it is on the same block, about I should say, 200 feet.

*Mr. Scarano.* I do not see where there is any relevancy in the question whether Mr. D'Elisa saw her there. She is not a party to this oral agreement. There is no foundation for it. Mrs. D'Amato was never a party to it. What difference does it make whether she saw the improve-  
20 ments going on, or not?

*The Vice-Chancellor.* Well, I do not know. I think I will admit the evidence. If she was not a party to the agreement, and did not know of it, and did not have any title at that time vested in her, I do not see how it would be notice to her so as to charge her in any manner as to divest her of her dower right.

*Mr. Scarano.* As I understand, under the statute, it is only by a separate acknowledgment that a wife can divest herself of her dower right.  
30

*The Vice-Chancellor.* I am not permitting it for that purpose—I am not permitting it as evidence against her on the subject of her dower right; it may have something to do with her subsequent acts as administratrix. I do not know where it will lead to, but I will not exclude it.

*Mr. Scarano.* I fail to see the connection.

*The Vice-Chancellor.* Well, I cannot tell. The case cannot be presented all at one time.  
40

*John A. D'Elisa, direct.*

Q When was the last time you asked Mr. D'Amato for a deed, Mr. D'Elisa, before he died?

A That was at the time that he had the mortgage on there; and that was about five or six years ago; I couldn't very well remember the date, but he told me himself that he was going to pay off this mortgage and have another one made; and then I asked him to have a release of those lots so he could give me a deed at the time, and he said that he would. But I seen that the thing went on, a new mortgage was put on there, and I asked him if he had the release, and he told me that he forgot all about it. 10

*By the Vice-Chancellor.*

Q That was five or six years ago?

A About, yes, your Honor.

*By Mr. Botti.*

Q He died, when, do you know? 20

A Well, it is over a year now; he died around December, 1913, I guess. Well, it is over a year.

Q The 26th day of December, 1913, wasn't it?

*The Vice-Chancellor.* That fact is admitted, I think.

*Mr. Botti.* Yes, that is admitted.

Q Did you also keep any other track of the payments that you made to Mr. D'Amato on account of these lots? 30

A Yes, I have got it marked on the book there, the little book.

Q Have you the book here?

A Yes, on the bench there.

Q (Showing the witness a book.) Will you turn to the account?

*Mr. Blakeman.* I object to the examination, or the admission of this book, because his recollection is evidently very clear without the aid of any memorandum. 40

*John A. D'Elisa, direct.*

*The Vice-Chancellor.* What is your purpose, Mr. Botti?

*Mr. Botti.* Nothing, excepting, if your Honor please, to make his evidence stronger, to show more clearly that what he testifies to is a fact—so much so that he even jotted it down in the book.

10 *The Vice-Chancellor.* Suppose he did, how does that make any difference. He could write that down, and still it might not be true.

*Mr. Botti.* Well, I was going to show that it was done at the time the payments were made.

*The Vice-Chancellor.* Well, if he was in doubt as to the time, he could refresh his memory by referring to the book, where the writing was made at the time; it would be perfectly proper then for him to examine the book to refresh his memory; but he recalls it without any aid.

20 Q Before you started to sue did you have any talk with Mrs. D'Amato about this transaction you had with the husband?

*Mr. Scarano.* I object to that, your Honor.

*The Vice-Chancellor.* The answer is "Yes" or "No."

A Yes, sir.

Q As long as you have known Mr. D'Amato have you seen him sign, before these checks were given to him?

30 A No, sir.

Q Did he ever give you any other checks or papers signed by him?

A No, sir.

Q Do you know whether or not he could sign his name, or if he made his mark all the time?

A Well, he couldn't write his name; it was always by cross.

40 Q Who signed his checks—do you remember, or do you know?

*John A. D'Elisa, cross.*

A His wife.

Q Have you seen checks signed by his wife?

A Yes, sir; by his wife.

Q For him?

A For him.

*Cross examination by Mr. Scarano.*

Q Mr. D'Elisa, you said that you entered into an oral agreement with Mr. D'Amato on the 27th of August, 1905? 10

A On the 28th.

Q On the 28th?

A Yes, sir.

Q Do you want to change it from the 27th?

A Well, the 27th was the day that he called me over on the premises around Marsellis street; but on the 28th was the day that he came over to my place and got the first payment; and the 29th I went over and took possession. 20

Q What happened on the first day that you and Mr. D'Amato met—what conversation did you have with Mr. D'Amato on the first day?

A On the 27th, do you mean?

Q Yes, on the 27th?

A I was around Marsellis street and looking around if I could locate a few lots that I wanted to buy, and Mr. D'Amato seen me, and he called me over. He says "John, what are you doing around here?" I says "Well, Frank, I am looking if I can see a few lots for sale around here that I want to buy." "Well," he says, "if that is the case, I will sell you three lots right here." I says "All right." Then he told me that he would be around to my place the next day and make an agreement. 30

Q That was all that day?

A That was all that day.

Q Was not this the fact, Mr. D'Elisa—that you asked Mr. D'Amato for the use of that land at that time? 40

*John A. D'Elisa, cross.*

A No, sir.

Q What was the purpose of buying those lots—  
what did you need them for?

A I needed them for my business.

Q What business were you in?

A In the lumber business, at the time—the second-  
hand lumber business.

10 Q Second-hand lumber?

A Yes, sir.

Q And you needed land to put this lumber on, and  
you had plenty of it at that time, hadn't you?

A Yes, sir; that was my intention; to buy some  
land around that way; yes, sir.

Q You paid \$100 on the 28th day of August?

A Yes, sir.

Q 1905—do you remember what day that was?

A No, I don't know exactly what day it was.

20 Q Well, was it Saturday?

A I couldn't say.

Q Was it a Sunday?

A I couldn't say.

Q Did you have that survey made, or did Mr.  
D'Amato have that survey made?

A Mr. D'Amato had it made for me.

Q For you?

A Yes, sir.

30 Q And when did you say that survey was made, to  
the best of your recollection? You said three months  
after that, didn't you?

*Mr. Botti.* I object.

*The Vice-Chancellor.* He is asking if the wit-  
ness did not say that the survey was made three  
months after the contract spoken of. I will ad-  
mit it.

*Mr. Scarano.* On his direct examination, as I  
recollect, he said this survey was made August  
21—

*John A. D'Elisa, cross.*

*The Vice-Chancellor.* You have asked the question, and the question was allowed.

A This I don't remember, but about three months after that.

Q You remember pretty definitely the days of this contract, don't you—the 27th, 28th and 29th?

A Yes, sir.

Q You have a pretty good memory there? 10

A Well, if I have it in the book why wouldn't I have a pretty good memory on it?

Q Why don't you remember the date of this survey?

A Because I didn't take that date down.

Q When was that survey given to you?

A That I couldn't state, when it was given to me; but it was given to me by Mr. D'Amato.

Q But when—how soon after the contract—how soon after the 28th or 29th of August? 20

A That I couldn't say exactly, when he gave it to me.

*Mr. Scarano.* If your Honor please, he says there was a survey made on the 21st day of August.

*The Vice-Chancellor.* I know; that is a matter of argument; you can confront the witness with it, and ask him about it.

*Mr. Scarano.* That was before the entering into of the contract. 30

*The Vice-Chancellor.* I observed that fact.

Q Was not this survey made for the purpose of your letting these premises from Mr. D'Amato?

A Letting?

Q Yes.

A No, sir; no, sir.

Q Did you have any conversation with Mr. D'Amato in regards to these three lots previous to the 27th of August, 1905? 40

*John A. D'Elisa, cross.*

A I don't remember exactly, but I think there was.

Q When?

A The best I can remember was this—the time that I paid him the first hundred dollars, it was the day before that that we had the conversation about it.

Q I am asking you if before the 27th of August, 1905—if that is the first time that you and Mr. D'Amato came into contractual relations together over buying this land?

A It might be before that.

Q Well, that is what I am asking you—do you know, do you remember?

A It might be before that, but that is the day we had all these transactions made that I stated here.

Q Didn't you say you were looking around for land right around there, and you met Mr. D'Amato?

A Yes.

Q And Mr. D'Amato asked you what you were looking for, John, and you said, "I am looking to buy a few lots?"

A Yes, sir.

Q Wasn't that the first time that you and Mr. D'Amato came together over this matter?

A Well, that may be.

Q Well, not "may be," do you know?

A Well, how can a man know all of those things now?

30 *The Vice-Chancellor.* Do not make an argument—do you know?

A No, sir; I don't know.

Q Did you ever pay any money for this survey?

A \$20 I paid for it.

Q To whom did you pay that \$20?

A To Mr. D'Amato.

Q To Mr. D'Amato?

A Yes, sir.

Q When?

40

*John A. D'Elisa, cross.*

A That I don't know; I can't remember that very well, because when he gave me that the surveyor told me that the cost of that survey was \$20, so I gave Mr. D'Amato \$20, as he asked me for.

Q What did you give Mr. D'Amato for it?

A That I don't know, I can't remember whether I gave him a check or cash.

Q Have you made a memorandum in your book there in reference to the \$20? 10

A No, sir.

Q You have not?

A No, sir.

Q You only made a memorandum of the payments that you made on the lots?

A Yes, sir.

Q You don't remember when you paid that \$20, do you?

A I do not; no, sir. 20

Q When did you start to fill in those lots, Mr. D'Elisa?

A About right after we had the agreement made with him—that was on about the 29th of August, 1905.

Q When did you make the first improvement on that land?

A Well, I started to build a fence around there.

Q Yes, a fence—that was the first thing you did?

A Well, not much longer after that; as soon as I had them graded I started to build the fence around it. 30

Q After you graded it you built a fence around it?

A Yes.

Q How long after that did you build up the fence—was it immediately, on the 29th day of August?

A No, no.

*The Vice-Chancellor.* No, he says after he graded it.

*John A. D'Elisa, cross.*

*By the Vice-Chancellor.*

Q How long did it take you to grade it?

A Well, it may be two or three weeks, or so, before I could start to put the fence around it.

*By Mr. Scarano.*

Q Mr. D'Elisa, what do you mean by "grading?"

10 A Do you not know what the meaning of "grading" is, Counsellor?

Q No, I do not understand you; what do you mean by "grading the land?"

A By grading the land I mean to level it up.

Q What kind of land was it?

A What do you mean by that?

Q In what condition was the land at that time?

A It was filled-in land.

Q Was it already filled in?

20 A It was filled-in land; yes, sir.

Q What was it filled in by?

A Filled in by garbage.

Q You did not do any filling, then?

A Yes, sir.

Q Well, that is what I asked you.

*The Vice-Chancellor.* Counsel is asking the questions too rapidly; be a little more deliberate.

*By the Vice-Chancellor.*

30 Q What was the condition of the land when you went into possession of it?

A That was only filled in by garbage, the city garbage.

Q Did you put any more fill on it?

A Yes, sir, your Honor, I put ashes on it after that.

Q And how long did it take you to do that?

A Well, about three or four or five weeks; I cannot state very well.

40

*John A. D'Elisa, cross.*

*The Vice-Chancellor.* (To Mr. Scarano.) That is what you wanted to know, is it not?

*Mr. Scarano.* Yes, sir.

*By Mr. Scarano.*

Q Within three or five weeks?

A Yes, sir.

Q That was the next improvement you made on the property? 10

A Yes, sir.

Q What did you do next?

A The fencing.

Q First it was filled in, then fenced, now, what did you do after that?

A Well, I started to build; I built this place first 25 x 30; I built a place, an open shed there, 30 x 75—no, that was 30 x 100, the full length of the ground.

Q Did you build that shed to rent it to anybody? 20

A Well, I built the shed to store lumber in it, first-off.

Q 30 x 75?

A Yes, sir.

Q That was the third improvement. Do you remember what that cost you?

A No, sir; not exactly.

Q Have you any bills that you paid for that, for the lumber, etc.?

A No, sir; I didn't keep any. 30

Q You did not?

A No, sir.

Q Do you remember how much about—whether it was a thousand dollars for the 30 x 75 shed?

A No, whatever I done on there was done this way—

Q I am asking you, if you please, if you do remember what it cost you?

A I don't remember; no, sir.

Q What was your next improvement, Mr. D'Elisa? 40

*John A. D'Elisa, cross.*

A I had a demand to rent the place of this shed, and I went to work and I closed it in.

Q You closed it in?

A Closed it in and fixed it for the purposes of a paper shop.

Q A paper shop?

A Yes, sir.

10 Q Was this shed, 30 x 75, built with new lumber?

A Some, and some second-hand.

Q You said subsequently you rented it for a paper shop?

A For a paper shop.

Q What rental did you get?

A I think it was ten dollars a month.

Q Ten dollars?

A Per month.

Q For the space 30 x 75?

20 A No, sir; part of that.

Q Part of it?

A Part of it; yes, sir; I closed a part of it in for a paper shop purpose; there was about, well, I couldn't recollect exactly what it was, but it was part of that shed; it was an open shed, and then I closed it in for a paper shop.

Q Did you rent the rest of it?

A Not at that time.

Q Well, did you rent it afterwards?

30 A Yes, when I had a demand I rented it; I fixed it for the purpose that they wanted it for, and I rented it.

Q Now, what was your next improvement, Mr. D'Elisa?

A The next improvement was a cow stable.

Q When did you make that?

40 A Well, I don't know exactly when I made it; it was about four or five years ago, maybe, or longer than that; and I fixed it, I closed up part of the shed again and fixed it for the purpose of a cow barn, a cow stable.

*John A. D'Elisa, cross.*

Q But you did not do anything until four or five years afterwards, as far as you can remember—after this shed 30 x 75 was built you didn't do any more improvement until four or five years afterwards?

A No, I didn't say that.

Q Well, what did you say?

A I didn't say that.

Q Well, what was your next improvement, Mr. D'Elisa? 10

A The next improvement? What do you mean?

Q What did you do next, after that? This is the only shed that you have on this land? You first fenced and filled in, then you built a shed 30 x 75, you say, then finally you got an offer for part of it and rented it; what did you do after that?

A Then I closed the other part of it. As I had a demand I closed in as much as they wanted, as much space as they wanted, I closed it in and made it for the purpose that they had to use it for. 20

Q When did you close the rest of that shed?

A Well, that I couldn't remember, when I exactly closed it. If I had the book here I could tell you exactly when I did it, but I ain't got the book here.

Q Did you give any receipts for your rents?

A Yes, sir; sometimes.

Q Have you got them in court?

A No, sir; there is nothing in the book about the rent. 30

Q What was the amount of rent that you got—near—you don't have to be positive, Mr. D'Elisa—the amount of rent that you received, after the completion of the 30 x 75?

A The first was \$10.

Q What was the rental of the rest of it?

A Well, I had it there for a short time when I had it all occupied with the cows; that is, I had four places occupied by the cows. They didn't stay there very long, but I was getting \$85 a month. 40

*John A. D'Elisa, cross.*

Q How long did they stay there?

A Not very long.

Q Well, how long was it—a year?

A Well, some a year, and some less.

Q At \$85 a month?

A About; I don't know exactly, but it is about \$75, \$80 or \$85.

10 Q You don't remember when you finished the shed, do you?

A No, sir.

Q Only four or five years ago, you said?

A That is what I said.

Q When did you make the next improvement, Mr. D'Alisa?

A It was a little after that that I had another space of land in the back of the lots, and I built a stable there; that stable is 30 x 30.

20 Q 30 x 30?

A Yes, sir.

Q In other words, you did not make any more improvement on that land until four or five years ago, only in filling the land and fencing it and building that shed 30 x 75, is not that so?

A Since I filled the land?

Q Yes.

A No, sir; that open shed was made there not long after the fence was there, and the grading was made on the ground.

30 Q That was your improvement, then?

A Yes.

Q That is the way I understood you?

A And as they came along and asked me for a shed I closed it in and made it for their purpose.

Q That is the 30 x 75 shed, as they came along you fixed it and rented it out?

A Yes, sir.

40 Q And that was the only improvement you made on that land four or five years ago—you have not made

*John A. D'Elisa, cross.*

any more at all since four or five years ago; is not that so?

A Well, did I make any more until four or five years ago?

Q Yes?

A The first I built was a place, as I told you, all closed in and covered up for a paper shop; that was about 25 x 30; then I continued; that was on this open shed, you see; and then I went along, and as they came along—I couldn't remember very well when did I do it, but it was done right along as I had tenants for it. 10

Q Well, what did you do after that? When did you put on the rest of the improvements? You said you had put stables on it, in your direct examination?

A Yes, sir.

Q When did you put them on there?

A I cannot remember when I put them on there. I put them on right along, as they came. 20

Q Did you put them on the next day after you bought the land?

A No, sir.

Q The following week?

A No, sir.

Q The following year?

A No, sir.

Q Well, when did you?

A Maybe the following year, for all I know, or two years after—after I had this open shed on there. 30

Q What did you do, however, in the first year that you went on Frank D'Amato's land—what was the first thing you did there? We will go all over it again.

A The first that I did there was the grading of this land, and the fence around it, and this open shed. I had a shed 25 x 30, was the first that I built, in the front of it.

Q Pardon me, you said that you built a shed 30 x 40

*John A. D'Elisa, cross.*

75, as your first improvement, open, so you could put your second-hand lumber in that—didn't you say that?

A Yes, sir.

Q You said that was your first improvement, wasn't it? Now, what did you build after that?

A I told you everything that is there now.

10 *By the Vice-Chancellor.*

Q No, no; give the order in which you put up the various buildings? You have disposed of this open shed—after building the open shed what building did you next put up?

A The next building that I put up after the open shed, was a person would come in and say "John, I want so much—

20 Q No, I don't want that; tell me what shed you put up, or what building you put up?

A A cow barn, as I said.

Q A cow barn?

A Yes.

Q What were the dimensions, about?

A About 25 x 30.

Q Now, when did you put that up?

A That was—well, I can't remember very well, your Honor; but it was about five or six years ago.

Q About five or six years ago?

30 A Yes, sir.

Q Now, that was the second building you put on the land?

A The second building; yes, sir.

Q Now, when did you put the third building on the land?

A About six months after that, we will say.

Q And did you put other buildings on?

A Yes, sir; the same way.

Q Just when did you put those on?

40 A Then I got another customer for it, and I put

*John A. D'Elisa, cross.*

another building on after that. There was four buildings in one direction. Now, that is on one side.

Q You put four buildings on?

A Four buildings; yes, sir.

Q How many buildings are on it to-day?

A There is five with the last one that I built about four years ago, we will say; there is a stable for twelve horses, all concrete, and everything, and a hay loft over that. 10

Q And that was put up when?

A About four years ago.

Q During the last four years you put up no other building?

A I did.

Q You did?

A I put up some sheds on the other side, and an open shed of about 15 feet—about 15 x 60, about.

Q When did you put that up? 20

A Well, that was about three or four years ago, also.

Q Now, is that the last shed you put up there, or the last building?

A Yes, sir, after this I put two small sheds right at the entrance.

Q When did you put those up?

A After this was built—about the same time—right after I done the other.

Q That is about three or four years ago? 30

A Yes, sir; your Honor.

*The Vice-Chancellor.* That is what you want, is it not, Mr. Scarano?

*Mr. Scarano.* Yes, sir.

*By Mr. Scarano.*

Q Then, practically, all the improvements were made up to—

*The Vice-Chancellor.* No, up to three or four years ago. 40

*John A. D'Elisa, cross.*

Q What was the amount of rent that you received from all occupants during that time, Mr. D'Elisa, do you remember?

A No, sir.

Q Well, the cow-barn paid you \$85 a month?

*The Vice-Chancellor.* Is that material?

10 *Mr. Scarano.* I would like to show the receipts of rents.

*The Vice-Chancellor.* He was there exercising dominion over the property, renting the place and collecting the rents, so that any person on the outside would have the right to assume that he was in possession under some color of right. Now, what more is there to that feature of it?

*Mr. Scarano.* Well, I am only anticipating a question of the profits paid to this man during the ten years there.

20 *The Vice-Chancellor.* Profits? How is the question of profits involved? Is not the sole question here did Mr. D'Elisa and Mr. D'Amato make a contract to convey this land for a given sum, which has been fully performed, and a contract that a court of equity will enforce? Now, what more is there to it? That is a very narrow question, it seems to me.

30 *Mr. Blakeman.* I think the question is relevant arising from the order of the erection of these buildings. They were built, as he was able to rent them, apparently at some profit to himself. The chief improvements were made in comparatively recent years. We think that this demand for the delivery of a deed and the claim of sale were prompted by the fact that the land increased a great deal in value; and I believe it is an equitable doctrine, affecting specific performance, that where the value has increased greatly, and there has been neglect, specific performance is some-  
40 times not granted.

*John A. D'Elisa, cross.*

*The Vice-Chancellor.* Oh, well, that is where a man pays only a deposit on the property; but this man says he paid the whole purchase price.

*Mr. Blakeman.* Oh, well, the question comes up whether that was really the whole purchase price, or some other price for use and occupation.

*The Vice-Chancellor.* He says so, and it is not denied. He must stand or fall on his statement.

*Mr. Blakeman.* That is why we were cross examining him along that line. 10

*Mr. Scarano.* He paid \$100 of the purchase price on the 28th day of August, and he did not pay three hundred dollars until the following year, in March. We may develop in our case—

*The Vice-Chancellor.* I think that the evidence is not material, particularly. If you think there is any merit in it I will let you show, briefly, what rental he received annually from the property, about. He cannot tell you to the dollar. 20

*Mr. Scarano.* Well, he says he doesn't remember, only that \$85 for cow-barns.

Q On your direct examination, Mr. D'Elisa, you said that the cost of the improvements amounted to what?

A To about three thousand dollars, twenty-eight hundred.

Q How do you account for that? You said you didn't know what you paid for the first shed or the next improvement—now how do you determine that it would cost you twenty-eight hundred or three thousand dollars? 30

A It is simply to the best of my knowledge.

*The Vice-Chancellor* (To examining counsel). Well, don't you think a man of ordinary intelligence in his business could look at a structure and say it cost about so much?

*Mr. Scarano.* Yes.

*John A. D'Elisa, cross.*

*The Vice-Chancellor.* That is about all this witness is saying.

*Mr. Scarano.* That may refer to an expert, but not to the man who actually pays the expeditures for this particular thing.

10 *The Vice-Chancellor.* Oh, well, any man in the business who is doing work of this kind is an expert, or expert enough to know about what it would cost; he may be out three or four dollars, one way or the other, on it.

Q What was your last improvement, Mr. D'Elisa?

A I have explained it here; that was another open shed on that side, and two small closed sheds.

Q That was done when?

A That was done about—I don't exactly know when, but it was between four and five years ago, or about three or four years ago.

20 Q What did that cost you, do you remember that?

A No, sir; not exactly what it cost me.

Q Who is this Lenzi on the back of this check (showing the witness a check)—on that Frank D'Amato check, the witness?

A Mr. Lenzi?

Q Yes, do you know?

A What do I know about that?

*The Vice-Chancellor.* Do you know who he is?

A Mr. Lenzi—I don't know who is Mr. Lenzi.

30 Q Well, this check is made by you to Frank D'Amato.

A Yes, sir.

Q I show you Exhibit C. 2 (referring to the same check); do you know who signed as witness to the mark of Frank D'Amato?

A I do not, sir.

Q Do you know the signature of the witness?

A No, sir.

40 *The Vice-Chancellor.* Well, now, that disposes

*John A. D'Elisa, cross.*

of that: he does not know the witness, he does not know Lenzi.

Q Do you know who Lenzi is?

A What was his son-in-law's name?

Q Wait a minute, please—do you know who Mr. Lenzi is?

A I do not; no, sir.

Q Well, I show you Exhibit C. 3, and ask you whether you know that signature of Mr. Lenzi there? 10

A I do not, sir.

*The Vice-Chancellor.* It is the same thing?

*Mr. Scarano.* It is the same thing.

Q Is that "Salvatore Campanetti" (referring to another name on the exhibit)?

A Yes, sir.

*By the Vice-Chancellor.*

Q Do you know that signature (referring to the name Campanetti)? 20

A I know the name; yes, sir.

Q Do you know the man?

A Yes, sir.

*By Mr. Scarano.*

Q These checks were cashed in the account you had at your bank?

A Yes, sir.

Q Against your name? 30

*The Vice-Chancellor.* Well, it was taken out of his account.

*Mr. Scarano.* If your honor please, I wish to show that it is J. A. D'Elisa & Company's check; it is not a personal check.

*The Vice-Chancellor.* Well, that speaks for itself, does it not?

*Mr. Scarano.* Well, it may be a transaction between A. J. D'Elisa & Company and Frank D'Amato. 40

*John A. D'Elisa, cross.*

*The Vice-Chancellor.* Well, examine him as to that.

Q What company was that, Mr. D'Elisa—J. A. D'Elisa & Company?

A There is no "company." I was in a company with Mr. Sesta when I opened the bank account, and my bank account has been run in that way ever since  
10 I have been doing any bank account business—"John A. D'Elisa & Company."

Q Who signed this "J. A. D'Elisa & Co." (referring to the signature of the maker of the check exhibited to the witness)?

A Myself.

Q That is the way you signed all your checks?

A Yes, sir.

*By the Vice-Chancellor.*

20 Q Well, who composed John A. D'Elisa & Company at that time?

A It was me, your honor.

*By Mr. Scarano.*

Q Yourself alone?

A Yes, sir.

Q Were you organized under the State of New Jersey, as a corporation?

A No, sir.

30 *Mr. Botti.* I object, on the ground that it is immaterial, if your honor please.

*The Vice-Chancellor.* What difference does it make. That is another matter. The witness has answered it.

Q Have you ever had any transaction besides this with Mr. Frank D'Amato during that time, or 1905 or 1906?

A Yes, sir.

Q What business did you have with him?

40 A Well—

*John A. D'Elisa, cross.*

Q (Interrupting.) Did you buy anything from him?

A On what?

Q Well, did you buy anything?

A He had a blacksmith shop in his premises, and I had a good many of my trucks fixed in his shop; and whatever fixing was done there it was paid for.

Q Was paid by what?

A It was paid by check and by cash.

10

Q You had a running account with Mr. D'Amato, hadn't you?

A Yes, sir.

Q Did the account run up to \$100, or over \$100?

A The account ran up—well, you know, he was fixing my trucks, and put it in the book, whatever fixing he done, and when he was in need of any money he would come over to me and say, "John, I would like to have \$100 to-day;" I would say "All right," because I knew it was due to him; and it ran along that way for quite some time until he died, and after he died everything was squared up about that account.

20

Q Was squared up?

A Yes, sir.

Q Does that check book you have there—the stubs in that check book—refer to those checks?

A No, sir.

Q You haven't got that?

A No, not now.

30

Q Do you remember whether or not these checks (referring to the exhibits shown the witness), were given for the running account?

A No, sir, the running account was only a little while, about three years ago, when he had this blacksmith shop; it was about three or four years ago, it couldn't be any longer than that.

Q You had business relations with Mr. D'Amato ten years ago, hadn't you?

A What do you mean by "business relations"?

40

*John A. D'Elisa, cross.*

Q Well, you bought from him different things, didn't you?

A No, sir.

Q You never bought anything from him ten years ago?

A Not as I remember.

Q Well, that is what we are asking you. You said that you gave him a horse?

10 A Yes, sir.

Q Of the value of \$100.

A Yes, sir.

Q Did you deliver the horse to him?

A Yes, sir.

Q And when did you ask him for the deed?

A When we made the agreement.

Q The very day you made the agreement?

A When I gave him the first money I asked him, too, when we would go down, and when he would give me these papers; he said "The first day we have got a little time we will go down and get those papers."

20

Q And when did you ask him that next?

A When I asked him next was when he got the \$300.

Q A year afterwards?

A No, that was about four, five, six or seven months afterwards, not a year; it might be it was a year.

30

*The Vice-Chancellor.* Do not argue the matter; the time speaks for itself. It is about six or seven months.

Q You did not ask again until the 22d of March?

A Yes, sir.

Q Why didn't you ask him before then for the deed, Mr. D'Elisa?

A Well, I had no occasion, because, as I stated first, that between me and Mr. D'Amato the friendship was too close to bother him too much.

40

Q That is your excuse?

*John A. D'Elisa, cross.*

A This is no excuse, it is as straight as it could be.

Q I mean your excuse that you did not want to ask Mr. D'Amato for the deed was because he was your friend?

A That is the reason why.

*The Vice-Chancellor.* There is no use in disputing or arguing it. The witness says they were close friends and that is the reason he did not ask for the deed earlier. 10

Q Had you ever bought property before 1905?

*Mr. Botti.* From Mr. D'Amato?

*Mr. Scarano.* No, from anybody?

*Mr. Botti.* I object, on the ground that it is immaterial.

*The Vice-Chancellor.* I don't know whether it is, or not; the answer is "Yes," or "No."

A Yes, sir. 20

Q And you know that you must have a contract in writing, in order to be binding?

*Mr. Botti.* I object to that, on the ground that it is immaterial to this case.

*The Vice-Chancellor.* I will sustain the objection. The witness evidently knew enough about this business to know that he ought to have a deed for his property. Now, in this case there is an oral contract, and the witness has testified, without any objection to his testimony, as to what the oral contract is. 30

Q When was the last time that you asked Mr. D'Amato for a deed?

A When he paid the other mortgage that he had on it previous to the last one that he put on.

*By the Vice-Chancellor.*

Q Now, when was that, in time?

A Well, your Honor, I cannot say very well, ex- 40

*John A. D'Elisa, cross.*

actly, but between five and six years ago, say to the best of my knowledge.

Q And that is the last time you asked him for the deed?

A Yes, sir.

Q And you knew, all these years, that you did not have title to the property, of record?

A Yes, sir, your Honor.

10

*By Mr. Scarano.*

Q Do you know who was the mortgagee of record at that time?

A Do you mean before that?

Q Yes?

A Well, not exactly; as I have heard say, it was a man by the name of Gusandina, an Italian fellow.

Q You heard that?

A I heard it from him, that he had to pay this  
20 fellow.

*The Vice-Chancellor.* What is the necessity of this?

*Mr. Scarano.* Only to show his memory; he does not remember certain things, and seems to recollect all other things on sight.

Q Do you know the name of the second mortgagee, Mr. D'Elisa?

A As I heard it from Mr. D'Amato, it was Bum-  
30 sted—that he was going to put a mortgage on there.

Q Did you ever go to Mr. Bumsted and inquire about a mortgage?

A No, sir.

Q You never did?

A No, sir.

Q At the time that you allege, five or six years ago, when Mr. D'Amato put the second mortgage on, you asked Mr. D'Amato for a deed, didn't you?

A Yes, sir.

40 Q And what else?

A That is all.

*John A. D'Elisa, cross.*

Q What did he say? You said in your direct examination that you wanted a release?

A Do you want me to answer the question right?

Q Yes?

A No, when I heard that he was going to put this other mortgage on it and pay the other old one, through him, I said "Well, Frank, now is the time for you to give the release for these three lots, so you can give me the deed." He said, "Yes, it is a good thing to remind me of, all right." So I seen him after that, and I asked him if he had it released after the mortgage was placed there, and he told me that he forgot all about it. 10

Q What was the contract, the oral agreement between you and Mr. D'Amato?

*Mr. Botti.* I object to that, if your Honor please, on the ground that we have gone over it, both on direct and cross examination. 20

*The Vice-Chancellor.* I do not think we have gone into it particularly; you have gone into it to some extent. Now, what point haven't you covered?

*Mr. Scarano.* Why, the conditions of the contract.

*The Vice-Chancellor.* Well, you can ask him as to those.

Q What was the condition of the contract between you and Mr. D'Amato, if there was any? 30

A The first condition?

Q Yes?

A The first condition of the contract with Mr. D'Amato was that he sold me those three lots on this property in the direction of Marsellis street, and he got the first payment when he called at my place, and I asked him if he sold me those three lots free and clear of all encumbrance, and when I could take possession of them, and so forth; that was the contract that we had between me and Mr. D'Amato. 40

*John A. D'Elisa, cross.*

Q Did you give him a check for that \$100 that you paid him?

A That I can't remember, whether exactly it was a check or cash for the first \$100.

Q How do you know it was \$100, then?

A Well, I know it was \$100; that was the first money that he got.

10 Q Yes, but you don't remember whether it was by cash or check, but you remember the amount, so I ask you how you remember that? Did you make a memorandum of all of these things to refresh your memory afterwards, or do you just remember abstractly, like that?

A No, I noted in on the book, and I remember when I gave him the \$100.

Q You entered it in the book?

A Yes, sir.

20 Q Have you got the book here?

A I don't know; I guess it is there.

*Mr. Botti.* That is the book I produced before.

Q Did you pay Mr. D'Amato any other money between the 27th of August, 1905, and the 22nd of March, 1906?

A Did I pay him any other money?

Q Yes?

A On those things?

Q No—any money?

30 A I don't know; I don't know; I can't remember that very well.

Q Did you have any business dealings with him in which you paid money to him?

A Well, that may be; it may be a small amount on a transaction in the steamship agent business, you see; it may be thirty or forty dollars, or so, which I cannot remember anything of that sort.

40 Q You were very much in need of that land, weren't you, Mr. D'Amato?

*John A. D'Elisa, cross.*

*Mr. Botti.* I object to that, if your Honor please, on the ground that it is immaterial, irrelevant and incompetent.

*The Vice-Chancellor.* What difference does it make. I will let you ask the question.

A Well, just as anybody else would need it.

Q I ask you to answer that question "Yes" or "No"—did you need the land, or not? 10

A If I didn't need it I wouldn't buy it.

Q Well, answer the question?

A Yes, I will answer it. You wouldn't buy anything unless you needed it.

Q Did you need the land?

A Yes, sir.

Q Well, did you own any other land around there at that time?

A No, sir.

Q You did not? 20

A No, sir.

Q You own land there now, don't you, Mr. D'Elisa?

A Yes, sir.

Q Where do you own it?

A Across the way from that; right across the way from it. I don't own it, Sesta owns it.

Q I am asking you do you own the land yourself?

A I do not.

Q You do not? 30

A No, sir.

Q Didn't you sell lots in 1907 to Juan Minielle?

A No, sir.

Q Yes, or no?

A No, sir.

Q Who is this Sesta?

A That is Thomas Sesta.

Q I know, but who is he—a relative of yours?

A A nephew of mine.

Q A nephew of yours? 40

*John A. D'Elisa, cross.*

A Yes.

Q What is his interest in the land?

*Mr. Botti.* I object to that.

*The Vice-Chancellor.* What is the relevancy of it?

10 *Mr. Scarano.* I find by the record that he bought two lots and conveyed the two afterwards; and in conversation I had with this complainant he said he was very much in need of these lots, and he had lots across the way from it, and he has land there to-day.

*The Vice-Chancellor.* I will exclude the evidence. There has got to be a limit to the testimony here.

20 *Mr. Scarano.* Well, it would also be material on the question of the price of the lots, because I knew what he paid for them within a year of the purchasing of these three lots.

*The Vice-Chancellor.* There is only one question involved here, namely, was that contract made? Now he swears it was made.

30 *Mr. Scarano.* Well, doesn't the price of the land at that time have a bearing on the question? Assuming that he says he bought three lots for \$800, when we can show that lots there at that time were sold for \$500 or \$800 apiece, would not that have a bearing as tending to show that he went as a tenant on that land and merely leased it to put old lumber on it?

*The Vice-Chancellor.* I will exclude the evidence.

Q Did you buy any other lands around there, Mr. D'Elisa?

A No, sir.

Q You never bought any, and never sold any?

A No, sir.

40 Q Was the lumber used in all the improvements you made on the property second-hand lumber?

*Thomas Sesta, direct.*

A The most of it.

Q And it was all your own?

A Yes, sir; and what was needed new, I bought it new.

Q (*By Mr. Botti.*) You said something about a truck being fixed, and you paid for it in an account with Mr. D'Amato—you had a suit over that—Mrs. D'Amato sued you, as administratrix, didn't she? 10

A Yes, sir.

Q And you paid the judgment?

A Yes, sir.

THOMAS SESTA, sworn.

*Direct examination by Mr. Botti.*

Q Where do you live?

A 388 First street.

Q And you are now in business with Mr. D'Elisa, are you, at First street? 20

A Yes, sir.

Q Did you know Mr. D'Amato?

A Yes, sir.

Q How long did you know Mr. D'Amato?

A I knew Mr. D'Amato since I was a kid.

Q Since you were a boy?

A Yes, sir.

Q I show you two checks and ask you if you know what they were given for? 30

*Mr. Scarano.* I object to that.

*The Vice-Chancellor.* He can answer "Yes" or "No."

A Yes, sir.

Q Were you present when they were given by somebody?

A I was present; yes, sir.

Q Where were they given?

A Right over the bar.

Q Who gave the checks? 40

*Thomas Sesta, direct.*

A To Mr. D'Amato?

Q Well, who gave them to Mr. D'Amato?

A Mr. D'Elisa.

Q Now, what conversation was had at the time those checks were given by Mr. D'Elisa to Mr. D'Amato—what was said?

10 A Well, he says he needed some money that day, and would he give him some money on account of the lots.

Q Who said that?

A D'Amato.

Q "Some money on account of the lots?"

A "Of the lots," yes, sir.

Q What else was said?

A Well, he says, about the deed, he says as soon as he had time he would give him a deed.

Q You heard this?

20 A I heard that; yes, sir.

Q Were you present on both days when these checks were given—on the 22d and on the 23d?

A Yes, sir.

Q Were you present at any other time when any money was given on account of these lots?

A I was present when he came in to make the deal for the lots.

Q When was that, do you remember?

30 A Well, I don't remember the day, but that was before the checks was given.

Q You mean when the first payment was made on account?

A When it was first made.

Q How long before March 22d, 1906?

A Well, I don't remember the day.

Q Well, do you remember the month?

A Well, around August.

Q August?

A Yes.

40 Q Of 1905?

*Thomas Sesta, direct.*

A 1905.

Q How much was paid at that time, do you know?

A One hundred dollars, he gave me.

Q Do you remember whether it was cash or check?

A Cash.

Q And was given in First street, too?

A It was given there; I went out to tend bar, and he walked in the office and gave it to him on the desk.

Q What was said at that time? 10

A He says that he could take possession to-morrow if he wanted to.

Q That who could take possession?

A D'Elisa.

Q Do you know whether or not Mr. D'Elisa took possession of those lots?

A Well, he went right after, and had some second-hand boards, and went up and took a couple of men up there and started right off with the dirt. 20

Q Did you go with him, Mr. Sesta?

A I went up a lot of times; I cannot remember how many times I went there.

Q I mean when he took possession?

A No, I didn't go.

Q Do you know that these improvements are on those lots, like stables and cow-barns?

A Sure, I do.

Q Did Mr. D'Elisa ever ask Mr. D'Amato, in your presence, for a deed, besides the two times when the \$100 was paid in cash (or three times) and the two checks were paid? 30

A Well, there was the checks and the \$100, I was present then; the other times I wasn't present.

Q Did you ever have any conversation with Mr. D'Amato, besides those three occasions, about those lots?

A No; no conversation with me; he had it with D'Elisa.

Q Did you see what Mr. D'Amato did with those checks when Mr. D'Elisa gave them to him? 40

*Thomas Sesta, cross.*

A Well, put them in his pocket.

Q Did you ever see Mr. D'Amato, before this time, sign any papers or checks, or any documents?

A No, I didn't see no signing at all.

*Cross examination by Mr. Blakeman.*

Q What was your business at that time?

A Well, I was working in the saloon at that time.

10 Q And these conversations took place in that saloon?

A Yes, right in the saloon.

Q What were you doing at the time?

A Well, I was tending bar there.

Q You were behind the bar?

A Behind the bar.

Q Where were Mr. D'Elisa and Mr. D'Amato?

A They sat down around the table.

Q Did you have quite a large saloon?

20 A Well, quite a large saloon.

Q How large a saloon?

A Well, I never measured the full length.

Q And Mr. D'Elisa and Mr. D'Amato were in there taking drinks?

A Yes, they had several drinks.

Q And during that time you were serving other customers behind the bar?

A Sure.

30 Q How long did Mr. D'Elisa and Mr. D'Amato remain in the saloon the first time?

A When—the first time?

Q Yes.

A Oh, they remained there for quite a while.

Q Quite a while?

A Yes, sir.

Q And were they talking on this business all the time?

A Not all of the time.

40 Q How do you know they were talking on any other business?

*Thomas Sesta, cross.*

A Well, they was talking in a friendly way.

Q How did you come to hear the particular statement with reference to the \$100?

A Well, I heard it while they was talking around the table.

Q How far away from the bar was that?

A Well, from here to the window there (the witness indicates about seven feet).

Q Now, what drew your attention particularly to them just at the moment when that \$100 was paid? 10

A Because I heard them talking about that he would give him the lots.

Q Well, this was ten years ago, wasn't it?

A Yes, going on ten years ago.

Q Have you endeavored to refresh your memory in any way since then?

A No.

Q Have you had any conversation with Mr. D'Elisa in reference to this testimony? 20

A No, sir.

Q You have not talked it over with him at all?

A Well, no; we weren't talking at all.

Q And now, at the expiration of ten years you are able to say that on the 27th of August—

A Well, I never recollected the date.

Q You have just said it was the 27th.

A No, I didn't say that.

*The Vice-Chancellor.* He said in August, as I recall it. 30

Q Well, do you know whether that was Sunday, or not?

A Well, I couldn't tell you what day it was; it was on a week-day; I don't know that it was Sunday.

Q You are not able to recall anything else that passed between D'Elisa and D'Amato while they sat at the table, the first time?

A Well, the first time, as soon as they sat around the table they had a round of drinks, first, and when 40

*Thomas Sesta, cross.*

they took these drinks they started talking about the lots.

Q Are you related to Mr. D'Elisa, the complainant?

A Yes, I am married to his niece.

Q You married his niece?

A Yes, sir.

10 Q Are you related also in a business way to him?

A Yes, sir.

Q What business?

A Well, trucking business.

Q And how long have you been in the trucking business with him?

A Oh, since we had horses. I don't remember when we started with the horses.

Q I know, but how many years?

A Oh, it has been about fifteen or sixteen years.

20 Q Now, Mr. D'Amato, during some of that time, was engaged in the blacksmithing business?

A No, right after that—right after he sold the lots.

Q Right after he sold the lots?

A No, not right after; I don't know how long, after, but it was right after he bought the lots.

Q And this trucking business in which you were engaged with Mr. D'Elisa—had Mr. D'Amato shod or took care of some of the horses for you?

A No, it was just for the trucks and fixing.

30 Q Trucks and fixing?

A Yes, sir.

Q And from time to time this firm of yours, of D'Elisa & Co., were indebted to Frank D'Amato for fixing trucks?

A Yes, in debt some.

Q And from time to time you would give Mr. D'Amato checks for the indebtedness?

A Some checks and cash.

Q Some checks and cash?

40 A Yes, sir.

*Thomas Sesta, cross.*

Q What was the name of this company in which Mr. D'Elisa was associated with you?

A That was the way he has been signing checks since he has been in the banking business.

Q Please answer that again?

A That is the way he signed the checks since we are in business.

Q Well, what was the name?

A Well, "D'Elisa & Company."

10

Q "D'Elisa & Company"?

A Yes, sir.

Q He signed the checks?

A He signed the checks—his own checks.

Q And I show you Exhibit C. 2—is not that the signature of the company?

A Yes, sir; he signed them all.

Q I show you Exhibit C. 3—is not that the signature of the company?

20

A That is the signature of the company; yes, sir.

Q And those two exhibits were checks of the company, made to the order of Frank D'Amato?

A Yes, sir.

Q Now, we come down to the time the three hundred dollar check was given—the first one, the first three hundred dollar check.

A Yes.

Q Do you recall when that was given—the month, or year?

30

A Well, I never took no attention to it, because he would do all the books and the checks and everything, and the banking.

Q That is to say, this business deal of the company with D'Amato was under the management of your partner, D'Elisa?

*Mr. Botti.* I object to that; there is no evidence that there was company dealing with Mr. D'Amato; the evidence is that Mr. D'Elisa dealt with Mr. D'Amato himself at that time, but that

40

*Thomas Sesta, cross.*

he signed the checks "J. D'Elisa & Company," and he was the company. That is the evidence before the court.

*The Vice-Chancellor.* This witness seems to indicate that it was a company.

*Mr. Botti.* He said he was working, if your honor, please, in the saloon at the time.

10 *The Vice-Chancellor.* I am going to let that inquiry be made. The question may be answered. (Question repeated.)

A Mr. D'Elisa, yes—

*The Vice-Chancellor.* Well, that is not a fair question; you are asking him if this "deal" with D'Amato was made by Mr. D'Elisa on behalf of the company.

20 Q You say that you could not recollect the time the first three hundred dollar check was given which has been testified to here, because you left the business dealings of the company with your partner, Mr. D'Elisa?

A No, I was tending bar at the time when he came in to get the checks.

Q Now, why is it that you cannot recollect when the first \$300 check was given, which you say was delivered in your presence?

30 A Well, I never remembered the dates, I never paid attention to the dates, what day or what date that he gave it to him, you see; I know he had it, that is all.

Q Have you any idea?

A Well, I cannot remember that.

Q Now, you were engaged at the time in serving drinks to other customers in this saloon?

A Yes, sir.

Q And Mr. D'Elisa and Mr. D'Amato sat at a table?

40 A They sat down at the table.

*Thomas Sesta, cross.*

Q Some eight or nine feet away from the bar?

A No, I didn't measure whether it was nine or eight feet; whatever it was, it was near the bar.

Q How was it your attention was drawn particularly to them at the time of the passing of this check?

A Why, there was no passing of a check at the time they made the deal.

Q I mean, you said that one of the three hundred dollar checks was delivered in your saloon? 10

A Well, this was after that, quite a long time after they made the first deal.

Q Do you mean right after the delivery of the \$100 in August?

A Yes, when they was talking; I don't remember the date, I remember it was around 1905; that is all I can remember.

Q You know it was in 1905?

A Yes.

Q How do you know that a check was given for the purchase of the land? 20

A Because he says he would give him \$100 first; and after he came back, when he says, "I am little short handed to-day if you can give me some money."

Q Did he say anything else?

A That is all.

Q Didn't say anything about a "lot"?

A Oh, he says "about the money on the lot."

Q How did you know what lot it was?

A How did I know what lot? Of course, I know about the lot—on the lot at Bright and Marsellis streets. 30

Q Well, did you hear anything that would indicate that it was that lot?

A No.

Q You did not hear any words passing between D'Elisa and D'Amato describing the lot?

A Well, the first words was when they made the contract. 40

*Thomas Sesta, cross.*

Q That was the only time you heard it?

A That is all I heard.

Q And at that time the \$300 was delivered—shortly afterwards.

A No, I don't remember whether it was then; I don't remember just the time.

Q But you remember that in 1905 it was done?

A Yes.

10 Q You did not hear any word about a lot—all you heard was that Frank D'Amato said he was short and wanted some money?

A Yes.

Q Was the check drawn and signed in your saloon in your presence?

A He just wrote it when I was serving the drinks; and D'Eliso says, "There is the check."

20 Q Now, you also said that another \$300 check was given, in your saloon, by Mr. D'Elisa to Mr. D'Amato?

A Yes, sir.

Q When was that?

A Well, that was right one day after the other.

Q One day after the other?

A It was given one day—I can't tell you, I can't remember the day of the month when he gave it to him.

30 Q You were serving other customers with drinks behind the bar?

A Yes, sir.

Q How was your attention drawn particularly to D'Elisa and D'Amato just at that time?

A Because I paid attention, because he passed the remark, he says "I need some money to-day."

Q Is that all he said?

A That is all he said.

Q Nothing further?

40 A Well, he said "Give me some money to-day on account of the lot."

*Thomas Sesta, cross.*

Q Now, hold on—you think, the second time, he said “on account of the lot”?

A “On account of the lot.”

Q How do you recall that so distinctly?

A Well, that is the words they said; that is all.

Q You didn’t know what “lot” it was?

A What “lot” it was? That was the only lot he sold to D’Elisa—that is the only lots.

Q Have you ever seen Exhibit C. 1 before (showing the witness the same)? 10

A I seen D’Elisa have this one day.

Q When did you first see D’Elisa have that?

A Well, I couldn’t tell that, but I saw that he had it. He said “D’Amato gave me—”

Q Do not say what he said.

A He said “D’Amato—”

*The Vice-Chancellor.* Strike that out.

Q When did you first see this survey, marked C. 20  
1, in Mr. D’Elisa’s possession?

A Oh, well, I cannot remember when I signed it; I can’t remember the date.

Q Well, we will recall the circumstances when Mr. D’Elisa and Mr. D’Amato were together the first time, when they sat in your saloon?

A No, I never seen when he gave it to him at all.

*By the Vice-Chancellor.*

Q Well, when did you first see this map—was it before or after the \$100 was paid? 30

A Well, I couldn’t remember when I seen it, I never remember the date.

Q Well, can’t you remember it?

A No, I couldn’t swear to that.

Q You could not swear whether it was before or after the \$100 was paid?

A No, sir.

Q You couldn’t say that?

A I could not, sir. 40

*Thomas Sesta, cross.*

Q Now, in whose possession was the map when you saw it?

A D'Elisa's.

Q Did you ever see it in the possession of D'Amato?

A No, I was all alone with D'Elisa.

*By Mr. Blakeman.*

10 Q Did D'Elisa ever say to you that he wanted to hire these lots, or lots like them, from Mr. D'Amato?

A Not before I saw them in the saloon.

Q Well, at any time subsequent, or after, did he say he wanted to hire these lots from D'Amato?

A No, never said he wanted to hire them.

*By the Vice-Chancellor.*

Q Did he say he wanted to rent or lease them?

20 A No, no; he just says, "I would like to buy some lots," when D'Amato came in.

*By Mr. Blakeman.*

Q Did Mr. D'Elisa talk it over with you that he would like to get the use of these lots for the business?

A Not them lots; no, sir.

Q Did Mr. D'Elisa, at any time, say that he had obtained possession of this property from D'Amato for a certain sum of money?

30 A Sum of money? What do you mean? I cannot understand it.

Q (Question repeated.)

A Yes, he gave him \$100 cash, the first time.

Q And didn't he say that he, D'Elisa, or the firm, could have the use and possession of these lots for some time to come; that he had paid for it?

A No, no; he said he sold the lots.

Q Did you, about 1905, own any lots in the vicinity of the lots shown in this Exhibit C. 1?

40 A I never remember when he gave him that?

*Thomas Sesta, cross.*

*By the Vice-Chancellor.*

Q No, did you own any lots there?

A Did I own any lots?

Q Only these two lots in question?

A Yes, sir; across the way from them.

*By Mr. Blakeman.*

Q Did you buy them in about 1905? 10

A No, it was right after that.

Q Right after? How much did you pay, a lot, for them?

*Mr. Botti.* I object to that, if your Honor please, on the ground, first, that it is irrelevant, immaterial and incompetent.

*The Vice-Chancellor.* How is it?

*Mr. Blakeman.* It is simply on the question of the adequacy of the consideration alleged to have been paid for these lots. I will go further. 20

Q Are the lots which you bought just across the way, of the same general character as the lots exhibited in Exhibit C. 1?

A Across the way?

Q Just across the street?

A They are across the street.

Q And are they of the same general character?

A On the same street.

Q And the same kind of lots?

A No, sir; not the same kind—different lots. 30

Q I mean, are they the same size lots as these?

A Same size? I never measured for the size on them.

Q What is the size of your lots across the street?

A Well, I never remember the sizes.

Q And those lots have to be filled in, too?

A No, sir.

*Mr. Botti.* I still insist on my objection.

*The Vice-Chancellor.* Well, he is only leading 40

*Thomas Sesta, cross.*

up to the question. This is all immaterial, so far. He is leading up to asking a question which you can object to.

*By Mr. Botti.*

Q Mr. Sesta, one question: In 1905 did you work as—

*Mr. Blakeman.* Do not lead.

10 Q Well, were you a partner of Mr. D'Elisa, or did you work for him as bar tender?

A I was bar tender at the present time.

Q And when did you become a partner of Mr. D'Elisa—after that?

A After.

*Mr. Blakeman.* I think these are all leading questions, your Honor, absolutely leading.

*Mr. Botti.* It has been brought out by them, if your Honor please.

20 *The Vice-Chancellor.* No, I do not think so. It has never been brought out. I had in mind to ask the witness the same question.

*Mr. Botti.* Well, then, your Honor will do it.

*By the Vice-Chancellor.*

Q Who comprise the firm of D'Elisa & Company?

A Well, I was with him.

Q When did you go with him?

A Well, I never remember the date.

30 Q You do not remember the date?

A No.

Q Did you ever sign articles of partnership?

A No, I never signed at all.

Q Well, what did you put into the firm?

A Well, we started into work; we didn't put in no capital at all.

Q He did not put any capital in?

A No.

Q You didn't put any capital in?

40

*Thomas Sesta, cross.*

A No; just started in to work together.

Q Well, did you do the work yourself?

A Sure, some of it myself.

Q Did you hire any men to work for you?

A Well, not when we started, no.

Q Well, now, when did you start?

A Well, I started the trucking business.

Q When?

A Well, I don't remember the date. 10

Q Was it in 1905?

A Oh, no.

Q 1908?

A Something like that—no, I don't remember the date, Judge.

Q But you do remember the year when this \$100 was paid in the saloon where you tended bar?

A Yes, I remember the occasion of that, when they were talking around the table. 20

Q And you remember the year when this \$100 was paid in the saloon in front of you?

A Yes.

Q And you were not interested in that?

A No, sir.

Q You don't remember the date when you went into partnership with D'Elisa?

A No, sir.

Q And you don't remember the year?

A No, I never took any attention to it. 30

Q Was there a bank account in the name of John D'Elisa & Co.?

A Yes, sir.

Q Do you know what money was put in the account?

A Well, we never figured it at all.

Q Did you ever know?

A No.

Q Did you ever make a deposit in the account?

A Not in my name, no—"D'Elisa & Company." 40

*Thomas Sesta, cross.*

Q Did you ever make any deposit of moneys in the account?

A On my account?

Q No, in the account of John D'Elisa & Company?

A Yes.

Q You took the money, didn't you, and put it in the bank?

A Took it with the books, yes.

10 Q Did you sign checks on the account?

A No, never signed no checks.

Q That was all done by D'Elisa?

A By D'Elisa, yes, sir.

Q Do you know how much you had in the account, or do you know how much is in the account to-day?

A Well, no, we never figured. Sometimes there would be \$100, sometimes more, and sometimes less.

Q And you never put anything into the business?

A We started in business, we started to work.

20 Q Now, you bought horses and trucks, did you?

A Yes, sir.

Q Where did you get the money to buy them?

A Well, we worked for it.

Q That is, you and Mr. D'Elisa, with your own hands, did the work to earn the money?

A Yes.

Q By the way, have you discussed this matter with Mr. Elisa since 1905?

A No.

30 Q Didn't talk it over with him?

A With Mr. D'Elisa?

Q With Mr. D'Elisa?

A Sure, we talked it over.

Q When?

A We talked about business—or what do you mean? I didn't understand what your Honor said.

Q Did you talk this matter over with Mr. D'Elisa?

A What matter?

40 Q The matter of these lots?

*Thomas Sesta, cross.*

A No, we didn't talk at all.

Q Did you tell Mr. D'Elisa that you heard D'Amato ask for \$100 in the bar room, in front of you?

A No, sir. He came in when he gave him the check, and—

Q No, no; now, if you will just listen and not try to anticipate the questions we will get along a good deal better. 10

A All right, Judge.

Q Did you tell Mr. D'Elisa that you had heard the conversation in the saloon when you were tending bar, when D'Elisa handed over \$100 to D'Amato—did you tell D'Elisa that you saw and heard that conversation?

A No, I never told D'Elisa about it.

Q You never told him about it?

A No. 20

Q Did you tell D'Elisa that you saw him turn over this \$300 check to D'Amato?

A I seen it when he gave it to him.

Q No, did you tell D'Elisa that you saw him turn over the \$300 check to D'Amato?

A No.

Q Did you talk about this case with Mr. D'Elisa from 1905 down to the present time?

A No, I never talked to him.

Q Never spoke about it? 30

A Never spoke about it, because he attended to all the business.

Q Did Mr. D'Elisa know what you were going to testify here this morning?

A No, Mr. D'Elisa didn't know what I am going to testify here to-day.

Q You never told him a word about it?

A No, sir.

Q Then how did Mr. D'Elisa know that you saw the \$100 paid over in the bar room in 1905? 40

*Salvatore Bovasso, direct.*

A Well, because I was there tending bar.

Q How did he know it?

A How did he know it? Because he—

Q (Interrupting.) Did you tell him?

A I never told him nothing.

*By Mr. Botti.*

10 Q Who asked you to come here to-day?

A D'Elisa.

Q Then you did talk to him about the case, didn't you, when he asked you to come here?

A Yes; he says "Come over; the case is going on to-day."

Q What did he say to you at the time he told you to come, that the case was going on?

A "Tell what you saw."

20 Q Did he come and tell you to say this in court to-day, or did you see him yourself?

A I seen him.

Q And you spoke to me in my office, across the street?

A Yes.

Q Then you did speak to Mr. D'Elisa's lawyer about it, too?

A Yes, sir.

SALVATORE BOVASSO, sworn.

30 *Direct examination by Mr. Botti.*

Q Where do you live?

A 387 First street.

Q And is that across the street from Mr. D'Elisa's?

A Right across the street; yes, sir.

Q Did you know Mr. D'Amato?

A Yes, sir.

Q How long did you know him?

40 A Oh, I knew him for the last twenty years.

*Salvatore Bovasso, direct.*

Q Were you ever present at any time at any transaction between Mr. D'Elisa and Mr. D'Amato?

A Well, the first I seen, he came in there and I was standing in the saloon having a drink, and Mr. D'Amato came in, and Mr. D'Amato treated us and we had a drink on him, and D'Elisa sprung it on him, "I hear you are going to sell your lots." He said "Yes." "What do you want for the lots?" He said, "I will take \$900." He said, "Would you take \$800 for them?" So Mr. D'Amato studied over it and said "Yes, I will take \$800 for them. Have you got \$100?" Mr. D'Elisa says, "Yes." So they walked in the office. While they were having the talk all the time they walked in the office. I seen some bills in Mr. D'Elisa's hands, I couldn't tell you exactly how much money it was. Then Mr. D'Elisa said, "Can I take possession?" He said, "You can go now and take possession, if you want to." And D'Elisa went there the next day with a truck load of—

Q Did you see him go there?

A Yes, I seen him with the truck.

Q How did you know where he went?

A By seeing where he was going to.

Q Do you remember when the conversation was had?

A No, I don't remember. It was about nine or ten years ago.

Q You don't remember the month, either?

A No, I do not.

Q Do you know anything about these other two checks of \$300 each?

A No, I don't know anything about them.

Q Do you know where these lots are?

A Yes—Marsellis street and Bright.

Q Have you been there?

A I have been there, and I have had junk there over-night.

Q When was this?

A Oh, this was about two years ago.

*Salvatore Bovasso, direct.*

Q What do you mean by having junk there overnight?

A I came in loaded and I had no place to put the wagon; I had some hoops; and I asked Mr. D'Elisa if he would give me the privilege to leave it there for a night or two. He says, "Go ahead and put them over there." So two days afterwards, when I traded them off, I shipped them away.

10

Q Did you do that often?

A No, only once.

Q And you then asked permission from Mr. D'Elisa?

A Yes, sir.

Q Now, are you sure you were there, Bovasso?

A I was there. The last time I was there now was one day last summer; I was there when we washed an automobile in it.

20

Q I mean at the time that this transaction was had with the lots?

A Oh, I was there often and often.

Q You were often in Mr. D'Elisa's saloon?

A Yes, I often met him there, and sent cows to the place.

*The Vice-Chancellor.* The witness does not understand the question.

Q I mean at the time you say, nine or ten years ago, when this talk was had about the lots—you were there and saw what you have testified to to-day?

30

A I was there in the saloon when he bought the lots; that is all I remember about that; that is all I know about it.

Q Did you tell Mr. D'Elisa about coming here to-day?

A Did I tell Mr. D'Elisa?

Q Yes.

A Well, Mr. D'Elisa asked me "You were here when this—

40

*Salvatore Bovasso, cross.*

*Mr. Blakeman.* I object; I cannot see what relevance it has at the present time.

*The Vice-Chancellor.* That is a matter for cross examination, I suppose.

*Mr. Botti.* I will withdraw it. You may cross examine.

*Cross examination by Mr. Blakeman.*

Q What was your business nine or ten years ago? 10

A Junk dealer.

Q You were present in the saloon of Mr. Sesta?

A Yes, sir.

Q What time in the day was it?

A I couldn't tell you what time of day it was.

Q What day was it?

A I couldn't tell you.

Q What year was it?

A I couldn't tell you; I know about nine or ten years ago. 20

Q Where were you seated, or where were you standing?

A Standing at the bar, in front of the bar, with a glass of beer in front of me.

Q Mr. Sesta was serving you at the time?

A Yes, sir; he did; he had me served, before D'Amato came in, with a glass of beer.

Q And you were drinking when D'Amato came in?

A Yes, sir. 30

Q Whom did D'Amato come in with?

A He came in alone.

Q And where did D'Amato go?

A Right in front of the bar.

Q Alongside of you?

A No, not quite alongside of me. I was here (indicating) and D'Amato stood about where your chair is.

Q That is about twelve or fifteen feet?

A Not as far as that; the bar ain't fifteen feet. 40

*Salvatore Borasso, cross.*

Q The bar is quite long?

A No, sir; very short bar; about a twelve-foot bar; and there is an office between that.

Q And what did D'Amato do at the bar?

A He asked me to have a drink.

Q Did Sesta serve him?

A Yes, sir.

10 Q How many drinks did D'Amato have, standing at the bar?

A One drink.

Q When did D'Elisa come in?

A D'Elisa was in there.

Q He was?

A In the office, with some books.

Q Where was the office?

A Right alongside of the bar.

Q An enclosed office?

20 A It is closed, but from the bar you can look right in the back window.

Q That is, you can walk from behind the bar to the office, but you cannot walk from the front of the saloon into the office?

A Yes, behind the side bar, if you walked behind it; but he usually goes behind the bar and goes in the office.

Q Where did D'Amato go after he had his drink?

A He stood talking to D'Elisa.

30 Q (*By the Vice-Chancellor.*) Well, D'Elisa at that time was in the office?

A He was in the office when Mr. D'Amato came in, and he jumped from the chair and went right in with D'Amato.

Q (*By Mr. Blakeman.*) Was D'Elisa behind the bar when talking to D'Amato?

A After D'Amato came in he was behind the bar.

Q And D'Amato and D'Elisa talked over the bar, with the bar between?

40 A Yes, sir.

*Salvatore Bovasso, cross.*

Q Now, where were you standing then?

A At the same place.

Q Did you have another drink?

A Yes, on D'Amato.

Q With D'Amato?

A Yes, sir; he blowed us.

Q Did D'Elisa join you in the second drink?

A He took a cigar.

Q And were you a party to this conversation between D'Elisa and D'Amato? 10

A No; they were talking loud enough that anybody could hear it.

Q What was said between them?

A What was said between them? D'Elisa said "We hear you are going to sell some lots?" He said "Yes." He said, "What do you want for them?" He said, "I will take \$900," and Mr. D'Elisa said, "I will give you \$800 for them." Well, Mr. D'Amato studied a little bit, and said, "Well, all right; we will agree on it at \$800." So Mr. D'Amato asked D'Elisa, "Have you got \$100?" Mr. D'Elisa said, "Yes." So Mr. D'Elisa walked behind the bar, right in the office, and from where I was standing we could look right into the office, and I seen some bills that D'Elisa handed D'Amato, but I couldn't tell you exactly how much money was into it. 20

Q Then you couldn't hear what was said?

A No, I couldn't hear what was said. D'Amato came out from behind the bar and treated us again. 30

Q Treated who?

A The fellows that was in there—treated me and Sesta and D'Elisa and a couple of more fellows; I don't remember who the fellows was.

Q You all drank your liquor standing up at the bar, on D'Amato's second treat?

A Yes, sir.

Q Yes—go on.

A And after we had the drink they shook hands 40

*Salvatore Bovasso, cross.*

together and said "Good day" and "Good-bye." Beforehand, though, D'Elisa asked D'Amato could he take possession of the lots; D'Amato said "Go there right away, if you want to, at any time."

*By the Vice-Chancellor.*

Q Who asked that question?

A D'Elisa asked D'Amato could he take possession of the lots. D'Amato said, "You can go at this present moment and take possession, if you wish ti."

*By Mr. Blakeman.*

Q How is it you recall so distinctly that D'Elisa asked D'Amato if he could take possession?

A Well, if I could hear you talk very loud I can hear what you are talking about.

Q I do not doubt that what you say is so, you could hear; but how is it you recall, nine or ten years ago, what was said?

20 A Well, Mr. D'Elisa said he was in trouble with Mrs. D'Amato about these lots, and he said "You were present when this \$100 was given out." I said I couldn't tell about the hundred dollars, but I know I had a drink of beer on that deal." He said, "Why don't you come along and be my witness and tell what you know?" I said I should tell what I know, I couldn't tell any more.

Q You told D'Elisa what about the \$100?

30 A About the lots. I didn't know about the \$100. I seen money in his hands, and perhaps that was about the lots.

Q Well, how is it you say you recall so distinctly now that D'Elisa, after the second treat, asked D'Amato if he could take possession?

A Well, I got a good memory; I remember what he said.

Q How many times have you talked it over with D'Elisa?

A Never spoke of it until this case came up now.

40 Q When was it you spoke to D'Elisa about it?

*Salvatore Bovasso, cross.*

A Well, it was about two weeks ago.

Q Did he ask you anything about your recalling a request for possession?

A He asked me whether I knew anything about these lots at that time—the lots he bought from D'Amato.

Q Is that all he asked you?

A That is all. I told him that I recollected about it, and his lawyer called me down there, and I went and told him what I saw about it, how much I knewed about it. 10

Q But you cannot recall the year it took place?

A I couldn't do it.

Q You cannot recall the time of year?

A No, sir.

Q But all these other details—the fact that D'Elisa took a cigar, and you took a drink, and two others joined in, are quite clear to your mind? 20

A Yes, sir.

Q You also know that D'Elisa and D'Amato were not seated at the table in front of the bar talking together?

A No, sir—no chairs in front of the bar to be seated on.

Q In the office there is a desk, is there?

A Yes, sir.

Q What kind of a desk was it?

A A small desk. 30

Q Roll-top?

A I don't know; there is drawers to it, big drawers that open out.

Q Open out?

A Yes, sir, with like a shelf on it—it opens out.

Q Any other furniture in the office?

A A big safe.

Q Any other furniture?

A That is all—and chairs. 40

*Pasquale Lenni, direct.*

Q And the chairs. Did D'Elisa sit down at the desk?

A D'Elisa sat down in a chair and D'Amato stood up.

*By the Vice-Chancellor.*

Q Was there a table in the room, in the office?

A No, sir; it was a desk inside of the wall.

10 Q Was it a flat-top desk?

A No, there is a piece falls right out, comes right out, and you close it up. It is more like a closet than anything else.

Q Do you know what a roll-top desk is?

A No, I do not.

Q One that slides back?

A No, it ain't that kind. There is only one piece that hangs down, and any time you want to close it, it shoves right in and closes up the desk.

20 Q Sort of a drop-leaf?

A Yes.

Q (*By Mr. Blakeman.*) Are you related to D'Elisa?

A No, sir.

Q Have you any business relations with him?

A No, sir; the only business I had with him was going to have a drink in his place, in Sesta's place; that is about all.

Q What is that?

30 A I went for a drink in Sesta's place; that is all.

PASQUALE LENNI, sworn.

*Direct examination by Mr. Botti.*

Q What is your full name?

A Pasquale Lenni.

Q Where do you live?

A 128 Colden street.

Q What is your occupation?

40 A Carpenter and builder.

*Pasquale Lenni, direct.*

Q Do you know Mr. D'Elisa?

A Yes.

Q Did you know Mr. D'Amato?

A Yes.

Q How long did you know Mr. D'Amato?

A In the year 1899.

Q How long have you known Mr. D'Elisa?

A About fourteen years ago, I think.

Q Did you ever have any conversation with Mr. D'Amato in reference to these lots?

10

A Yes, I remember about five or six years ago; I cannot say the months or years.

Q What was the conversation?

A It started from me; I asked him why he sold those lots, because next summer it might be the park would be running there.

Q What lots did you mean?

A Bright and Marsellis streets, I think.

20

Q Are those the lots on which Mr. D'Elisa was?

A Yes, sir.

Q And what did he say?

A Well, he said, "I didn't know the park is coming there. I sold it, anyhow, because he was my good friend."

*Mr. Blakeman.* I object to this, on the ground that it does not appear that Mr. D'Elisa was in possession of these lots.

*The Vice-Chancellor.* He is offering to show that Mr. D'Amato had stated to him that he had sold the lots to D'Elisa. That testimony is unobjectionable, is it not?

30

*Mr. Blakeman.* It would be if he was in possession.

*The Vice-Chancellor.* Well, how could he be out of possession, if he had sold it and made delivery?

(Objection overruled.)

40

*Pasquale Lenni, direct.*

Q And did he mention any name?

A No.

Q Whom did he refer to as "he was my good friend"?

A Well, he meant Mr. D'Elisa.

Q Well, did he say that he meant Mr. D'Elisa?

A Yes, he said "My good friend, Mr. D'Elisa."

10 Q As far as you remember, just what were the words he said about Mr. D'Elisa—just what he said; tell us again.

A Well, he said, "He is my good friend; I sold it to him because he was my good friend."

*By the Vice-Chancellor.*

Q Is that all he said?

A That is all he said.

Q Oh, no, it wasn't—what did you say to him?

A Nothing at all.

20 Q Didn't you say anything to Mr. D'Amato?

A No.

*By Mr. Botti.*

Q You said a minute ago—

*The Vice-Chancellor.* Just start again and tell all the conversation you had with Mr. D'Amato; state what you said, and what he said, from beginning to end, without interruption.

30 A I was talking to Mr. D'Amato about this ground, because I read in the papers the night before that the park will come along there; and I said, "Why did you sell those lots, now, because the park is going to run here?" and he said, "I sold those lots to Mr. D'Elisa because he is my good friend." That is all I know about it.

*By Mr. Botti.*

Q Did you ever talk to him at any other time about these lots?

40 A No.

*Pasquale Lenni, direct.*

Q Have you seen these improvements in the lots, Mr. Lenni?

A Yes, sir.

Q How long have you been a carpenter and builder?

A About fifteen years.

Q Fifteen?

A Fourteen.

10

Q And are you a carpenter to-day?

A I am.

Q And during that time have you constructed many houses and buildings?

A Yes.

Q Can you give us the fair and reasonable value of the improvements which exist to-day on those three lots?

A Yes.

Q What is it?

20

A (The witness consults a memorandum.)

*Mr. Blakeman.* I object to his using any memorandum, unless I know the character of it.

*The Vice-Chancellor.* How can he give the figures without using the memorandum?

*Mr. Blakeman.* We would like to know when he made it, and something about it.

*The Vice-Chancellor.* The witness may use the paper for the purpose of taking his own figures and furnishing them to counsel, if counsel desire it; but if counsel desire it, the witness can give the total of his estimate, and then the other matter may be brought out on cross examination. No question is raised as to his being expert enough to testify.

30

Q What is the entire amount that you place as the fair and reasonable value of the improvements?

A \$1,493.80.

Q What does that include—what do you figure in it?

40

*Pasquale Lenni, cross.*

A This includes all the carpenter work and hardware and concrete floor.

Q Does that include plumbing?

A No, sir.

Q Does that include labor, too?

A Yes, material and labor.

Q And the only thing you exclude is plumbing?

10 A Yes.

*Cross examination by Mr. Blakeman.*

Q You say you had a conversation with Mr. Frank D'Amato about four or five years ago?

A Four or five years ago, yes.

Q Are you sure that the name of Mr. D'Elisa was mentioned in that conversation?

A Yes.

Q How are you able to recall that?

20 A Well, he was working with me—Mr. D'Amato.

Q Who was working?

A Me and Mr. D'Amato.

Q Were working together?

A Yes.

Q What were you working at?

A Well, at a place right on Bright street.

Q Where did this conversation take place?

A Well, we were talking about his wanting to buy some farm in the country.

30 Q Where did this talk between you and D'Amato take place?

A Oh, on Bright street.

Q On the street?

A On the corner; yes, sir.

Q That is, on the street. Were you walking together, or had you just met him?

A No, we were walking together.

Q What were you working at?

A Well, we were walking on the street.

40 Q Oh, you were walking together?

*Pasquale Lenni, cross.*

A Yes.

Q And you turned to D'Amato and asked him why he sold these lots?

A No, I didn't ask him the first-off; he was talking about he wanted to buy a farm away out in the country, and I said to him "Why did you sell those lots to Mr. D'Elisa, because there is a park coming around here?" and he said "I did it because he was my good friend."

10

Q Didn't he say that he let D'Elisa go into possession and use them because he, D'Amato, did not want to use them?

A No.

Q Didn't he say that D'Elisa had promised to fill them in if he could have the use of them?

A No.

Q Sure of that?

A Yes, sir.

20

Q How do you know that the lots you are speaking of are the lots which D'Elisa claims he has bought?

A Well, I don't know anything about it; I know Mr. D'Elisa occupied them lots from long ago; that is what I know.

Q Yes, but you don't know what D'Amato was speaking of when he said "lots?"

A No, sir.

Q You knew D'Amato owned a lot of other lots?

A Yes.

30

Q He did own a great deal of property there, didn't he?

A No.

Q He owned a number of lots, though?

A No, sir.

Q D'Amato did not?

A No, sir.

Q You know D'Amato owned quite a little real estate?

A Yes.

40

*Pasquale Lenni, re-direct.*

*George L. Geraghty, direct.*

Q And you know that he owned other lots besides these?

A Yes.

Q Well, then, you did not know, when he spoke of "lots" that he was referring to these lots?

A No, sir.

10 *Re-direct examination by Mr. Botti.*

Q Did I understand you to say, Mr. Lenni, that you know Mr. D'Elisa had been in possession of these lots for a long time?

*Mr. Blakeman.* Do not lead him, please.

Q When you gave that figure of \$1,493.80, what kind of material did you figure on?

A Second-hand material.

Q All second-hand?

20 A Yes.

GEORGE L. GERAGHTY, sworn.

*Direct examination by Mr. Botti.*

Q Where is your business?

A 353 Third street.

Q What are you?

A Plumber.

Q How long have you been a plumber?

A About twenty years.

30 Q Do you know Mr. D'Elisa?

A Yes, sir.

Q Did you know Mr. D'Amato in his lifetime?

A Yes, sir.

Q Did Mr. D'Elisa ever order work of you done at Bright and Marsellis streets?

A Yes, sir; I put in a water main for him.

Q And anything else?

A Well, repaired the pipe there twice, I think.

40 Q Can you give us an idea of how much plumbing work you did on the premises?

*Paul Fortugno, direct.*

A (Referring to a memorandum.) Putting in the water main was December 14, 1908, and then in May, 1909 I put in an offset, and in October 8, 1909, repaired the water pipe, and in 1910 repaired the water pipe—\$58.08.

Q This work was all done on the premises at the corner of Marsellis and Bright streets?

A Yes. 10

Q And Mr. D'Elisa ordered the work of you?

A Yes, sir.

Q Did you ever have any conversation with Mr. D'Amato about these lots?

A No, sir.

Q How much is the total amount?

A \$58.08.

No cross examination.

PAUL FORTUGNO, sworn. 20

*Direct examination by Mr. Botti.*

Q Mr. Fortugno, where do you live?

A 42 Norcross street.

Q You are in the manure business, aren't you?

A Yes.

Q Do you know Mr. D'Elisa?

A Yes.

Q How long have you known Mr. D'Elisa?

A Well, fifteen or eighteen years. 30

Q Did you know Mr. D'Amato?

A Yes, sir.

Q How long did you know Mr. D'Amato?

A The same way.

Q The same time?

A Yes, sir.

Q Now, did you ever have a talk with Mr. D'Amato about Mr. D'Elisa and some lots?

A Eight years ago I myself tried to buy a couple of lots; I asked Mr. D'Amato to sell two lots to me; 40

*Paul Fortugno, cross.*

him say "I sell three lots back of the lots of Mr. D'Elisa." I asked him how much he wanted for the three lots back of Mr. D'Elisa—

*Mr. Blakeman.* I object to this. What relevancy has the value of the lots back of D'Elisa?

*Mr. Botti.* I want to show an admission.

10 *The Vice-Chancellor.* He is giving evidence that shows a recognition by Mr. D'Amato that Mr. D'Elisa was the owner of the property.

A (Resuming.) And him say he wanted a thousand, two hundred dollars for the three lots. I say "How much you sell those lots to Mr. D'Elisa for?" Him say "Mr. D'Elisa bought the lots two years ago." I say "How much you sell those lots to Mr. D'Elisa for?" "Well," Mr. D'Amato say "Mr. D'Elisa bought the lots two years ago."

20 *By the Vice-Chancellor.*

Q "Mr. D'Elisa bought the lots two years ago?"

A Two years ago.

Q Go right on and say what further was said?

A He said "The property is more dearer than two years ago."

*By Mr. Botti.*

Q Anything else?

30 A That is all. I offered nine hundred dollars for the three lots, that is all.

Q And he wouldn't take it?

A No; me told him I would give him \$900; he says he wanted a thousand, two hundred.

*Cross examination by Mr. Scarano.*

Q When was this conversation between you and Mr. D'Amato?

A Eight years ago.

Q Eight years ago?

40 A Yes, sir.

*Paul Fortugno, cross.*

Q Where?

A At Dumb's, in the property he got of Mr. D'Elisa.

Q Where is Mr. D'Elisa's property?

A I don't know the number of the lots—across from the property of Mr. D'Amato.

Q Across the way from Mr. D'Amato?

A No, across the way—the same place. 10

Q Well, eight years ago, where were those lots?

A Eight years ago?

Q Yes.

A In the same place.

Q They are in the same place to-day, I know, but in what location?

A I don't understand what you mean.

*By the Vice-Chancellor.*

Q On what streets? 20

A The lots I wanted to buy was on Bright street. These three lots he got, Mr. D'Elisa—I don't know the name of the street—the other side of Bright street.

Q Did Mr. D'Amato own any more lots than D'Elisa's lots?

A Yes.

Q How do you know that?

A Because him gets lots of property there.

Q Do you know that is a street next to Mr. D'Elisa's lots? 30

A A street?

Q Yes. He couldn't sell you the street. Where did you want to buy the lots, on what street?

A In the back of Bright street; the back of the lots joined D'Elisa; John D'Elisa has got a road this side of this street, and these lots were back of those lots.

Q Well, there is Bright street, here is Centre street (drawing a sketch and showing it to the witness). Right here, do you say? 40

A Yes.

*Paul Fortugno, cross.*

Q There is Mr. D'Amato's house (indicating on the sketch)?

A Yes.

Q There is Mr. D'Elisa's lots (indicating on the sketch)?

A Yes.

Q We will say three lots?

10 A Three lots.

Q Do you recognize that?

A Yes.

Q Now, over here (indicating on the sketch) is Marsellis street?

A Yes.

Q This is the street?

A Yes.

Q Where did you want to buy these lots?

A Back here (indicating on the sketch).

20 Q Where?

A Here.

Q 25 x 100 D'Elisa's lots are. Is there a street up here (indicating on the sketch)?

A That is his lots (indicating on the sketch). I wanted to buy myself some back of these ones here.

Q Well, 25 x 100 would be the D'Elisa lots. Now, there is no street in here, is there (indicating on the sketch)?

A No street at that time.

30 Q And there is no street to-day there, is there?

A No; they have got a street there now.

Q Where is the street?

A They have got a street in front of D'Elisa.

Q Yes, go on.

A This is Marsellis street (indicating on the sketch). Mr. D'Elisa owns 1, 2 and 3—the corner lot and the one next to it, and the third one. Now, Mr. D'Elisa had his property here all built up.

40 Q Where were you going to buy your three lots?

*Gregorio Cucco, direct.*

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock P. M.

*Mr. Botti.* May it please the court, I have one or two other witnesses I would like to call, if you will permit me to, and in order not to confuse Mr. Scarano's mind by interpreting and, at the same time, looking out for the interests of his client, I have here another interpreter. 10

*The Vice-Chancellor.* All right.

(James M. Lepis was thereupon sworn as interpreter.)

GREGORIO CUCCO, sworn.

*Direct examination* by Mr. Botti (through the interpreter).

Q Where do you live? 20

A 41 Brooke street—41½.

Q Do you know Mr. D'Elisa?

A Yes.

Q Did you know Mr. D'Amato?

A Yes.

Q In the last three years have you been living at 41½ Brooke street?

A No.

Q Since when have you been living at 41½ Brooke street? 30

A Just seven months.

Q And up to seven months ago where did you live?

A I lived at 234 Bright street.

Q And is that owned by Mr. D'Elisa—is that one of the lots in question at the corner of Marsellis street?

A Yes, Marsellis and Bright.

Q And how long were you before seven months ago, living at Bright street and Marsellis?

A Five years. 40

*Gregorio Cucco, direct.*

- Q What is your business?  
 A Milk business.  
 Q What have you got—cows?  
 A No, I ain't got any cows.  
 Q Did you have cows at one time?  
 A Before, I had cows.  
 Q Where did you keep the cows?  
 10 A Kept the cows in the yard.  
 Q What yard?  
 A The yard of Jack D'Elisa.  
 Q At Marsellis and Bright streets?  
 A Yes.  
 Q Have you got milk cans, too?  
 A Yes.  
 Q Where is your place of business now?  
 A Just at the same place.  
 Q How long have you been there in that place of  
 20 business?  
 A About six years—three years with D'Elisa and  
 three years with another man.  
 Q Have you yourself been there for six years?  
 A Yes, three years working for a man, and three  
 years it has been for myself.  
 Q For the last three years have you been a work-  
 man, or in business for yourself?  
 A In business with myself.  
 Q And before the last three years, a working man  
 30 at the same place?  
 A At the same place.  
 Q When you were working three years ago whom  
 did you work for?  
 A Joseph Bundo.  
 Q And do you know to whom Joseph paid the rent  
 for that place?  
 A Oh, he was paying it to John D'Elisa.  
 Q To whom did you pay rent for the last three  
 40 years?  
 A Jack D'Elisa.

*Gregorio Cucco, cross.*

*Tony Fregaboni, direct.*

Q And you still pay rent to Mr. D'Elisa?

A Yes.

Q Did you ever talk to Mr. D'Amato about this matter?

A No.

*By the Vice-Chancellor.*

Q Did Mr. D'Amato ever ask you to pay him rent? 10

A No, not before.

*Cross examination by Mr. Scarano.*

Q Did Mrs. D'Amato ask you to pay her rent?

A No.

Q Mrs. D'Amato, I mean?

A After he died, Mr. D'Amato, there came a lady and wanted me to pay her.

Q After the death of Mr. D'Amato?

A Yes. 20

TONY FREGABONI, sworn.

*Direct examination by Mr. Botti (through the interpreter).*

Q Where do you live?

A 373 Eighth street.

Q Do you know Mr. D'Elisa?

A I know him because he called me to work for him. 30

Q When did he call you to work?

A All the time, after eight or nine years ago, all the time he got a job I worked for him.

Q Did you ever do any work on property at Marsellis and Bright streets?

A Always; I worked in the stable and everything.

Q What do you mean by "always"—every day?

A Whenever I had it to do—once a week, or less than once a week, so many times a month, three weeks, two weeks. 40

*Andrew Ariano, direct.*

Q How long did that continue from eight or nine years ago?

A I worked for him three or four years that way; not always in the same place, but different places.

Q Well, I mean how long did you continue at that place?

10 A I couldn't remember very well; sometimes a week; sometimes it was days, a few days.

Q When was the last time you worked there?

A About two or three years, now; because I went with an American fellow now, and I work steady.

No cross examination.

ANDREW ARIANO, sworn.

*Direct examination by Mr. Botti.*

Q Where do you live?

20 A I live 390 First street; I just moved a week ago. I lived at 403, and I moved to 390 now.

Q First street?

A Yes, First street.

Q Do you know Mr. D'Elisa?

A Well, I know him just as much as the rest.

Q For how long did you know him?

A Well, I know the people.

Q No, how long have you known him?

30 A Oh, well, I have known him for about twelve or fourteen years, something like that.

Q And did you know Mr. D'Amato?

A Certainly.

Q How long did you know him?

A I have known him for twenty-five.

Q Twenty-five?

A More than that I have known him.

Q Have you ever been present at any conversation between Mr. D'Amato and Mr. D'Elisa about certain lots?

40 A Yes, they was talking about the lots.

*Andrew Ariano, direct.*

Q When was this? Can you tell us?

A This was about nine or ten years ago.

Q Do you remember the month?

A I don't remember the month very well; I don't remember the month, or I don't remember the day, but it has been nine or ten years ago.

Q What do you remember of the conversation?

A Well, he said "I would like to sell a couple of them lots— 10

Q Who said this?

A Mr. D'Amato said this—"I would like to sell two or three of them lots." Well, Mr. D'Elisa said to him "I need a couple or two or three myself." Well, he asked him how much he wanted. "Nine hundred dollars." He said "Can you come down?" "Well," he said, "there ain't any harm about eight or nine hundred dollars," he said. Then he went in the little office there what he has got in the saloon, and I seen some money, I don't know what he gave him, whether he gave him one hundred or five hundred or a thousand dollars; I don't know what money he gave him; I seen his hands full of money; that is all I know. 20

Q Was that the same time that Mr. Bovasso was present?

*Mr. Botti.* I will withdraw that question.

Q Who else was there?

A Oh, there was about six or seven or something; about ten people were there. 30

Q (Mr. Bovasso being asked to stand up, and complying.) Was that man present?

A That man was there, too; yes, sure.

Q Go on?

A I saw Mr. D'Amato all this time; these people, he blowed them; he always treated us well at the time we saw him.

Q Did you ever talk to Mr. D'Amato after that time?

A Oh, we were talking every time. 40

*Andrew Ariano, cross.*

Q I mean about the lots?

A No, I never talked to him about it any more, because it was none of my business, only that time he went into the little office there; well, he had some money. I don't know what he gave to him, whether he gave him two dollars, five dollars, I don't know anything about it.

10 Q Mr. D'Amato was a big man, wasn't he, very tall and big?

A Oh, yes, big man; I knew him for about twenty-six or twenty-seven years

Q Do you know how long he was sick before he died?

A Oh, about three or four days.

*Cross examination by Mr. Scarano.*

20 Q Mr. Ariano, what was the conversation that you heard when you were in the saloon?

A Well, the same as I told before.

Q Well, what was it?

A They was talking about them lots—"I would like to sell two or three lots," he said.

Q Who said he wanted to sell two or three lots?

A Mr. D'Amato.

Q Mr. D'Amato stood in the saloon in your presence?

30 A He sat down there, and he blowed all hands, very near, that was in the saloon; that man was able to blow everybody to have a drink. Well, he said to Mr. D'Elisa, "I would like to sell two or three lots." "Well," he said at the time, "I need them there, too; what do you want?" "I want about nine hundred." He said "Can't you take eight hundred?" "Well," he says, "No harm for that," he says, so he went in in the office there, the little office, and he handed him some money. I don't know how much he gave him, because I wasn't looking at that, you know.

40 Q Who was in the saloon at that time besides yourself?

*Andrew Ariano, cross.*

A I can't tell; there was about nine or ten people in there; I can't remember nine or ten years ago.

Q You cannot remember nine or ten years ago?

A No.

Q Was Mr. D'Elisa there?

A All hands was in there, certainly. I was there myself.

Q Who was there—who else, beside Mr. D'Elisa?

A Well, that fellow was there at the time (indicating Bovasso), and there was six or seven more.

Q Well, who else?

A I can't remember about them people.

Q Who sold you the beer—Mr. D'Elisa?

A Well, I suppose so—his bartender.

Q Mr. D'Elisa had a bar-tender?

A Somebody was there.

Q Well, I am asking you who? Do you know Mr. Sesta?

A I do.

Q You do?

A Sure.

Q Was he there present?

A I don't know who was there; I can't remember exactly. If it was about a week ago I could remember, or two weeks; but nine or ten years ago, I can't.

Q Did you have a conversation with Mr. D'Elisa about this case here?

A No, sir.

Q You haven't talked it over with him?

A No, sir; never.

Q How did you come to come down here to-day?

A I come to find out; I swear right.

Q I know, I am not asking you that; how did you know this case was coming on down here?

A Don't you think I find out in the paper.

Q In the paper you read it?

A Yes.

10

20

30

40

*Andrew Ariano, re-direct.*

*Re-direct examination by Mr. Botti.*

Q Did you tell Mr. D'Elisa about this case, Mr. Ariano?

A Yes, sir.

Q When did you tell him?

A About Monday or about Saturday, something like that.

10 Q You say you found it out—who told you?

A In the paper, in the Journal I find it out, that this case was going to be on to-day.

Q Did you talk to Mr. D'Elisa then?

A No, sir; what business did I have to talk to him.

*By the Vice-Chancellor.*

Q Well, you did not talk to him?

A No, I didn't talk to him.

Q Who asked you to come here to-day?

A I find it out in the Journal.

20 Q Didn't you tell Mr. D'Elisa you were a witness in the case and you would come to help him out?

A I told him a week ago to-day about the case.

Q You told him a week ago to-day?

A Yes. I expected to get a subpoena to come over here. I never got it.

Q And he asked you to come, didn't he—you did not get a subpoena, but Mr. D'Elisa asked you to come, didn't he?

A No, sir.

30 Q Well, when you saw Mr. D'Elisa a week ago what did he say to you?

A Well, he said, "The case is coming up on the 12th, and to-day is the 12th, ain't it?"

Q And did he tell you to come at that time?

A No.

Q Eh?

A He said the case was to be to-day.

*By the Vice-Chancellor.*

40 Q Did he tell you to come down to-day?

A To come down to-day?

*Andrew Ariano, re-direct.*

Q Did he tell you to come down?

A He told me the case was to be tried to-day.

Q Well, why didn't you say so? You have been asked half a dozen times.

*By Mr. Scarano.*

Q Do you read English?

A I can read Greek, but not English.

Q Do you know how to read? 10

A I can read in Greek.

Q Do you know how to read English writing?

A I can talk English.

Q Answer my question—do you know how to read the English language?

A No.

Q Do you know how to read a paper?

A No, I can't read the papers, but some boys of mine can read the papers.

Q Do you know how to read, yourself? 20

A No, I have got some boys to read the paper.

*The Vice-Chancellor.* Answer the question:  
Do you read English?

A No, I can't read English, but I have some boys that can read English.

Q Then you did not read in the Journal that this case was coming on to be tried to-day, did you?

A My boys told me about it. I got boys that can read, and they told me about it.

Q Do you remember what night this notice that the case would be tried to-day, or what day it was that you read it in the paper? 30

A Well, it was Friday or Saturday; I remember the boys told me. I never read the paper, the boys did it.

Q How old is your boy?

A About 17 or 18.

Q Last Friday, did you say, or last Saturday?

A Well, last Friday, or Saturday; something like that. 40

THE COMPLAINANT RESTS.

*Philip Tumulty, direct.*

THE CASE FOR THE DEFENDANT.

PHILIP TUMULTY, sworn.

*Direct examination by Mr. Blakeman.*

Q Mr. Tumulty, you live in Jersey City?

A Yes, sir.

Q Do you know the complainant, Mr. D'Elisa?

10 A Well, I knew him for quite some time—know him to see him; I don't know his name though.

Q But you know him by sight?

A Yes.

Q Do you know the property that has been testified to in this suit?

A Yes, sir.

Q You have seen these lots?

A Yes, sir.

20 Q Do you know whether or not, last fall, the administratrix of the estate of Frank D'Amato offered those lots at public sale?

A Yes, sir.

Q When was that sale?

A Well, I don't remember just what day it was.

Q Well, what month?

A I don't remember even that.

Q Do you think it was in November, 1914?

A Well, about that time, I guess.

Q Were you present at the sale?

30 A I was, yes.

Q And where did the sale take place?

A It took place on Bright street—well, they first started to sell the property on Marsellis street, I think.

Q I mean these particular three lots that have been testified to?

A Oh, the sale was on Bright street.

Q Was Mr. D'Elisa present?

A He was; yes, sir.

40 Q Who was auctioneering them off?

A Well, I don't know the name of the man who

*Philip Tumulty, direct.*

was acting as auctioneer; I would know him if I seen him.

Q Were these three lots put up for sale?

A They were put up for sale—the second lots, the second number of lots that were put up, I think.

Q Were these three put up together?

A Yes.

Q And do you recall the terms of the sale?

A The terms of the sale were cash, 10% on the day of sale, and the balance when the court confirmed the sale. 10

Q Do you remember what title was offered—whether it was in fee, or any lesser title?

A I think it was a warranty deed; I think it was; that is my recollection of it.

Q That is your recollection of it?

A Yes.

Q When those lots were offered for sale did you make any bid for them? 20

A Yes, sir.

Q Did Mr. D'Elisa stand by at the time they were offered?

A Well, Mr. D'Elisa was in the crowd; there was quite a crowd of people there. I saw Mr. D'Elisa there at the sale.

Q Did he make any objection, or make any statement at the time?

A No. 30

Q Were these lots bought in by you?

A Yes, sir.

Q For how much?

A My recollection is, \$2,350.

Q And did Mr. D'Elisa, at any time, make any statement to you that he claimed any interest in these lots?

A Not Mr. D'Elisa; after the sale, or a day or two after, I think, somebody told me that—

Q Well, I don't mean what anybody else told you, I mean D'Elisa? 40

*Philip Tumulty, cross.*

A No.

*Cross examination by Mr. Botti.*

Q Do you know whether or not Mr. D'Elisa left after the first batch was sold, Mr. Tumulty?

A I couldn't say that.

Q You are not sure about that?

A Because this was the second lot that was sold.

10 Q How many lots were there in the second lot?

A There was three.

Q How do you know that those three lots are the same three lots which are in question?

A Why, because I purchased them, and I learned afterwards that, or, at least, somebody told me—

Q Well, excepting what people told you?

A I know myself that I purchased those lots that Mr. D'Elisa now claims.

*The Vice-Chancellor.* That is perfectly clear.

20 Q You live where, Mr. Tumulty?

A I live at 54 Monticello avenue, Jersey City.

Q How long have you lived there?

A I have lived there ten years.

Q Have you a son by the name of Philip, also?

A Yes, sir.

Q Didn't you know, before this day, that Mr. D'Elisa and Mr. D'Amato were in dispute concerning this property?

A No, sir.

30 Q Did your son Philip tell you?

A No, sir.

Q You knew Mr. D'Amato?

A I knew D'Amato; yes, sir.

Q For years?

A For a number of years, yes.

Q And Mr. D'Elisa?

A I have known Mr. D'Elisa, to see him, but I was not acquainted with him.

40

THE DEFENDANT RESTS.

*John A. D'Elisa, in rebuttal, direct.*

COMPLAINANT'S REBUTTAL.

JOHN A. D'ELISA, recalled.

*Direct examination by Mr. Botti.*

Q Mr. D'Elisa, you heard the testimony of Mr. Tumulty?

A Yes, sir.

Q Were you there when there was some sale going on around the neighborhood? 10

A I was there when they tried to sell some lots on Centre street.

Q Were you there in the crowd, among the people, when the lots were being sold on Bright street and Marsellis street—your lots?

A No, sir; I left before. Mr. Tumulty bought some lots right next to this property, and then I had a talk with Mr. Scarano that day, and he tells me he wasn't going to sell those lots. 20

*Mr. Scarano.* I object to that, your honor; that is not material. He was merely asked whether he was present while the sale was going on of these three lots.

*The Vice-Chancellor.* Well, it may be deeper, if there was an advertisement showing that these lots were to be sold. Suppose there was an advertisement of the sale, announcing that they proposed to sell these particular lots, and he was around, and he knew that they were his lots, and he went away before the lots were sold—would not the question of estoppel arise there? 30

*Mr. Scarano.* But the notice of the sale of the property was right on his land, and had been there for three months.

*The Vice-Chancellor.* Doesn't that call, then, for some excuse for his not remaining there and notifying them?

Q Mr. Scarano was the lawyer for the estate?

A Yes, as much as I could understand at the time. 40

*John A. D'Elisa, in rebuttal, cross.*

Q And when he told you your particular lots would not be sold, you left after the first batch was sold?

A Yes, sir; I left and went away.

Q Do you know Mr. Tumulty?

A Well, I have seen him right along, in the office there.

10 Q Do you know his son?

A Which son do you mean?

Q Philip?

A I know Philip; I know Joe, and I know Tom, and I know them all.

Q Did you ever tell Philip these lots were yours?

A Well, Philip seen me right along in that plot, working all the time.

Q Did this last witness see you also?

A Which one is that?

20 Q Mr. Tumulty?

A No, Mr. Tumulty was never in that direction, as much as I can remember. Philip was there a good many times, and Philip seen me digging that long sewer there, and every other thing.

*Cross examination by Mr. Scarano.*

30 Q Do you mean to tell me that, on the 4th of November last, when the sale was had right on the land—the land that you claim, these three lots—that when the auctioneer was selling those three lots out you were not there present?

A No; I have said—

Q No, answer my question; do you mean to tell me you were not present on that day?

A I was not there when my lots was sold; and when I seen them take the direction—

Q I am asking you that question.

*The Vice-Chancellor.* Do not get excited. The question you are asked is this: Were you present

*John A. D'Elisa, in rebuttal, cross.*

at the sale that day when your three lots were put up by the auctioneer at public auction?

A Your Honor, I think I stated—

*The Vice-Chancellor.* Well, state it again—were you present when your three lots were put up at auction?

A As I say—

*The Vice-Chancellor.* Can't you say "Yes" or "No" to that? 10

A No, sir.

*The Vice-Chancellor.* That is enough.

*Mr. Scarano.* That is all.

*By the Vice-Chancellor.*

Q Were there bill-boards on your property, advertising it for sale?

A Not as I know; I think it was on the property next to it, on the property that Mr. Tumulty has got to-day. 20

*By Mr. Scarano.*

Q I wish to repeat this particular question again—there were three lots; there was a fence in the front of them, or a door, and about fifty or seventy-five people or more than that were in your yard at that time, with the auctioneer, and with myself and Mr. Blakeman—do you know Mr. Blakeman, my partner?

A I know him if I see him; probably I do. 30

Q Well, you know me?

A Yes, I know you.

Q Well, did you see me on your land?

A At that moment, when the lots was sold?

Q Yes?

A I don't think I did, Mr. Scarano.

Q Didn't you follow me up from Center street right into your yard, with Mr. D'Amato here?

A I followed you up when you went in the direction of Brooke and what is the other street, the next to that, is that Marsellis? 40

*Michael V. D'Amato, in rebuttal, direct.*

Q Marsellis and Bright, that is right.

A Marsellis street continues up there, don't it?

Q Yes. In other words, what I wish from you is whether you did not return there?

A I was not there at the time they were sold.

COMPLAINANT RESTS.

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DEFENDANT'S REBUTTAL EVIDENCE.

MICHAEL V. D'AMATO, sworn.

*Direct examination* by Mr. Scarano.

Q You are one of the heirs of Frank D'Amato, deceased?

A Yes, I am.

Q One of the sons?

A Yes, sir.

20 Q Do you remember the first sale that we had on the land of your father?

A I do.

Q Do you remember the date?

A No, I cannot recollect the date.

Q Well, was it in November some time?

*The Vice-Chancellor.* Well, there is no dispute about that.

*Mr. Botti.* No, no dispute about that.

30 Q Well, were you present at the time I was conducting a sale there, with an auctioneer?

A I was.

Q Do you remember which lots were sold first?

A Well, you began on the corner of Centre street, Centre and Brooke, and then we went around to the back, through Marsellis street.

Q Well, tell why we began on Brooke and Centre street and stopped there?

A Well, they weren't bidding high enough.

40 Q Then we followed up, and where did we go?

*Michael V. D'Amato, in rebuttal, direct.*

A Well, we went down to these other nine lots, down there on Marsellis street.

Q What happened there?

A Well, I can't hardly recollect then what happened there, but the next I know of, we went—

Q Well, did anybody bid there?

A No.

Q Then, following that up, where did we go? 10

A To Bright and Marsellis.

Q What did we sell there?

A We sold the three lots which Mr. D'Elisa claims.

Q Before then, previous to that, what did we sell there?

A I think those four lots there which Mr. Tumulty bought.

Q Well, I am asking you what was first sold there?

A Four lots.

Q Who bought them? 20

A Mr. Tumulty.

Q After that, where did we go?

A Well, after that we went to the land where Mr. D'Elisa claims is his.

Q Was the auctioneer right on the premises with us?

A With us.

Q Was I there?

A Yes, sir.

Q Were you there? 30

A Yes, sir.

Q Do you know Mr. D'Elisa?

A Yes, sir.

Q Was he there at the time that the auctioneer sold to the highest bidder, which was Mr. Tumulty—was he there present?

A During the sale I was watching Mr. D'Elisa particularly, and he was there all the while.

Q What did he say?

40

*Michael V. D'Amato, in rebuttal, cross.*

A Well, I don't know what he said; he was maundering.

Q Did you hear him say anything?

A No.

*Cross examination by Mr. Botti.*

10 Q What do you mean by he was "maundering." He was saying something, wasn't he?

A Well, I see his lips moving—mumbling.

Q You have known this property in dispute quite a while, haven't you? Mr. D'Elisa has been to your mother's house and spoken it over with her, hasn't he?

A What is that?

Q (Question repeated.)

A Yes, my mother sent a call for him.

20 Q Are you sure that he did not leave before you went to his property, to the three lots?

A Oh, yes, I am sure of that.

Q Which property did you sell before the three lots on Bright street?

A There were four adjoining lots there which Mr. Tumulty bought.

Q On Marsellis?

A No, on Bright.

Q It was not on Centre street?

A No; Bright, I said.

30 Q Did Mr. Scarano tell you that he had told Mr. D'Elisa that he would not sell those three lots?

*Mr. Scarano.* I object to that.

Q Mr. Scarano is the lawyer of your father's estate, is he not?

A He is, as far as I know of.

*By the Vice-Chancellor.*

40 Q Do you say that there is a dispute between your mother and Mr. D'Elisa about the ownership of these lots?

*Pasquale Scarone, direct.*

A Well, after my father died my mother sent in a call for Mr. D'Elisa, which, of course, the conversation they held in the rooms up in the house I did not hear; but it might have been over something like that.

Q But you were not present at any meeting where your mother asserted that she owned the lots, and Mr. D'Elisa asserted that he owned them?

A No, your Honor.

10

*By Mr. Botti.*

Q Your mother told you, though, didn't she, about it?

A Well, I heard it from different speakings.

Q Well, your mother told you, too, didn't she?

A No, she did not tell me.

Q Well, when she sent for D'Elisa that day, it was about the lots, wasn't it?

A I don't know.

20

PASQUALE SCARONE, Esq., sworn.

*Direct examination by Mr. Blakeman.*

Q Do you know Mr. D'Elisa?

A I do.

Q Were you present at the auction sale of these three lots in question last November?

A I was.

Q Where did the sale take place?

A Right inside, on the three lots claimed by Mr. D'Elisa—right inside the fence.

30

Q At that time they were put up for sale, and at the time of sale do you know whether Mr. D'Elisa was present, or not?

A Yes, he was.

Q How long was he present?

A Present during the whole proceedings of the sale.

Q Do you recall whether he said anything?

40

*Pasquale Scarone, cross.*

A Never said a word; he looked on and never said a word of any kind, or a murmur of any kind; he never objected.

Q Was he in a position where you could see him?

A Yes, indeed.

*Cross examination by Mr. Botti.*

10 Q Could you tell the facts of every other individual that was there?

A No, I cannot tell you the face of any other individual, but I know the face of Mr. D'Elisa. There were a good many people there.

Q You paid particular attention to him?

A Why wouldn't I? He was talking to me all the time.

Q You had already seen Mr. D'Elisa in my office?

A I knew Mr. D'Elisa, yes.

20 Q And you, at that time, had stated that you would not sell these lots until the pending suit was settled?

A Never. My statement was that if the sale wouldn't bring enough money I would withhold them until the suit Mr. D'Elisa wished to bring; but as soon as I saw Mr. Tumulty wanted to buy land right next to it, and was willing to bid, and I had a purchaser, I put them up for sale.

Q You did not assure Mr. D'Elisa and myself that you would not put those lots up for sale?

30 A I did not, no.

Q And I, at that time, told you I was about to file my bill, too, didn't I?

A Yes.

*By the Vice-Chancellor.*

Q Were the people inside the fence, on this property of D'Elisa's?

A Yes, sir.

Q About how many?

40 A Why, I should think, seventy-five, at least.

*Argument.*

Q Was there a gate to the property?

A Yes, sir.

Q Was there a bill posted on the fence?

A Yes, sir.

Q Of Mr. D'Elisa's property?

A Right. I think it was on the very fence of Mr. D'Elisa's; and he objected to the sign being there, and I took one of the signs off and put it right adjoining, right next to it. 10

## BOTH SIDES CLOSE.

*The Vice-Chancellor.* Is there any evidence of any dispute, before this sale, between Mrs. D'Amato and Mr. D'Elisa?

*Mr. Blakeman.* There has been a dispute, I think, but I did not see how we could put in the evidence, because it referred to a possible settlement.

*The Vice-Chancellor.* I mean before the sale? I want to know if, before the sale, there was any assertion made by Mr. D'Elisa of his claim on this property—that is, an assertion to Mrs. D'Amato? 20

*Mr. Scarano.* No.

*The Vice-Chancellor.* I want to know if any claim was asserted by Mr. D'Elisa, of ownership in this property, before the sale, and whether that claim was communicated to Mrs. D'Amato?

*Mr. Scarano.* No; in fact, it was communicated to Mr. D'Elisa by us, that we demanded the land, and Mrs. D'Amato wished me to start an ejectment suit to put him out; and Mr. Botti said to me (I have letters in regard to that) that he only would ask for an injunction, and then file his own bill. 30

*The Vice-Chancellor.* Well, that was all before the sale?

*Mr. Scarano.* Yes.

*The Vice-Chancellor.* Well, there is no evidence of that, is there?

*Mr. Scarano.* No. 40

*Argument.*

*Mr. Botti.* Mr. D'Elisa was to Mrs. D'Amato, as your Honor will recall, and spoke it over after we had exhausted all means in an amicable way to adjust the matter.

*The Vice-Chancellor.* What I want to know is if there is any evidence in the case which shows that Mr. D'Elisa asserted this claim to either Mrs. D'Amato or her counsel before the day of the sale?

10 *Mr. Scarano.* It was on our side, your Honor.

*Mr. Blakeman.* Did he make any reply to any claim of ours before the sale?

*Mr. Scarano.* No, he did not.

*The Vice-Chancellor.* What was he going to file a bill for?

*Mr. Scarano.* For specific performance as to these lots.

*The Vice-Chancellor.* Well, then, if he told you that, you knew of his claim?

20 *Mr. Scarano.* Oh, yes, I knew of his claim.

*The Vice-Chancellor.* That is what I want to get at; because, of course, the effect of standing by and seeing the sale take place, when a claim has been asserted before the sale, while it may be beneficial to Mr. Tumulty, I fail to see where it would be beneficial to Mrs. D'Amato.

*Mr. Scarano.* Yes, he claimed ownership of it.

*The Vice-Chancellor.* Well, if that is admitted, it is not necessary to have further proof on the matter. Is that the case on both sides?

30 *Mr. Botti.* That is the case on both sides.

(Counsel thereupon proceeded to sum up.)

*Mr. Blakeman.* (During the argument.) It seems to me that there ought to be proof of relationship here; there are minor defendants, I understand.

*Mr. Botti.* Well, it is admitted in both answers, your Honor.

*The Vice-Chancellor.* Have the minors answered?

40 *Mr. Botti.* Yes, sir; through a guardian; and it

*Argument.*

is admitted also that they are the heirs-at-law, and Rose admits that they are the heirs-at-law of Frank D'Amato, deceased.

(Mr. Blakeman asks for a dismissal of the bill, in so far as Mrs. D'Amato is concerned, individually.)

*The Vice-Chancellor.* I will take that motion under consideration, and decide it when the case is decided.

CASE CLOSED.

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**Opinion.**

## IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i>          JOHN ANTONIO D'ELISA,  <i>Complainant,</i>  <i>and</i>          ROSE D'AMATO, INDIVIDUALLY,          AND AS ADMINISTRATRIX, &amp;c.,  <i>Defendant.</i></p>	}	<i>Opinion.</i>
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Submitted May 12th, 1915; decided May 21st, 1915.

For the complainant, Mr. Botti.

For the defendant, Messrs. Blakeman & Scarano.

GRIFFIN, V.-C.:

20 The bill in this cause is filed against the widow, heirs-at-law and administratrix of Francesco D'Amato for the specific performance of an oral agreement for the sale of lands entered into between said Francesco D'Amato in his lifetime, as vendor, and the complainant, as vendee, for the consideration of \$800.

30 The agreement was discussed on August 27th, 1905, and the terms settled upon. On the following day the vendor paid the vendee \$100, and it was then and there agreed that the vendee might immediately enter into possession, and he so entered the next day, began filling in and grading the lands, fencing the same, and erecting buildings thereon, and has continued in possession ever since, without any claim for rent or other charge for use and occupation being asserted against him.

The balance of the purchase price was paid by two checks of \$300.00 each, dated March 22d and 23d, 1906, respectively, drawn by the complainant to the order of D'Amato, delivered to him and actually paid

*Opinion.*

by the bank upon which they were drawn, and the delivery of a horse by the complainant to D'Amato at the agreed price of \$100.00.

The complainant from time to time asked D'Amato to give him a deed, but D'Amato explained first that he would do so when he discharged a mortgage covering the premises, and later, when about to discharge it and execute another which would cover other property, he said he would give the deed after cancelling the existing mortgage. Again, when asked for a deed he said by mistake he had executed the new mortgage covering the premises in question and other property; and thus the matter rested until after D'Amato's death on December 26th, 1913. 10

The parties were close personal friends, and as D'Amato had his money and complainant had the land, evidently they considered that the mere delivery of the deed could wait until D'Amato procured a release of the mortgage. The contract has been clearly, definitely and unequivocally proven, and having been performed by the complainant, this Court has power to decree specific performance, even though the contract be oral. *Wharton vs. Stoutenburgh*, 35 N. J. Eq. (8 Stew.), 256; *Clement vs. Young & McShea Amusement Co.*, 69 N. J. Eq. (3 Robb.), 347; 1 Pomeroy's Eq. Juris., sec. 103. 20

The defendants also claim that the decree should be in their favor because of the laches of the complainant in failing to obtain a deed or bring this suit during the lifetime of Francesco, who was familiar with the whole transaction. I do not agree with the defendants in this claim. The undisputed evidence, received without objection, clearly proves (1) full performance by the complainant; (2) the entry into possession of the lands with the assent of Francesco; (3) complainant asked repeatedly for a deed, and Francesco made excuses for not complying; (4) the improvement of the lands by expenditures by the com- 30 40

*Opinion.*

plainant to an amount more than double the purchase price of the lands; (5) the failure of Francesco to demand rent or other charge for the use and occupation of the premises; (6) in fact, the utter abandonment of the premises to the complainant. All of this makes the complainant's right so clear that to apply the doctrine of laches would aid in the perpetration of a fraud.

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The defendants also assert an estoppel against the complainant under the following state of facts: The administratrix offered a number of lots for sale, including the premises in question. D'Elisa, they say, stood by without protest, and heard the premises struck off to Philip Tumulty for \$2,300, who paid a deposit of \$230. There is no evidence, however, that the sale has been confirmed in the Orphans' Court and a deed delivered. Nothing in this suit can affect any right which Mr. Tumulty may have, he not being a party hereto. The estoppel, if it rises at all, must be between the parties to this suit, and it is admitted that prior to the sale a question arose between the complainant and defendants as to the ownership of the property; that D'Elisa asserted his claim, and there was an understanding between counsel that a bill should be filed to settle the dispute. Under such a state of facts I fail to see upon what theory the defendants can claim the benefit of an estoppel in their favor against the complainant. As to the wife, she did not join in the agreement and was not a party to it, and the decree should not go against her individually directing her to convey her dower. As the contract was fully performed, and there is no purchase money to be paid to the administratrix, the bill will be dismissed as against her, individually and as administratrix.

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I will therefore advise a decree directing the heirs-at-law to specifically perform.

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## Final Decree.

Filed

IN CHANCERY OF NEW JERSEY.

*Between*

JOHN ANTONIO D'ELISA,

*Complainant,**and*

ROSA D'AMATO, INDIVIDUALLY, AND

AS ADMINISTRATRIX OF THE ES-

TATE OF FRANCESCO D'AMATO,

DECEASED, JOSIE IANELLI AND

JOHN IANELLI, HER HUSBAND,

DONATO D'AMATO AND CLARA

D'AMATO, HIS WIFE, AND MICHAEL

D'AMATO, NICHOLAS D'AM-

ATO, ANGELO D'AMATO, ROSE

D'AMATO AND ANGELINA D'AM-

ATO AND WILLIAM G. BUM-

STED, TRUSTEE, etc.,

*Defendants.*

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*On Bill for  
Specific  
Performance.**Final  
Decree.*

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This cause coming on to be heard before the Vice-Chancellor upon bill, answer, replication and proofs in the presence of Anthony Botti, of counsel with the complainant, and of Blakeman & Scarano, of counsel with the defendants, Rosa D'Amato, individually, and as administratrix of the estate of Francesco D'Amato, deceased, Josie Ianelli and John Ianelli, her husband, Danato D'Amato and Clara D'Amato, his wife, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angeline D'Amato, and the pleadings and proofs having been read and the arguments of counsel heard and considered and it satisfactorily

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*Final Decree.*

appearing to the Court that by virtue of an oral agreement duly made and entered into, between John A. D'Elisa, the complainant and Frank D'Amato, now deceased, in his lifetime, on or about the twenty-seventh day of August, one thousand nine hundred and five, the said John A. D'Elisa, agreed to purchase of the said Frank D'Amato, a certain tract of land in the said bill mentioned and described as follows: to wit:

10 All those certain lots, pieces or parcels of land and premises which on a map entitled, "Map of property of Mrs. Jane Van Horne, City of Bergen, Hudson County, N. J., 1868," filed in the Clerk's, now Register's Office, in said County are known as all those parts of lots numbered twenty-six (26), twenty-seven (27) and twenty-eight (28), in block number thirteen (13) lying south of the middle of the small creek shown on said map, also the right, title and interest of the said D'Amatos to the creek adjoining the foregoing premises, and to pay him therefor the sum of eight hundred dollars to be paid at different times, when the said Frank D'Amato was to execute and deliver to him, his heirs and assigns, a good and sufficient deed for the said premises, and that said John A. D'Elisa, the complainant was to take possession at once at the time of the making of the said oral agreement; and it further appearing that the said Frank D'Amato departed this life, on the twenty-sixth day of December, one thousand nine hundred and thirteen, intestate and that the said defendants are his administrators and heirs at law and that the said complainant has fully performed his part of said agreement and has prayed the order or decree of this Court directing the defendants to comply with and fulfill the same in all things on their part, in the place and stead of the said Frank D'Amato, and the Chancellor being of opinion and the complainant is entitled, as against the heirs at law of Frank D'Amato, to the

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*Final Decree.*

specific performance of the said oral agreement, but is not entitled to relief as against Rosa D'Amato, individually, and as administratrix of the estate of Frank D'Amato, deceased, as in said bill he has prayed; it is on this                    day of October, one thousand nine hundred and fifteen, ordered, adjudged and decreed, that the said oral agreement be in all things specifically performed by the said defendants, the heirs at law of Frank D'Amato, respectively and that the said defendants, Josie Ianelli, John Ianelli, Donato D'Amato, Clara D'Amato, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelino D'Amato, do within                    days from the date of this decree, make, execute and acknowledge in due form of law and deliver to the complainant, a good and sufficient deed for the said premises subject to the dower right of said Rosa D'Amato, widow of Frank D'Amato, deceased, she not having joined in the said oral agreement, and that thereupon the said heirs at law, the defendants in this cause, do pay a counsel fee of one hundred dollars to Anthony Botti, solicitor of complainant, and also the costs of the complainant to be taxed against the defendants, Josie Ianelli, John Ianelli, Donato D'Amato, Clara D'Amato, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelino D'Amato.

It is further ordered, adjudged and decreed, that the bill of complaint be dismissed, as to Rosa D'Amato, individually, with costs to be paid by complainant, together with a counsel fee of twenty-five dollars to be taxed therein and that the bill be dismissed as against Rosa D'Amato, as administratrix, of the estate of Frank D'Amato, deceased, without costs.

Respectfully advised,

EDWIN R. WALKER,

C.

JOHN GRIFFIN,

V.-C.

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*Notice of Appeal.*

deed for the said premises, subject to the dower right of said Rosa D'Amato, and further decrees that said defendants pay a counsel fee of one hundred dollars to Anthony Botti, solicitor for the complainant, and also the costs of the complainant to be taxed against said defendants, to the Court of Errors and Appeals in the last resort in all causes.

Dated November 5th, 1915.

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BLAKEMAN & SCARANO,

*Solicitors for Defendants.*

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

FRANK BENJAMIN,

*Of Counsel with Defendants.*

Served November 6, 1915, and filed November 8, 1915.

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**Petition of Appeal.**

Filed November 20, 1915.

## New Jersey Court of Errors and Appeals

10 *Between*

JOHN ANTONIO D'ELISA,  
*Appellee,*

*and*

20 ROSA D'AMATO, INDIVIDUALLY, AND  
AS ADMINISTRATRIX OF THE ES-  
TATE OF FRANCESCO D'AMATO,  
DECEASED, JOSIE IANELLI AND  
JOHN IANELLI, HER HUSBAND,  
DONATO D'AMATO AND CLARA  
D'AMATO, HIS WIFE, AND MICHAEL  
D'AMATO, NICHOLAS D'AMATO,  
ANGELO D'AMATO, ROSE  
D'AMATO AND ANGELINA D'AMATO  
AND WILLIAM G. BUMSTED, TRUSTEE, etc.,

*Appellants.*

*Petition  
of Appeal to  
the Court  
of Appeals.*

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

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The petition of Josie Ianelli, John Ianelli, Donato D'Amato, Clara D'Amato, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato, the appellants in the above stated cause respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 1st day of November, 1915, wherein the

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*Petition of Appeal.*

said John Antonio D'Elisa was complainant and said Josie Ianelli, John Ianelli, Donato D'Amato, Clara D'Amato, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato were defendants, in this respect, to wit: that the said decree adjudges that it satisfactorily appearing to the Court that by virtue of an oral agreement duly made and entered into between John Antonio D'Elisa, the complainant, and Frank D'Amato, now deceased, in his lifetime, on or about the 27th day of August, 1905, the said John Antonio D'Elisa agreed to purchase of said Frank D'Amato a certain tract of land in the said bill mentioned, and that the said complainant is entitled, as against the heirs at law of Frank D'Amato to the specific performance of the said oral agreement, and that the said oral agreement be in all things specifically performed by the said defendants, heirs at law of Frank D'Amato, respectively, and that the said defendants Josie Ianelli, John Ianelli, Donato D'Amato, Clara D'Amato, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato do, within twenty days from the date of this decree, make, execute and acknowledge, in due form of law, and deliver to the complainant, a good and sufficient deed for the said premises, subject to the dower right of said Rosa D'Amato, widow of Frank D'Amato, deceased, and that thereupon the heirs at law, the defendants in this cause, do pay a counsel fee of one hundred dollars to Anthony Botti, solicitor of complainant, and also the costs of the complainant.

And your petitioners themselves 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 said complainant was in laches, and the rights of the said defendants, the heirs at law of Frank D'Amato, deceased, were impaired by the death of said

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*Petition of Appeal.*

Frank D'Amato, the only living witness to said oral agreement, other than the complainant.

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

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FRANK BENJAMIN,  
*Solicitor of Appellants.*  
*Of Counsel with Appellants.*

Filed November 20, 1915.

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**Acknowledgment of Service.**

Filed

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

*Between*

JOHN ANTONIO D'ELISA,

*Appellee,*

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*and*

ROSA D'AMATO, INDIVIDUALLY, AND  
AS ADMINISTRATRIX OF THE ES-  
TATE OF FRANCESCO D'AMATO,  
DECEASED, JOSIE IANELLI AND  
JOHN IANELLI, HER HUSBAND,  
DONATO D'AMATO AND CLARA  
D'AMATO, HIS WIFE, AND MICHAEL  
D'AMATO, NICHOLAS D'AMATO,  
ANGELO D'AMATO, ROSE  
D'AMATO AND ANGELINA D'AMATO  
AND WILLIAM G. BUMSTED,  
TRUSTEE, etc.,

*Appellants.*

*Acknowledg-  
ment of  
Service.*

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The receipt of the Petition of Appeal to the Court of Errors and Appeals of Josie Ianelli, John Ianelli, Donato D'Amato, Clara D'Amato, Michael D'Amato, Nicholas D'Amato, Angelo D'Amato, Rose D'Amato and Angelina D'Amato, is hereby acknowledged this twenty-third day of November, nineteen hundred and fifteen.

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ANTHONY BOTTI,

*Solicitor and of Counsel with Appellee.*

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**Answer to Petition of Appeal.**

Filed December 24, 1915.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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*Between*

JOHN ANTONIO D'ELISA,

*Appellee,**and*

ROSA D'AMATO, INDIVIDUALLY, AND  
AS ADMINISTRATRIX OF THE ES-  
TATE OF FRANCESCO D'AMATO,  
DECEASED, JOSIE IANELLI AND  
JOHN IANELLI, HER HUSBAND,  
DONATO D'AMATO AND CLARA  
D'AMATO, HIS WIFE, AND MICHAEL  
D'AMATO, NICHOLAS D'AMATO,  
ANGELO D'AMATO, ROSE  
D'AMATO AND ANGELINA D'AMATO  
AND WILLIAM G. BUMSTED,  
TRUSTEE, etc.,

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*Appellants.**Answer  
to Petition  
of Appeal.*

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The answer of the above named appellee to the Petition of Appeal of the above named appellants.

This appellee not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits, that a decree was on the first day of November, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this appellee prays to refer thereto when the same shall be produced. And

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*Answer to Petition of Appeal.*

this appellee is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs, to be adjudged to this appellee.

ANTHONY BOTTI,

*Solicitor and of Counsel with Appellee.*

Endorsed :

“Filed December 24, 1915.

THOMAS F. MARTIN,

*Register.”*

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