NEW JERSEY COURT OF ERRORS AND APPEALS.

AMIELLO RAIMONDI, *Complainant-Respondent,* *vs.* OVIDIO C. BIANCHI, *Defendant-Appellant.*	*On Bill, Etc.* *Addendum to State of Case*

It is hereby stipulated and agreed by and between Edward A. Schilling, solicitor of complainant, and James F. X. O'Brien, solicitor of defendant, that that part of the charge of Judge Dallas Flannagan in the suit at law between the above parties in the Common Pleas Court of Essex County, set forth as Exhibit A annexed to the Bill of Complaint in the printed case to which this is an addendum, be considered as having been introduced in evidence and considered by Vice-Chancellor Church as a part of the record and proceedings had upon the trial of this issue.

E. A. & W. A. SCHILLING,
Solicitors for Complainant-Respondent.

DONOHUE & O'BRIEN,
Solicitors for Defendant-Appellant.

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BILL OF COMPLAINT.

Filed October 21, 1926.

In Chancery of New Jersey

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Amiello Raimondi, of the City of Newark, in the County of Essex and State of New Jersey, respectfully shows that:

1. On or about June 11, 1925, he was arrested by the Police Department of the City of Orange, New Jersey, and charged with crime.

2. On or about that day the defendant, Ovidio C. Bianchi, was an attorney and counsellor at law of the State of New Jersey, engaged in the practice of the law at Orange and Newark in this State.

3. On or about that day the complainant engaged the defendant, Ovidio C. Bianchi, to represent him in the defense of the criminal accusation against him, and the defendant undertook to act as attorney for complainant in said criminal proceeding. Complainant thereupon paid to defendant, Ovidio C. Bianchi, a retainer of $300.

4. Defendant continued to act as attorney for complainant and presented his defense at the trial of the criminal indictment against the complainant on November , 1925.

5. At the trial of said criminal proceeding the jury disagreed and the indictment against the defendant was held open for a retrial.

6. Thereafter and before the retrial of said defendant on said indictment, complainant discharged defendant as his attorney.

7. On or about November 25, 1925, defendant caused to be served on complainant a bill for services, demanding $2,500 for his services in representing complainant in said criminal proceeding.

8. On or about December 7, 1925, defendant, Ovidio C. Bianchi, instituted suit in the Essex County Court of Common Pleas against this complainant alleging that complainant agreed to pay the said Ovidio C. Bianchi for his services together with necessary disbursements the sum of $2,500, that said Ovidio C. Bianchi rendered said services and incurred disbursements and obligations relying upon said promise for payment. Defendant, Ovidio C. Bianchi, gave complainant credit for the $300 paid as a retainer on account of said fee.

9. The alleged contract between complainant and defendant was, according to defendant, Ovidio C. Bianchi, made during the month of October, 1925, and just before the trial of the indictment and after the relationship of attorney and client between the parties had existed for several months.

10. Complainant filed an answer in said suit, denying the making of any express contract as to fees, but admitting that defendant had rendered legal services for complainant in the preparation and trial of the indictment against the complainant.

11. The trial of said cause took place in the Essex County Court of Common Pleas before Honorable Dallas Flanagan and a jury on April 19, 1926.

12. At said trial the defendant testified to the making of said express contract and complainant

denied the same, and the cause was submitted to the jury solely within the limits of the pleadings, that is on the question as to whether or not the express contract had been made. Excerpts from the charge of the court are annexed hereto and marked Exhibit A.

13. At the trial of said issue complainant's counsel moved for a direction of verdict in favor of the defendant therein on the ground that there was no proof of the reasonableness of the value of the services of the said Ovidio C. Bianchi, which motion was denied by the Court.

14. The jury brought in a verdict for $2,200 in favor of the said Ovidio C. Bianchi against this complainant.

15. Complainant's counsel thereafter obtained a rule to show cause why a new trial should not be had, and on the return of the rule argued the point and the alleged contract btween complainant and defendant could not be enforced by the plaintiff attorney, unless reasonable, and that there was no allegation of reasonableness in the complaint in said action nor proof thereof at the trial.

16. The Court refused to make the rule absolute and permitted the judgment to stand.

17. The defendant, Ovidio C. Bianchi, has issued execution upon said judgment, levied execution against certain real estate alleged to belong to this complainant and threatens to have the same sold by the sheriff under said execution.

18. The contract alleged to have been entered into between complainant and defendant was

made while the relationship of attorney and client existed between them and should have been characterized by utmost fairness and good faith, and, until otherwise strictly and adequately proven, is presumed to be fraudulent on the part of the defendant.

19. The contract alleged to have been entered into between complainant and defendant was made while complainant was in great mental distress, and while he was in danger of his loss of liberty.

20. Defendant, Ovidio C. Bianchi, before entering into the alleged contract with defendant, failed to give defendant all the information and advice which it was his duty to give and dealt surreptitiously with complainant. Defendant concealed from complainant the fact that he could be convicted only under one of the counts in the indictment against him.

21. The alleged transaction between complainant and defendant was not made in good faith on the part of the defendant, but upon misrepresentation, concealment and suppression of facts known to the defendant and kept from the defendant.

22. At the trial of the issue between defendant and complainant, defendant failed to establish that the alleged contract was fair, just, honest and honorable.

23. The relationship between complainant and defendant at the time of the making of the alleged contract, the force of circumstances and influence of the defendant over complainant at that time, prevented complainant from being free to enter into the alleged contract.

24. The alleged agreement is inequitable, unconscionable and unreasonable.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That Ovidio C. Bianchi, who is the defendant in this suit, may answer this bill of complaint and each statement herein made.

2. That the defendant, Ovidio C. Bianchi, be restrained from proceeding upon said judgment or upon any execution thereon, and that the Sheriff of the County of Essex and all other persons acting for and on behalf of the defendant may be restrained and enjoined from taking any further proceedings on said judgment or execution thereon.

3. That this Court may find and determine what sum of money is due and owing to the defendant from this complainant and that upon payment of said sum so found and determined to be due the aforesaid judgment of the Essex County Court of Common Pleas be declared to be paid and satisfied.

4 That a subpoena issue directed to the said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

E. A. and W. A. SCHILLING,
Solicitors for and of Counsel with Complainant.

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

Amiello Raimondi, of full age, being duly sworn according to law, deposes and says:

1. I am the complainant in the foregoing bill of complaint named.

2. I have read the same and the contents thereof are true.

3. Particularly it is true that on or about June 11, 1925, I employed the defendant, Ovidio C. Bianchi, as my attorney and he continued to represent me until November, 1925. At the time he alleges I made a contract with him, the relationship of attorney and client existed between us.

4. I never agreed to pay Mr. Bianchi any particular amount for his services and I never entered into an agreement to pay him $2,500 to represent me in the trial of my case.

5. Mr. Bianchi told me all during the time that he represented me that my case was a difficult one; that I was charged with arson and with burning a building to defraud the insurance companies; that on pleading my bail would probably be raised; that the insurance companies had canceled my policies and that I wouldn't get a cent; that I was in a very serious fix; that he would have to do many things to prepare my case; that I would have a difficult time in explaining the presence of gasoline in the premises; that I would have to explain why some other person set fire to my property; and in fact, continually tried to impress me with the fact that I needed badly his help and representation.

6. Mr. Bianchi never told me that I could not be convicted of arson as my building was not a dwelling house; in fact, he repeatedly told me I was charged with arson and that it was a most serious charge.

AMIELLO RAIMONDI.

Sworn to and subscribed before me
at Newark, N. J., this 15th day of
October, A. D. 1926.

HAROLD SIMANDL,
A Master in Chancery of New Jersey.

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

Harold Simandl, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am an attorney and counsellor-at-law of the State of New Jersey, and represented complainant at the trial of the suit of Ovidio C. Bianchi against him.

2. The complaint filed in said suit alleges a contract between said Ovidio C. Bianchi and complainant for services rendered in the trial of a case before the Essex County Court of Quarter Sessions, whereby complainant agreed to pay said Ovidio C. Bianchi $2,500 for his services.

3. The trial of said case was had strictly on the question as to whether or not an express contract had been entered into. When I attempted to cross examine the defendant, Ovidio C. Bianchi, on the time he spent on the case, the following colloquy took place:

"The Court: What difference does it make?

"Mr. Simandl: Only this, your Honor has permitted this evidence to be brought in on the theory that he did all this work for $2,500.

"The Court: If there was no express contract, you are entitled to a verdict on these pleadings. It doesn't make any difference if he worked fifteen years.

Mr. Simandl: That is all then, if that is the Court's view of it."

4. At the conclusion of the case I moved for a direction of a verdict in favor of the defendant in said suit on the ground that there was no proof of a *quantum meruit,* nor of reasonable value of the services. The Court denied the motion.

5. I applied and obtained a rule to show cause why the verdict should not be set aside. On its return I argued the same reasons for a reversal, but the Court dismissed the rule. On granting the rule the Court refused to allow me to reserve my right of appeal on these points.

HAROLD SIMANDL.

Sworn to and subscribed before me
at Newark, N. J., this 16th day of
October, A. D. 1926.

HARRY E. STEIN,
An Attorney-at-Law of N. J.

EXHIBIT A.

"Now, gentlemen, this is a suit upon an express contract. The plaintiff must stand or fall upon that theory. He is entitled to recover in this suit upon an express contract or not at all. Now, the defendant was competent to contract with the plaintiff for a fee. If he wished to contract with the plaintiff for a fee of $2500. he had a right to do so and if he did do so, he is bound by the contract. In this suit we are not concerned with the reasonableness of the charge. This suit is not upon what is known as a *quantum meruit,* that is to say, it is not a suit to recover the reasonable value of services. It is a suit to recover upon a contract under which contract the plaintiff claims the defendant agreed to pay him a certain amount of money for his services."

"Now, gentlemen, you will take the case and bring in your verdict. The verdict must be either for $2500. less $300. or $2200., or it must be for the defendant—one or the other. The case, gentlemen, is in your hands."

Order to Show Cause.

ORDER TO SHOW CAUSE.

Filed October 21, 1926.

IN CHANCERY OF NEW JERSEY.

Between AMIELLO RAIMONDI, *Complainant,* and OVIDIO C. BIANCHI, *Defendant.*	*On Bill, Etc.* *Order to Show Cause.*

Upon reading and filing the duly verified bill of complaint in this cause,

It is, on this 16th day of October, 1926, on motion of E. A. and W. A. Schilling, solicitors of complainant, ORDERED, that the defendant Ovidio C. Bianchi show cause before this Court at the Chancery Chambers, 1060 Broad street, Newark, on Tuesday, the 26th day of October, next, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of the said bill and for such further relief as may be just.

And it is further ordered, that said defendant Ovidio C. Bianchi, and his agents, in the meantime and until further order of this Court in the premises, desist and refrain from proceeding on the judgment recovered by the defendant against the complainant in the Essex County Court of Common Pleas.

And it is further ordered that the Sheriff of the County of Essex be and he is hereby restrained and enjoined from proceeding with any

Order to Show Cause.

sale under the execution issued on the judgment of the defendant against complainant.

And it is further ordered that a copy of said bill and affidavits certified to by the solicitor of complainants and of this order be served on said defendant within three days from the date of this order.

And it is further ordered that a copy of this order certified to by the solicitor of complainant be served on the Sheriff of Essex County or his deputy within three days from the date hereof.

E. R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

NOTICE OF MOTION.

Filed November 8, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
AMIELLO RAIMONDI, *Complainant,*	*On Bill, Etc.*
and	*Notice.*
OVIDIO C. BIANCHI, *Defendant.*	

To E. A. & W. A. SCHILLING,
Solicitors for Complainant.

SIRS:

PLEASE TAKE NOTICE, that on Tuesday, the 26th day of October, 1926, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, we shall move before the Chancellor at the Chancery Chambers at the City of Newark, to dismiss the Bill of Complaint filed in the above-entitled cause, on the grounds that the same does not set forth a cause of action in the respect that the matters therein contained afford no jurisdiction for the Court of Chancery, and afford no grounds for relief in Equity.

Yours very truly,

DONOHUE & O'BRIEN,
Solicitors for Defendant.

AFFIDAVIT.

Filed November 8, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
AMIELLO RAIMONDI, *Complainant,*	*On Bill, Etc.*
and	*Affidavits.*
OVIDIO C. BIANCHI, *Defendant.*	

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

OVIDIO C. BIANCHI, being duly sworn according to law, upon his oath deposes and says:

I am the defendant in the above-entitled cause. On or about June 11, 1925, I was retained by complainant to defend him in criminal proceedings instituted against him, wherein he was charged with the crime of arson, and the crime of burning with the intent to defraud the insurance companies.

I prepared his case for trial, and defended him at the trial thereof, which covered two days of actual trial, and succeeded in obtaining a direction of a verdict, of acquittal of arson, and a disagreement of the jury on the charge of burning with the intent to defraud the insurance companies.

The complainant had agreed to pay me twenty-five hundred ($2,500) dollars as my fee, and had given me three hundred ($300) on account, and had, before the trial, given me an assignment

of monies he was to receive on the sale of a certain piece of property belonging to him.

Out of the moneys received on the sale of this property, I retained a thirty-four hundred ($3,400) dollar check belonging to the complainant, out of which, he and I understood the balance of my fee was to be paid. This check required the indorsement of some one else besides the complainant, and, after the trial of his criminal case, and while making preparations for the retrial, the complainant came to me and asked that I give him the thirty-four hundred ($3,400) dollar check, so that he could have it indorsed by the said other person, and indorse it himself, and then return it to me, so that I could deposit it, collect upon it, take the balance of my fee out of the proceeds of collection, and return the balance to him. I gave him the check for the above purpose, and after that day he did not return to my office, and I was subsequently informed that he had retained another attorney.

In December, 1925, I instituted suit in the Essex County Court of Common Pleas to recover the balance due on my fee, and trial was had before the Honorable Dallas Flannagan, resulting in the jury returning a verdict of twenty-two hundred ($2,200) dollars in my favor. At the trial, the complainant herein denied that he had agreed to pay me the amount. I believe, although I cannot make it as a positive statement, since I have not a copy of the testimony taken at said trial, that I testified that my services were worth twenty-five hundred ($2,500) dollars, including the disbursements I had been forced to make, and testified that the amount was a fair and just one for the services.

At the time the complainant agreed to pay me said twenty-five hundred ($2,500) dollars, he was in a perfectly keen and competent state of mind, and knew what he was doing, and he was not in any great mental distress such as would prevent his understanding thoroughly what he was doing. At that time, I explained everything thoroughly to him, and gave him all the information and advice necessary.

The contract was made in good faith, and was not made upon any misrepresentations or concealment or suppression of facts on my part, and the contract was a fair, equitable and reasonable one.

At the trial of the cause, I offered to produce a counsellor-at-law of this state, to testify to the reasonableness and fairness of twenty-five hundren ($2,500) dollars, as the agreed fee in the case, and it was upon objection of Harold Simandl, the complainant's counsel at that trial, that the judge excluded this testimony.

The Court's attitude, as set forth in the Bill of Complaint, including Exhibit A, contained therein, was the result of strenuous objection upon the part of complainant's counsel to the admission of such evidence.

The complainant obtained a rule of show cause why the verdict of twenty-two hundred ($2,200) dollars should not be set aside, and upon the hearing of the rule the Court dismissed the same, holding that such testimony of reasonableness and fairness had been excluded upon the complainant's objection, and the Court stated in deciding the rule to show cause, that the verdict was a just and fair one and refused to set it aside.

O. C. BIANCHI.

Subscribed and sworn to before
me this 26th day of October, 1926.

HARRY W. LINDEMAN,
Master in Chancery of N. J.

CONCLUSIONS OF VICE-CHANCELLOR.

Filed November 1, 1926.

IN CHANCERY OF NEW JERSEY.

Between

AMIELLO RAIMONDI,
Complainant,

and

OVIDIO C. BIANCHI,
Defendant.

On Bill.
On Application for Preliminary Restraint on Return of Rule to Show Cause.
Conclusions.
Docket , Page

E. A. and W. A. Schilling, for complainant.
Donahue & O'Brien for defendant.

BERRY, *V.-C.*

The defendant obtained a judgment for $2,200 in the Essex Common Pleas, representing the balance of a $2,500 counsel fee claimed to be due him from the complainant on an express contract, which was denied by the complainant.

The complainant here (the defendant in the action at law) offered to prove at the trial that the services rendered by the defendant were not

of the value of the amount claimed, but was not permitted to do so, because the complaint was founded on an express agreement.

Execution has been issued on the judgment at law, and complainant applies for an injunction restraining further proceedings under the judgment, because it is claimed that the defendant's charges were unfair and exhorbitant, and the agreement which was the basis of the judgment was unconscionable and procured by fraudulent concealment of facts from the complainant.

That equity may relieve against a judgment founded upon an unconscionable or fraudulent agreement, or such an agreement arising out of confidential relations, or obtained by undue influence, is well settled.

Glover v. *Hedges,* 1 N. J. Eq. 113;
Powers v. *Butler,* 4 N. J. Eq. 465;
Tompkins v. *Tompkins,* 11 N. J. Eq. 512;
Dunn v. *Dunn,* 42 N. J. Eq. 431.

Agreements between attorney and client, because of the confidential relation, are always subject to the scrutiny of a court of equity.

Brown v. *Bulkley,* 14 N. J. Eq. 451;
Porter v. *Bergen,* 54 N. J. Eq. 405.

And a suit based upon an agreement for counsel fees, or upon a written obligation given therefor by a client to his attorney, will be restrained pending investigation by a court of equity as to its fairness.

Kelly v. *Swinghammer,* 78 N. J. Eq. 437.

Where a client has not had an opportunity in a court of law to test the reasonableness or fairness of his attorney's charges, he will not be precluded here even after judgment obtained.

The reasons for an inquiry of this kind are more potent when that inquiry involves the integrity of an attorney or the fairness of his conduct toward his client.

An attorney at law is a *quasi* public officer. He is in fact an officer of the court and a part of the machinery of the law, and as such, is charged with the duty of assisting in its administration. Like Caesar's wife, he should be above suspicion. Too often the accusing finger is pointed at members of the Bar without just cause. Because of these facts, and in view of the recognized high standing of the legal profession as a class, both courts and lawyers should welcome any inquiry into the fairness of transactions between attorney and client and courts should never hesitate to condemn where the conduct of the attorney has been unconscionable. In no other way can the high reputation of the legal profession, of which its members are justly proud, be maintained.

An order will issue restraining further proceedings under the judgment at law until the final hearing of this cause.

The defendant has moved to dismiss the bill for want of equity. This motion is denied.

ANSWER.

Filed November 10, 1926.

IN CHANCERY OF NEW JERSEY.

Between

AMIELLO RAIMONDI,
Complainant,

and

OVIDIO C. BIANCHI,
Defendant.

On Bill, Etc.

The defendant, OLIVIO C. BIANCHI, of the City of Orange, County of Essex, and the State of New Jersey, answering the Bill of Complaint, says:

1. Paragraphs 1 to 8 inclusive are admitted.

2. Paragraph 9 is denied in that the agreement made between complainant and defendant was made just before the trial of the indictments.

3. Paragraphs 10 and 11 are admitted.

4. Paragraphs 12 and 13 are denied.

5. Paragraphs 14, 15, 16 and 17 are admitted.

6. Paragraphs 18, 19, 20, 21, 22, 23 and 24 are denied.

7. The contract for the fee mentioned in the Bill of Complaint was made between complainant and defendant when the complainant was in clear and understanding mind, and complainant understood thoroughly what he was doing when he entered into said agreement. Defendant did not conceal anything, nor did the defendant make

Answer.

any misrepresentations to the complainant at the time the said agreement was made, and all the transactions between complainant and defendant, and particularly the one in question, were characterized by the utmost fairness and good faith.

8. The defendant alleges that the complainant was guilty of fraud and deceit in his transactions with defendant, and is thus barred from relief in the court of equity, said fraud and deceit being in that he procured services and fraudulently obtained possession of security for same and deprived defendant of payment due.

9. The defendant alleges that the complainant has been guilty of laches in the institution of this suit, and is therefore barred from relief in this court.

10. The defendant alleges that it was upon the complainant's own objection in the action at law, wherein he was defendant, that the testimony of reasonableness and fairness of the fee in question was not permitted by the Court, and complainant is estopped by his actions in the court of law from alleging or claiming that the defendant herein had not proven the reasonableness and fairness of the charge in the action at law.

DONOHUE & O'BRIEN,
Solicitors for Defendant.

Replication.

REPLICATION.

Filed November 18, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
AMIELLO RAIMONDI, *Complainant,*	*On Bill, Etc.*
and	*Replication.*
OVIDIO C. BIANCHI, *Defendant.*	

The complainant, replying to defendant's Answer, says:

1. The complainant joins issue on the Answer of the defendant.

2. He denies the allegations contained in paragraph 7.

3. He denies the allegations contained in paragraph 8.

4. He denies the allegations contained in paragraph 9.

5. He denies the allegations contained in paragraph 10.

E. A. & W. A. SCHILLING,
Solicitors for Complainant.

ORDER OF REFERENCE.

Filed November 30, 1926.

IN CHANCERY OF NEW JERSEY.

Between AMIELLO RAIMONDI, *Complainant,* *and* OVIDIO C. BIANCHI, *Defendant.*	*On Bill, Etc.* *Order of Reference.*

This matter being opened to the Court by E. A. & W. A. Schilling, solicitors for the complainant, and it appearing that said solicitors for the complainant, and Donohue & O'Brien, solicitors for the defendant, have consented hereto.

It is on this 30th day of November, 1926, on motion of E. A. & W. A. Schilling, solicitors for the complainant, ORDERED, that the above cause be referred to Hon. Alonzo Church, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to report thereon to him, and to advise what order or decree should be made thereon.

E. R. WALKER,
C.

We hereby consent to the entry of the foregoing Order.

E. A. & W. A. SCHILLING,
Solicitors for the Complainant.

DONOHUE & O'BRIEN,
Solicitors for the Defendant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between AMIELLO RAIMONDI, *Complainant,* *and* OVIDIO C. BIANCHI, *Defendant.*	

January 26, 1927.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Edward A. Schilling and Harold Simandl for complainant; Messrs. Donohue & O'Brien (by Mr. O'Brien) for defendant.

IRVING TEEPLE, sworn for the complainant.

Direct examination by Mr. Schilling.

Q Mr. Teeple, you are a member of the Bar of the State of New Jersey? A Yes, sir.

Q And how long? A Next November will be twenty years.

Q And you are also a member of the Bar of the State of New York? A Yes, sir.

Q And how long? A Next October will be twenty-two years.

Q And during the last twenty years you been actively engaged in practice in the State of New Jersey? A Yes, sir.

The Court: Well, I think we will all admit Mr. Teeple's qualifications as a member of the Bar.

Mr. O'Brien: Yes.

Q And, Mr. Teeple, during your practice, what particular branch of the law have you specialized in, if any? A Generally, in the criminal and divorce work.

Q Yes. Now, during your experience, have you had any arson cases? A Yes.

Q Have you had any cases of the burning of buildings with intent to prejudice insurance companies? A Yes.

Q Now, assuming that an attorney is engaged —and do you know, generally, what fees are charged in criminal cases? A Yes; I do.

Mr. O'Brien: I do not think that is material. They go into the question of what was done and then say what was reasonable.

The Court: Yes. Well, that is the way to do.

Q Now, assuming that an attorney, who has been practicing before the Bar for a number of years and doing criminal work and who has spent a considerable time—proportion of his practice in criminal cases, who is an ex-judge of the Orange Police Court, was engaged to represent a man for arson, or represent a man charged with arson and the burning of a building with intent to prejudice insurance companies, under the statute, and, assuming that he thereupon in the Police Court did obtain the release of the defendant under bail and thereupon went on the bail himself, and, assuming that he investigated the facts

in the case, of the interviewing witnesses and taking down their statements and interviewed the defendant and generally prepared the facts in the case, and, assuming, further, that he prepared a memorandum of the law applicable to the facts as he had ascertained them from various witnesses and the defendant, and, assuming that he thereupon appeared with the defendant before the Court to plead to the indictment returned, and, assuming that he thereupon represented the defendant in the trial and spent one day waiting for the trial to be reached and one and a half days actually in trial and the remainder of the third day in waiting for the jury to return its verdict, and, assuming that a verdict was returned resulting in a disagreement, and, assuming, further, that he thereupon made preparations—some preparation for that new trial and was thereupon discharged from further services in the case, and, assuming, further, that he had a member of the Bar of his own choosing as an assistant, who devoted his entire time for a week prior to the trial to the interviewing of witnesses and the preparation of the law for him, and that the assistant charged five hundred dollars for his services, what would you say would be a fair and reasonable fee, under the circumstances, to compensate the attorney for his services? A May I ask what the amount of bail was that he went?

Q Five thousand dollars? A Anywhere from ten to twelve hundred dollars.

Q Yes. Now, from your experience in criminal cases and your knowledge of charges made by attorneys in representing defendants, what do you say is a reasonable fee for the ordinary attorney in preparing an arson case and defending it?

Mr. O'Brien: Oh, I think that is—(interrupted).

The Court: You have asked him for his opinion on the hypothetical question.

Mr. Schilling: Yes, sir.

The Court: And he says, twelve hundred dollars.

Mr. Schilling: Yes.

The Court: Now, it seems to me that is all we want. He thinks twelve hundred dollars is a proper fee.

Mr. Schilling: Now, I am going in the question. That hypothetical question is based on testimony that I have taken from Mr. Bianchi, from what he did in the case, taken from his former testimony. Now, I want to know what the ordinary fee is in an ordinary arson case.

The Court: I do not think that has anything to do with it.

Mr. Schilling: All right.

The Court: What we want to find out is what the proper fee is in this case.

Q You have taken into consideration the fact that the attorney went on the bail. A Yes; that is why I concluded twelve hundred dollars; otherwise I would say about ten hundred.

Q Do you know what the ordinary rate for bail is? A Five per cent.

Mr. Schilling: Five per cent.

Cross examination by Mr. O'Brien.

Q Mr. Teeple, suppose we go into a little more detail on those facts and, in addition to

what Mr. Schilling has said, the attorney made several examinations, at least two examinations of the building in question, and photographers photographed the building from different angles inside and out, had builders, and assumed the expenses himself of builders to testify to the value of the building, got in touch with the insurance companies and made an endeavor to collect the insurance on the place, and that the financial worth of the defendant was between fifty and sixty thousand dollars and that he earned about ten thousand dollars a year, having in mind, now, the number of years which he might be sentenced to for arson and for burning with intent to defraud, and the additional fact that there was about twenty-eight thousand dollars of insurance hanging in the balance and that he not only obtained a disagreement of the charge of burning with intent to defraud the insurance companies, but a direction of a verdict of acquittal on the charge of arson, that he examined about twenty witnesses and subpoenaed about twenty witnesses for the trial, that he had been practicing for seventeen or eighteen years, and had had an extensive criminal practice and criminal experience, wouldn't you change your opinion in view of all of those facts? A No.

Q Because you do believe the fee could be earned? A I would say, no. In my judgment, he would be required to do just that.

Q In fixing fees in criminal matters, especially, you consider the financial status of the defendant, as to whether or not he can pay a good fee or, if he is a poor person, you cut the fee down. A I usually consider it just the other way. If he is a poor man he cannot pay much of a fee.

Irving Teeple, cross.

Q Assuming that the complainant in this case came into the defendant's office and said, "I want you to take this case" and inquired the fee and the defendant said, "If you want me to take the case, it will cost you twenty-five hundred dollars," and he assented to that and agreed and let the attorney do all the work that was done and put a lot of time on it, the attorney assuming he would be paid the twenty-five hundred, would you say that there is anything unfair or unreasonable about the agreement?

Mr. Schilling: I object.

A There might be.

The Court: I will allow it.

The Witness: There might be.

Q Well, I am asking you whether, on the facts I stated—(interrupted). A The attorney is in a better position to know what fee to charge than the client.

Q In other words, isn't counsel in a better position to fix the fee than the client? A He has a right to make it on the proper basis, yes.

Q And he doesn't have to take it unless the client—(interrupted).

Mr. Schilling: I object. This is a—(interrupted).

A No; he is not compelled to take it.

The Court: Of course, that is perfectly patent. We all know it. You do not have to take a case unless you want to.

Andrew Van Blarcom, direct.

Q In fixing a fee in a criminal case, do you take into consideration the financial ability of the defendant to pay? Just yes or no. A Yes; to some extent.

ANDREW VAN BLARCOM, sworn for the complainant.

Direct examination by Mr. Schilling.

The Court: Now, Mr. Van Blarcom's qualifications are admitted?

Mr. O'Brien: Surely.

The Court: And let him read that long hypothetical question. Do not say it over several different times.

Mr. O'Brien: I consent. You have heard everything, Mr. Van Blarcom?

The Witness: Yes.

Mr. O'Brien: I consent that it be considered as if asked again.

The Witness: I also read it before.

The Court: Well, now—

The Witness: I think that a charge of fifteen hundred dollars would be fair, and, that considering the fact Judge Bianchi had the services of somebody to work the case up for him, who was an attorney, it seems to me fair that that should be taken off the fifteen hundred, but, as to the bail matter, I have nothing to say about that. Any extra charge for that is outside of the fact I mentioned. I don't know what bail costs and I would rather not pass on that.

The Court: Is that all?

Mr. Schilling: Cross examine.

Cross examination by Mr. O'Brien.

Q Assuming that the defendant in the case is the one who had asked for associate counsel and suggested that to help the counsel he had already retained, you would not then think that the first counsel's fee should be reduced because the defendant asked for the associate counsel? A Well, we are talking about the reasonableness of the fee and not any special arrangement.

Q Did you take into consideration, Mr. Van Blarcom, the additional facts which I recited to Mr. Teeple? A Well, I will take them into consideration now. The ones you mentioned, I do not think that changes my mind any as to the amount. I think that is only fair.

Q Fixing a fee in a criminal case, do you take into consideration the financial ability of the defendant to pay? A Yes, I do.

Q And you take into consideration his earning capacity and the fact in this case that he might be sent up from two and a half to five years? A We don't think about his being sent up. Nevertheless, his ability to pay is considered.

Q That should be taken into consideration, that he might be sent up from two and a half to five or as high as ten years. You would take that into consideration, wouldn't you? A I don't know as I would.

Q Don't you think so? A No. I wouldn't take that into consideration. His present ability to pay, of course, after he is locked up, he wouldn't earn anything. You would have to get your money in advance.

Q Would you take into consideration the fact that there was twenty-eight thousand dollars of insurance hanging in the balance? A I wouldn't think that that had anything to do with the criminal case.

Q The fact that a man is worth fifty or sixty thousand dollars would be taken into consideration by you, wouldn't it? A Yes; I think his means, his ability, his fortune depends somewhat—I mean, the charges depend somewhat on that.

Q Your experience in the most part was in prosecuting rather than in defending criminal cases, was it not? A Not necessarily. I have defended a great many, what I considered, important cases.

WILBUR A. MOTT, sworn for the complainant.

Direct examination by Mr. Schilling.

Mr. O'Brien: I will make the same arrangement as to Mr. Mott's qualifications.

The Court: I think we will admit Mr. Mott's qualifications.

Q Mr. Mott, you have heard, and I have submitted to you in writing beforehand, this hypothetical question which you have heard in court. Will you give us your answer on that.

Mr. Schilling: His qualifications are admitted?

The Court: Yes.

Mr. Schilling: I might go a little deeper, if your Honor will permit.

Q Mr. Mott, you are a practicing attorney?

The Court: What is the use of that?

Mr. Schilling: Wait a minute. Mr. Mott brought this case on the second trial, your Honor, and I think I ought to put it in the record.

The Court: All right. Very well.

Q You brought this case, this Raimondi arson or burning case, on the second trial, after the disagreement, did you? A I did.

Q And you are familiar with all the facts and circumstances surrounding that case, are you not? A Well, all that I developed.

Q Yes. Now, did you have any assistance from the record of the prior trial? A None.

Q No. Did you then try this case as though it had never been tried before, as far as your work in the case was concerned? A Yes, sir.

Q Yes. Now, what is your answer, then, to this hypothetical question as to the reasonable value of an attorney—of Mr. Bianchi's services performed in this case? A From seven hundred and fifty to a thousand. I was paid for my services seven hundred and fifty dollars, all I asked.

The Court: Well, now cross examine.

Cross examination by Mr. O'Brien.

Q Was Mr. Giuliano in on that case with you? A I think he was.

Q He received a fee, too? A I don't know.

Q You had a transcript of the prior trial—

A I—

Q —before you went to trial in your case, didn't you? A I don't recall that I did.

Q Don't you remember having a transcript of the case in your office, when I saw you there, before the second trial, one day with Mr. Bianchi? A Well, I really can't say whether I secured a transcript or not.

Q And you produced substantially the same evidence that was put in, at the second trial?

The Court: He can't say that. He said he—(interrupted).

Q Did you visit the premises? A No.

Q Did you hire any expert builders and take them up and show them the place and have them testify? A I did not. Some builders did testify.

Q You used the same builders that had been used before? A I don't know.

Q The whole case, in fact, had been prepared before and you used the same witnesses and just brought the case on the same statement of facts, did you not? A The case was not prepared for me in any shape, manner or form. I do not take other people's preparations in an important criminal case. I prepared the case for trial; I interviewed the witnesses. I cannot recall now just who they were, but they came to my office and I personally interviewed them. I never put a witness on the stand, and do not mean to, without knowing what he is going to testify to.

Q And the defendant brought everybody to you and you merely went over their testimony with them and put them on the stand; isn't that right? A Who brought them you say?

Q The defendant, Raimondi. A Why, they came there. He told me some witnesses to send for.

Wilbur A. Mott, cross.

Q Did you go to the police station and examine tubs that were alleged to have held the gasoline? A Oh, no. A tub is a tub.

The Court: "For all of that."

The Witness: Yes; a butter tub.

Q You represented Raimondi, the complainant, here, in the Common Pleas case when Judge Bianchi sued. You originally represented him in that case, didn't you? A Yes; I think I filed the pleadings.

Q You filed an answer in that case for him? A Yes.

Mr. O'Brien: That is all.

The Witness: And that was included in my bill. Now—

The Court: Do you want to say anything else?

The Witness: On the amount, your Honor. I am very much in doubt of just what Mr. Giuliano's, the lawyer, relations to the case were. My impression now is that Mr. Giuliano employed me, and, if he did, I followed the general rule and gave Mr. Giuliano one-third of my fee. Now, I don't say I did, but, if I was employed by him, I did do that. I do that with lawyers. That is the rule.

The Court: In other words, you only got five hundred dollars and he got two hundred and fifty.

The Witness: If he employed me, that must be so, but I would think somebody ought to get that from the lips of Mr. Giuliano, who would recollect better than I do.

Wilbur A. Mott, re-direct—re-cross.

Re-direct examination by Mr. Schilling.

Q Mr. Mott, was this an ordinary burning case or were there any difficult questions of law or fact involved in it? A No, sir. I have, as attorney, brought quite a number of arson cases and never was one more simple or easy to solve than this.

Re-cross examination by Mr. O'Brien.

Mr. O'Brien: I have a couple of questions I would like to ask.

Q When you brought them, you only charged them with intent to defraud insurance companies, not with the charge of the crime of arson? A Yes. Of course, there was charge of arson, but there can be no arson— (interrupted.)

Q There— (interrupted.)

The Court: Let the witness finish.

The Witness: There could be no arson in a building in which no human being has ever lived; and any lawyer ought to know that.

Mr. O'Brien: I move that be stricken out.

The Court: I will let it stand.

Q Did you know that Judge Caffrey reserved decision two days on that point? A No; and I I don't know it now.

Mr. Schilling: Your Honor, there were two witnesses, two other attorneys, who agreed to come down here, Mr. J. Victor D'Aloia, who was going to testify and who

had to appear for a few minutes before Judge Stein in Elizabeth on a matter that was set down, and he said he would be here as soon as he got through. The other was Mr. Fitzmaurice, who is trying a case before Judge Mountain and will be here at half-past eleven. Can we reserve the right to put then on after the other side is completed?

The Court: Have you any other witnesses?

Mr. O'Brien: We have three besides Judge Bianchi, three witnesses, and Mr. John Matthews, if he can get here in time to testify.

The Court: We will go on with your witnesses and then I will allow you to put them on, if they come before the close of the case. Go on. You haven't got anything further?

Mr. Schilling: I have got the complainant in the case, to show the relationship and show what Judge Bianchi told him and the facts and circumstances appertaining to this case, if your Honor wants it.

The Court: No, I am not advising you.

Mr. Schilling: All right. Mr. Raimondi.

AMIELLO RAIMONDI, sworn for the complainant.

Direct examination by Mr. Schilling.

Q Mr. Raimondi, where do you live? A 417 Bloomfield avenue.

Q And were you the defendant in the case of the State against you for burning a building in

North Jefferson street, or in Jefferson street, Orange? A Yes, sir.

Q And who represented you at the trial of that case, the first trial? A Mr. Bianchi.

Q Judge Bianchi. Now, when did you first become acquainted with Judge Bianchi in this case? A I was locked up in the cell.

Q Where? A Police station, Orange.

Q Police station, Orange. And will you tell us the conversation between you and Mr. Bianchi at the police station, leaving out any question or reference to charges in the matter?

Mr. O'Brien: What has the conversation got to do with it, unless it is with reference to services rendered or with reference to the charges?

The Court: That is what it should relate to.

Mr. O'Brien: That is what it should relate to, if anything, the charges.

The Court: Yes. What we are trying now is the propriety of his charge; that is all.

Mr. Schilling: But, your Honor, I am perfectly willing to go into it, but I thought I was precluded by the law court's judgment from having Raimondi again testify here that he did not agree to pay Bianchi twenty-five hundred dollars. That has been found as a fact against me. If your Honor will permit me again to go into the question of whether Raimondi agreed, I shall do so, but I think, against myself, that this decision in the law court in which the Court said, "Now, gentlemen, this is a suit upon an express contract. The plaintiff must stand or fall upon that

theory. He is entitled to recover in this suit upon the express contract or not at all. Now, this defendant was competent to contract with the plaintiff for a fee. If he wished to contract for a fee of twenty-five hundred dollars, he had a right to do so."

The Court: Well—

Mr. Schilling: "If he did so, he is bound by the contract." Now, the jury having brought in the verdict, I think I am precluded from—

The Court: Very well, if you think you are precluded, there is no use of asking it.

Mr. Schilling: I will ask it, if no one will object.

What was the conversation?

Mr. O'Brien: What I have in mind is, the bill alleges fraud in the inception of the contract. The contract, of course, is an admitted fact. The jury passed on that and decided it. Now, the bill alleges fraud. Now, I thought what is proper for this man to testify to is with reference to any fraud that might have been, any that can be imagined.

The Court: Now, you can ask him the question and we will see.

Mr. Schilling: Before going on, I want to withdraw the witness and put Mr. D'Aloia on and let him get away.

———.

J. VICTOR D'ALOIA, sworn for the complainant.

Direct examination by Mr. Schilling.

Q Mr. D'Aloia, you know the Raimondi case, State against Raimondi? A Yes, sir.

Q And did you try that case for the State at both the first trial, in which Mr. Bianchi represented the defendant, and the second trial, at which Judge Mott represented the defendant? A I did.

Q Yes. You knew all the facts in the case? A Yes; I knew all the facts.

Q And you know what work was done at the trial by Judge Bianchi? A I do.

Q Yes. Now, assuming that—

The Court: Well—

Q You have read this hypothetical question. Will you— (interrupted).

The Court: Just read it.

Mr. O'Brien: Have you a copy of that?

Mr. Schilling: (Handing paper to witness.) This is the very thing I read.

The Court: Well, now.

Q Have you heard the question? What is your answer?

Mr. O'Brien: May I just add what I put in the other one—a few facts?

The Court: No. You can bring that out on cross examination.

Mr. O'Brien: I thought I might save time.

The Witness: My answer to that question would be, considering everything set forth there, the reasonable charge for the services would be about a thousand dollars.

The Court: All right. Cross examine.

Cross examination by Mr. O'Brien.

Q Now, Judge, you take into consideration the financial worth of a defendant in fixing a fee in a criminal case, don't you? A Not necessarily, no.

Q You do, though, in your practice? A I do not.

Q No? The first trial resulted in a disagreement on the charge of burning with intent to defraud and an acquittal on the arson charge; isn't that right? A Yes.

Q And the second trial resulted in the conviction? A It did.

Q The man was—

The Court: A conviction?

Mr. O'Brien: On the second trial. That was when Mr. Mott tried it and we had nothing to do with the case.

The Court: I thought he was acquitted on the second trial.

Mr. O'Brien: No; convicted. Two and a half to five years, wasn't it?

The Witness: I tried the case again, subsequent to this agreement, and he was convicted.

Q In addition to the facts that you got in that hypothetical question, assuming the defendant in this case was worth fifty to sixty

thousand dollars, that he had an earning capacity of ten thousand dollars a year, bearing in mind the term for which he might be sent up, and that there was twenty-eight thousand dollars hanging in the balance and that in the preparation of this case some sixteen or twenty witnesses had been interviewed, the building examined, photographs taken, experts hired, what would you say was a reasonable value in that case? A I don't think it would change it much. I think the reasonable value of the services could not be more than a thousand dollars, or, possibly, considering all those other things you mentioned, two hundred dollars more. You said twenty witnesses. I do not recall any such number of witnesses.

Mr. O'Brien: That is all.

AMIELLO RAIMONDI, recalled for further

Direct examination by Mr. Schilling.

Q Will you tell us what conversation you had with Judge Bianchi in the police court when you first met? A Yes, sir.

Q Eh? A Yes, I do.

Q What was it? A Judge Bianchi says—the man come down to see me down at the cell, which I didn't send for him.

Mr. O'Brien: Oh, now, that is—

The Witness: Nothing but the truth.

Mr. Schilling: Let the witness testify and object to the Court.

The Court: What is this? What is it he said?

Mr. Schilling: He says, "Mr. Bianchi came down to the police cell and I didn't send for him." What is the harm in that?

The Court: That is all right. I will let him say— (interrupted).

Q Go on. Tell us what Judge Bianchi said and what you said to him. A That is what I want to explain everything what he said, nothing else.

Q Go ahead. A And he came down to see me. I was locked up in the cell at the police station and he says to me, "Raimondi, you want somebody to bail you out?" I says, "Well, I don't think I need any lawyer at all. I don't need anybody because I am not guilty on the case." He said, "Your case is so serious you don't know yourself; you have got to clear yourself that you are not guilty." I says, "All right," and he said, "Well, if you want to hire somebody else, you can, but I advise you to have me, because, you know, being a police judge in Orange for a number of years and I know the fire chief in Orange and am well acquainted, so I am the only man can get you out of this trouble." I said, "I don't need a lawyer, because I don't know of this act." He said, "You think so, but this is a serious occasion. I got to work all these things out." He took everything in his own hands.

Q Go ahead. Tell us what else was said. A And he said, "I am well acquainted at the Court House and do all what other lawyers can't do in the United States today." He says, "I am the man can work these things out pretty, and"

he says, "if you hire me, I guarantee I will get all the insurance money; I will get everything for you, and, if not, you will go to jail twenty years," he says, "you will get about twenty years. You can't get away with an arson case and burning for less than twenty years." I said, "I don't know anything about it. I am not guilty." He says, "You have got to clear yourself that you are not guilty." That was all that was said.

Q All right. What was said about charges? A You mean, about the fees?

Q Yes. A Well, he says, "I am gambling." The first word he spoke to me, he says, "I am gambling." I says, "What do you mean by that?" He says, "I will take this case in my hand, which I don't want a nickel," he says, "You pay me three hundred dollars to me today, then, if I lose the case, I will refund you the three hundred dollars besides," he says, "I don't want nothing; I want to fight the case on my own strength. If I won't beat you the case and you only got to give me about eight hundred all together, seven or eight hundred dollars." That is the plan he spoke to me, and I had four witnesses, and I answered, I said, "What is the fee going to be? What will it cost me?" See, tell him a few times, and he said, "That is all it is going to be; that is all it will cost you; that will be for everything."

Q Yes. Did he go your bail? A Yes. He says, "I will bail you out and everything; that is all it will cost you."

Q Yes. All right. Now, how many times did he see you during the time this trial was, or— before the trial, how many times did you go to his office? A Three times.

Q And how long were you there? A About fifteen or twenty minutes.

Q Yes. Did you go with him to the building? A Sure. Yes. No, no. Once, once it was I was at the building with him, examined the building, that is all I know.

Q Between the time that you saw him in the police court or in the police station, when you were first arrested, and the time of the trial, did he have any talks with you about the case? Did he tell you anything about what was happening? A Yes; he did.

Q What did he say? A He says, "Well," he says, "when did this happen? What did you do on the building?" I said, "I worked every day there and bring—I laid concrete sills, I brought the butter tubs and everything, take dirt out of the house and naturally you need tubs to take dirt out.

Q Now, did he tell you anything about what you would have to prove at the trial? A Yes, he did. He says, "What you got to prove?" I said, "I ain't got no proof because I don't know nothing about this happening."

Q Yes. What did he say to you, if anything, about butter tubs being in the building? A He asked me what the butter tubs doing there. I said, "The butter tubs I bring up myself from my store to take dirt out of the house."

Q Did he mention anything to you about the fact that you were held on two counts? A Yes; he did.

Q Two charges? A Yes; he did.

Q What did he say? A He said, "We have got to prove you are not guilty." He said, "I got to prove you are not guilty. That is up to me to bring the case up."

The Court: Well.

Q Did you ever make a contract to pay Judge Bianchi twenty-five hundred dollars? A No, sir.

Q Did you pay the three hundred dollars that he asked for? A Yes; he asked and I give it to him.

Cross examination by Mr. O'Brien.

Q When you testified at the Common Pleas Court, Raimondi, you didn't say anything then that Judge Bianchi had said he was the best lawyer in the United States, or something to that effect, did you?

The Court: Oh, no.

Mr. O'Brien: I merely want to show this man did not testify to any of those things in the Common Pleas Court.

Mr. Schilling: I agree with you. He was precluded from testifying.

The Court: I don't think it is important.

Mr. O'Brien: I want to show the man is not telling the truth.

Q You didn't testify then that Judge Bianchi told you you would get twenty years, did you? A Yes. He did say that.

Q But you didn't testify to that at the Common Pleas trial. A He didn't question me.

Q You say you only saw Judge Bianchi three times before the trial came up; is that right? A Yes; I did. Three times is right.

Q And how long were you with him each time? A About fifteen to twenty minutes.

Q Do you remember one evening in his office when I was also present, when you were there from about eight o'clock to twelve going over the case with Judge Bianchi and with the people that came in with you, members of your family? A Never saw them any time.

Q You don't remember that at all? You saw Judge Bianchi just before you pleaded, didn't you? A Yes, sir.

Q And you saw him several days in the week just prior to the trial. A Three times, that is all I saw him, no more.

Q Only saw him three times altogether? A Yes, sir.

Q And you want us to believe he said, "Give me three hundred dollars and I will gamble on the result?" A Yes; positively he did.

Q Did you ever go over the matter of insurance with him? A No, sir.

Q Did you ever sign any affidavits? A He asked for the insurance policy and I brought them up to him. He still got today. He didn't return to me yet.

Q But you signed affidavits, didn't you? A What kind of affidavits?

Q About the insurance in the insurance policies. A Yes, sir. He says, "Give me. Sign affidavits and I will get the insurance back."

Q You have had dealings with lawyers before, haven't you? A Plenty.

Q You had had plenty of dealings? A Yes, sir.

Q And you knew what you were doing when you were dealing with a lawyer? A I never had no trouble with a lawyer but this one.

Q Didn't you tell Judge Bianchi you had trouble with Simandl over a fee? A No; never had trouble with Simandl. He can tell you himself. No lawyer living.

Q You had trouble with Mr. Simandl? A No, siree.

Q Over one hundred thousand dollars worth of liquor, didn't you?

Mr. Schilling: I object.

A That is not—

The Court: I will sustain the objection.

Q A couple of days before the trial, when you closed the title to premises with Anthony Molinari and you got eleven thousand dollars out of that deal, did you make an authorization or write out an authorization to Wolber and Gilhooly to pay the checks to Judge Bianchi so that he could have security for his fee of twenty-five hundred dollars? Did you ever sign a paper? A No; I never signed no paper for that.

Q Is that your signature (showing witness paper)? A Well, he can ball me up any way he wants.

Q Is that your signature? A That is my signature.

Mr. O'Brien: I offer it.

Mr. Schilling: I haven't any objection to that.

The Court: Let it be marked. It is offered and there is no objection. I will admit it.

(Paper marked Exhibit D. 1.)

Q And you authorized those checks to be turned over so Judge Bianchi would be secured in his fee?

Mr. Schilling: I object. The paper speaks for itself.

The Court: I will sustain the objection.

Q Judge Bianchi turned all of the checks over to you except the thirty-four hundred dollar check out of the batch, did he? A That was my money, not his money.

Q Just answer the question. A Sure he did.

Q All but the thirty-four hundred dollar check? A Yes, sir.

Q And he held that check and had that check at the time of the first trial and after the first trial of your case, didn't he. A No. I gave him a check, everything the same day.

Q Just a minute. I am talking about the thirty-four hundred dollar check. After the first trial when you had to be rebailed? A Yes; he drew the bonds.

Q Do you remember asking Judge Bianchi for that thirty-four hundred dollar check which he had retained, telling him that you were going down to Scheckner, who had the second mortgage on the place, to get his endorsement, that you would then endorse it and bring it back to Judge Bianchi, let him put it through the bank, take the fee out of it and give you whatever balance was due you? Do you remember that? A No, I got all the checks the same day.

Q Did you get the thirty-four hundred dollar check separate or the same day? A The same day I got everything. I went to Scheckner; Scheckner had to sign that check.

Q And you told Judge Bianchi you would have Scheckner endorse it and you would bring it back to him and he could take his fee out of it? A No; never mentioned no fee at all.

Q But you told Judge Bianchi you would bring the check back? A What office? Never mentioned no fees, never, whatsoever.

Q Didn't he give that check to you when you were being rebailed at the Court House for you to take down and have Scheckner endorse it and then have you to endorse it and bring it back to him at the Court House? A I don't remember that.

Q You don't remember? A No.

Mr. O'Brien: I guess that is all.

The Court: That is all, sir.

Mr. Schilling: That is all, Raimondi.

The Court: Well, anything further?

Mr. Schilling: No. That is all, except if Mr. Fitzmaurice appears later. Oh, wait a minute. Mr. George.

JOSEPH GEORGE, sworn for the complainant.

Direct examination by Mr. Schilling.

Q Mr. George— A Yes, sir.

Q —you are a professional bondsman? A Yes.

Q And how many people have you bailed in the last ten years?

Mr. O'Brien: We will admit his qualifications as a bondsman.

The Court: What is the idea?

Mr. Schilling: We want to prove the reasonable value for going a man's bail for—

The Court: Five per cent.

Mr. O'Brien: Five per cent.

OVIDIO C. BIANCHI, sworn for the defendant.

Direct examination by Mr. O'Brien.

Q You are the defendant in this case, Judge? A I am.

Q How long have you been practicing? A Since November, 1908.

Q Seventeen or eighteen years? A Eighteen years.

Q You are a former police judge of Orange? A For five years.

Q You have offices in Orange? A I have offices in Orange.

Q You were retained by the defendant in this case on June 10th, were you not? A On or about June 10, 1925.

Q What were the charges against him? A He was locked up in the Orange Police Court charged with arson and intent to defraud insurance companies.

Q Did you appear for him in the police court? A I appeared for him in the police court. I did.

Q Who bailed him out? A I went his bail and his two brothers' bail—it amounted to six thousand dollars—at his request.

The Court: Now, that is all in the hypothetical question, what the Judge did.

Mr. O'Brien: That is all in the hypothetical question, but there is no direct testimony of his services.

The Court: Well, we are going to agree that he performed the services as stated in that question. Otherwise the question would be useless.

The Witness: There were others.

Mr. O'Brien: And it is stipulated on the record that all of those services were performed?

Mr. Schilling: Yes, sure, certainly. I can't get away from my own question.

The Court: I don't see how you can.

Q Did you make any trips to the building?

Mr. O'Brien: That was not in the question, your Honor.

The Court: All right.

A I made two trips there with Mr. Raimondi. I made at least four or five trips there alone and also went there with the photographer to take photographs of the building and, in addition to those facts related in that special question, I interviewed all of the State's witnesses, with the exception of one woman who would not talk to me.

Q Did you have photographs taken? A I had photographs taken.

Q Did you pay for those? A I paid for them. Had the transcript made and I paid for that.

Q How much did you pay for the photographs? A Around thirty-two dollars, I think.

Q And how much did you pay for the transcript? A One hundred dollars. I also paid—indebted to pay fifty dollars for an expert witness.

Q That was the builder? A Yes, sir.

Q And there was another witness that you obligated yourself to pay for? A Some man that worked on the floor, a fellow by the name of Powell, I think.

Q How much did you agree to pay him? A He wanted forty-five dollars.

Q For how many days? A He wanted fifteen dollars a day. I also paid for the taxi hire and all subpoena fees.

Q How much did they amount to? A Probably around thirty odd dollars. I don't remember.

Q Did you have any conferences with Raimondi? A Raimondi was up in my office on an average of two or three days a week from the time of his arrest clear up to the time of his indictment. I had lots of trouble trying to collect his insurance. He had trouble with his building and loan association through Mr. Kanengieser, who represented the Grand Building & Loan Association, I believe.

The Court: You say he was many times in your office. That is enough.

The Witness: Yes, your Honor.

Q What was the result of the trial when you brought the case? A He was—there was a direction of verdict on the question of arson.

Q And what about the burning? A And there was a disagreement on the other question or the other indictment.

Q You didn't try the second case?

The Court: No.

A We prepared for the second trial and did not try the second trial.

Q With reference to the fee now. Did Raimondi make any arrangement with you for a fee in the case? A After the notice of the indictment and before going to trial, he agreed to pay twenty-five hundred dollars.

Q How much did he give you on account of that? A He had given me, previously, a retainer of three hundred dollars, at the time that he was first arrested, and I told him I would give him credit for that three hundred dollars on the twenty-five.

Q Were the expenses you incurred to be included in the twenty-five hundred dollars, or separate? A My personal expenses were to be included.

Q I meant, the expenses of trial, and so forth. They were to be included in the twenty-five hundred; is that right? A Anything I had to spend in the way of expert witnesses or taxi fares or subpoena fees or anything like that, I consider I have to spend out of that.

Q Out of that twenty-five hundred. At the time he agreed to pay you twenty-five hundred as far as you could see, was he in a perfectly normal state of mind? A He was absolutely so; very competent and very keen in his dealings, and told me about his experience with other attorneys—

The Court: Well, do not—(interrupted).

A (Continuing.) As a result of that, it wound up with an agreement as to what he would have to pay, your Honor.

Q Did you make any misrepresentation or conceal any facts at the time of that agreement?

The Court: That is not necessary.

Mr. O'Brien: It is alleged in the bill.

The Court: I know, but they have to prove it. You don't have to disprove it.

Mr. O'Brien: I just thought I would have to— I withdraw the question then.

Q Did you make any arrangement for the security of the balance of your fee? A Previous to going to trial, he had agreed up to that time to give me the money and he was to close title on a piece of property on Bloomfield avenue, Newark. I appeared for him at the office of Wolber & Gilhooly and closed title, but the money could not be paid over, because of the fact that a second mortgage with the Second National Bank of Orange could not be paid off. I insisted I wouldn't go to trial for him unless I received security. He then agreed and gave me the assignment of all moneys coming to him from Wolber & Gilhooly and out of which I was to receive my fee, as soon as they were ready to close, which happened to be about two or three days after the first trial. We appeared at the Court House, that is to say—(interrupted).

Q Never mind the details. Tell us about the thirty-four hundred dollar check transaction. A I gave him all the money but the thirty-four hundred dollars. We went to the Court House where he was to be rebailed, and I was rebailing him and we had to wait for the clerk While waiting

for the clerk, I suggested to him, "Suppose you run down—" we tried to get Mr. Scheckner on the phone and couldn't do it, so finally we waited around and I said, "Suppose you run down and get Mr. Scheckner yourself and get the check endorsed." It was made out to Scheckner and Mr. Scheckner held the second mortgage. He went down and he didn't come back. That is the last I saw of my thirty-four hundred dollar check.

Q Did he tell you whether or not he would return with the check? A He was to return.

Q What did he tell you you could do when he returned with the check? A I was to take out my fee.

Q And he never returned with the check? A No.

Q Did he tell you his financial— A He got about $17,500 cash, I believe.

Q Did he tell you his financial worth at the time the contract for fees was made? A In going over the case with him—

Mr. Schilling: I object.

A (Continuing.) —we did, and figured it was about sixty or seventy thousand dollars.

Q Did he tell you how much he was earning a year?

Mr. Schilling: I object.

A He said he figured he was making about ten thousand dollars a year. The reason for going over this was to show he was not in a situation where he was likely to set fire to a building, that he had finances enough in back of him so that he would have no motive to set fire to the place.

Q How much insurance was involved or hung in the balance? A As I remember now, around twenty-eight thousand dollars.

Cross examination by Mr. Schilling.

Q Did you introduce into evidence at the trial of that case the fact that Raimondi was worth between sixty and seventy thousand dollars? A We asked the questions and Judge Caffrey ruled on it two or three times.

Q You knew it was not admissible? A I did not and do not now. There is law in our favor that it is admissible.

The Court: We will decide that.

Q You say this assignment was given to you for the purpose of securing your fee? A Positively.

Q Why didn't you put in it that you could retain the money as security for your fee? A Mr.—I didn't put it in there because it didn't occur to me that any such trick would be played on me as was finally played. Mr. Deriveaux and I talked it over and that was suggested.

Q You knew this was only an authorization to let you go down and close title and get the money at the Fidelity, didn't you? A The Fidelity had nothing to do with it.

Q From Wolber & Gilhooly? A Wolber & Gilhooly were to turn the money over to me and out of that I was to take my fee, but finally I was tricked out of it.

Q You intended to take your fee out of it? A Yes; that was the purpose of turning it over, that was the arrangement, Deriveaux, Mr. Raimondi and myself and at Mr. Wolber and Gilhooly's office.

Q How many times did you go up to the building, did you say? A I went up there twice, I believe, with Mr. Raimondi, at least four or five times alone, and I went up there a couple of times with the photographer and hired a taxi to go up with the photographer and took up the machine myself and also sent my clerk up there.

Q That is the work that is done in preparation of that case, isn't it, the arson case, looking at the building? A I don't see any other way you can prepare a good defense unless you do it.

Q Why was it necessary to go up there more than once? It was a vacant building and everything was there to be seen. A The building was—(interrupted).

The Court: I don't think this is important, really I don't.

Mr. Schilling: All right.

Q When you made this alleged agreement that you were to get twenty-five hundred dollars, you expected to do all the work in the case, didn't you, prepare it and take care of it? A I expected to do the best I could.

Q Yes. You had an assistant in the case, did you not? A At Mr. Raimondi's request, yes.

Q Yes. A He wanted to get some other lawyer in the case. Finally I suggested Mr. O'Brien's name and said he could hire him, if he wanted to, for assistant.

Q Yes. And did Mr. O'Brien do any work? A Mr. O'Brien was brought to my office and there was introduced to Mr. Raimondi and Mr.

Raimondi agreed to pay him for his services and Mr. Raimondi came there several nights.

Q Who brought Mr. O'Brien to your office?

Mr. O'Brien: I do not see that is material to the case. I have no special objection to it, but I think the services the Judge performed are in issue here.

The Court: It seems so to me.

Q Who brought Mr. O'Brien to your office? A I did.

Q As a matter of fact, you and Mr. O'Brien have offices together, have you not? A We have not.

Q Your names are on the doors and windows. A They are not.

Q (Continuing). Of the offices on Branford Place, are they not, or were at that time.

Q Were they at that time? A Never have been.

Q Do you mean to tell me the name of Ovidio C. Bianchi and Donohue & O'Brien did not appear on the windows of an office on Branford Place opposite—or right near High street—at the time that this trial took place? A You said that it appeared on the doors and windows. I say my name appeared on a window. It has been there long before Donohue and O'Brien ever appeared there and had never been taken off, but it does not appear on their doors on any other place and I have no connection with that office whatsoever.

Q Of course, the work that Mr. O'Brien did for you, you did not have to do again; isn't that so? A We did work separately—separate from one another. He looked up certain questions of law and I did certain other work.

Q What questions of law were involved in this case, Mr. Bianchi? A We prepared so much law that there were eighteen questions carefully prepared from the Law Library covering the questions of law and instructions to the jury, every one of them.

Q I mean, what phase of it? A On one of the particular phases that you just called my attention to as to the financial ability of a man, financial qualifications of a man as to whether there would be a motive in back of whether he would want to set fire to a place.

Q How long would that take? A It was a very big question and took considerable time.

Q What other questions of law were involved? A Questions as to what constituted arson.

Q Did you look up the common law definition of arson? A We looked up every phase of the question of arson.

Q Mr. Bianchi, as a matter of fact, without looking up anything, don't you know there can be no arson except in a building that has been completed and someone is living in it? Don't you know that from your general knowledge of the law? A It happens to be I am not so familiar with the law that I take anything as being general. It took Judge Caffrey almost a day to determine as to whether he would give his opinion as to whether it was or was not arson. Finally, after considering the case a day, he directed a verdict.

Q What other questions of law were involved in this case? A As to how far we could go with the expert witnesses testifying to the damage; the question of what qualifications would be necessary for the fire chief to have in order to

testify, and we had his testimony, as a result of looking up the law, excluded because he could not qualify under certain statutes in our state as to fire experts; questions as to how far the confessions of the brothers could be used as against this man; question as to how far—(interrupted).

Q There was no question about it, was there? A There were questions about that, yes. I never take any questions of law as being settled without looking them up.

Q How many arson cases and burning cases have you had in your experience, Mr. Bianchi?

Mr. O'Brien: I don't know as that is material, criminal experience in criminal courts.

The Court: I do not see that this is a matter of very great importance. I will allow the question.

Q Do you think—

The Court: How many have you had?

The Witness: Actually tried, this is the only arson case I ever tried. I have had other matters involving—I have had a lot of experience in police court work where different people have been arrested and I have looked up questions of law of what constituted arson, but actual trial, this was the only one. I had actual experience with homicide cases, but not arson.

Q How many cases have you had in your criminal experience in which you received a fee of twenty-five hundred dollars?

The Court: I don't think—

A I have received—

The Court: I don't see what that has to do with it, really I don't. This may have been a large case and he may have had smaller ones before that. What we want to find out is the reasonableness of the fee in this case.

Q How much do you charge per day for actual trial work, Mr. Bianchi—or, rather, not that. I withdraw it. What do you think is the reasonable value of an attorney's services in actual trial work per day? A I think that every fee should be charged according to the financial ability of the man to pay and that is the way I charge.

Q In other words— A No other way.

Q —as much as you can get. Is that your criterion? A Not as much as I can get, but what the man can afford to pay and what he agrees to pay and I always fix my price beforehand.

Q So it is not a question of what the services are worth? A I say the services are worth according to what a man can pay and to his financial position and the difficulties he finds himself in.

Mr. Schilling: That is all.

Re-direct examination by Mr. O'Brien.

Q You take into consideration, I suppose, the work that will have to be done in a particular case? A Naturally.

Q Arson cases are not a frequent occurrence, are they, from your experience?

The Court: Apparently not. This was the first one he had.

Mr. O'Brien: I mean, in courts of justice at all.

The Court: That is not important.

Q Was this a hard or an easy case? A The evidence was very, very strong. There were ten tubs, or seven tubs, found filled with gasoline; there were torches; there were holes made in the wall; there were witnesses, six or seven men going back and forth making a lot of preparations and he had made very strong statements—strong statements had been made by his brothers and himself.

Q Was it a hard or easy case to prepare? A Very hard.

Q Is twenty-five hundred dollars a reasonable fee for the services you performed? A I don't think there is any doubt about it.

Re-cross examination by Mr. Schilling.

Q Mr. Bianchi, you told the defendant all about this fact that it was a hard case and he was in a fix and there were seven butter tubs to be accounted for and there was waste paper that was burned and a hole knocked in the floor, didn't you? A I told him that the man who had sold him the invention which he had spread on the floor had told me about it. I told him of what the police knew I had seen, all the evidence, and I told him of the fact that he merely denied it did not make it conclusive that he was innocent, and that he was in a serious fix; of course, I did.

Q You told him he was in a serious fix and all the way through your conversations with him you tried to impress him with the difficulties you were up against in this case? A No doubt about it.

Mr. Schilling: No doubt about it.

Further re-direct examination by Mr. O'Brien.

Q Did you try to—

Mr. Schilling: Wait a minute.

The Court: Now, if you are going to see-saw—finish one before the other one begins, please.

Mr. O'Brien: Peculiar way of ending up, you make a person think you are through.

Re-cross examination by Mr. Schilling.

Q And you told him you had influence with members of the police force, by which you could learn what the story of the State's witnesses was going to be. A I never used the word "influence." I wouldn't be so silly as to use it.

Q Well, you had entree to the witnesses? A I didn't say anything of the kind. I said I had seen the evidence and had gone through it.

Re-direct examination by Mr. O'Brien.

Q Did you ever try to impress upon him the seriousness of his fix in such a way as to put him in fear so as to get a big fee out of him? A You couldn't put that man in fear of anyone.

NICHOLAS LaVECCHIA, sworn for the defendant.

Direct examination by Mr. O'Brien.

Q Mr. LaVecchia, you did not hear the hypothetical question and my additions, so I will have to read it.

The Court: Why not stick to the same one?

Mr. O'Brien: Because it does not cover it fully.

The Court: All right.

Mr. O'Brien: You admit Mr. LaVecchia's qualifications?

The Court: Yes.

Mr. Schilling: Yes.

Q Mr. LaVecchia, assuming that an attorney and counsellor, who has been practicing seventeen or eighteen years, who had had an extensive criminal experience, who had been judge of a police court for five years, was retained by a man to defend him where he was charged with arson and also the crime of burning with intent to defraud insurance companies, and that the man was worth fifty or sixty thousand dollars; he had an earning capacity of ten thousand dollars a year; that there was twenty-eight thousand dollars worth of insurance involved and at issue and that this counsellor represented him in the police court at the pleadings, the time the man pleaded; that he prepared the case and in the preparation he examined the building many times, had photographs taken of it for which he paid; that he got extra testimony and paid the extra testimony;

that he interviewed and subpoenaed about twenty witnesses and he was in court three days at trial and that he obtained an acquittal on the charge of arson and a disagreement on the charge of burning with intent to defraud and that he made preparations for the second trial, have you any opinion as to whether or not twenty-five hundred dollars is a reasonable fee for those services? A I have.

Q What is your opinion? A I think twenty-five thousand—twenty-five hundred dollars is a reasonable fee.

Cross examination by Mr. Schilling.

Q Mr. LaVecchia, did you take into consideration, or, rather, would you say that that was a reasonable fee, in view of the fact that the attorney had an assistant who was an attorney-at-law, and who looked up the question, briefed the questions of law, interviewed the witnesses for him and with him and charged—and rendered a bill for a thousand dollars, would you still say that twenty-five hundred dollars was—

Mr. O'Brien: Just one moment. There is no evidence of that.

Mr. Schilling: I will put you on the stand and ask you if you rendered a bill for a thousand dollars.

Mr. O'Brien: You forgot to include he was retained by the defendant. That is essential.

The Court: Answer the question.

Q Will you still say it is a reasonable fee? A Yes; for the simple reason that I think, if it

were me, I would be responsible, even though I retained an assistant that I would be responsible at the trial.

Q How do you fix the charge, Mr. LaVecchia? A Well, in the first place, an arson case is, I think, one of the most serious crimes, and, naturally, the attorney carries a great responsibility. There is considerable work in preparing a trial of that kind, looking up the law, interviewing witnesses and going into the court prepared to properly defend the accused.

Q Do you know how much time it would take to look up the law in an arson case? A Yes.

The Court: Well, now, that depends on the case.

Mr. O'Brien: I think that is argumentative.

The Court: Why, that is certain.

Q Do you know how long it took to look up the law in this case? A No, I don't, but I have looked the law up in cases.

Q Do you know that in this particular case, as far as the arson charge was concerned, that Mr. Bianchi from an examination of the building saw that it was uncompleted and never had been tenanted?

Mr. O'Brien: I object to that as argumentative.

A I don't know that.

Q Now, in view of the information that the building had never been occupied and was uncompleted, would you say that was any very difficult question of law?

Mr. O'Brien: There is no testimony the building was uncompleted. The building was completed and it had been then left. It was not tenanted.

Mr. Schilling. All right. Have it your way.

Q In view of the fact that the building had never been occupied or tenanted, would you say there was much law involved on the arson charge? A I would, because there is an indictment there and on the mere fact that this man is indicted for arson the attorney assumes that responsibility to go in prepared. There are a great many questions involved in an arson case that an attorney must naturally prepare, witnesses that are going to be confronted and a lot of points that are raised in the trial of an arson case and in the trial of burning to defraud insurance companies.

Q That is true of every case, is it not? A Well—

Q In criminal cases? A No, I wouldn't say—an arson case I regard almost as serious as a murder case.

Q All right. Let me ask you this: You say twenty-five hundred is a reasonable fee. Have you any experience personally on arson cases—had any? A I have had one, I think; two that I have been in.

Q Try them yourself? A Yes; I tried one; another one was nolle prossed.

The Court: Well, is that all?

Q What do you charge per day? A It all depends on the circumstances.

Q What circumstances? A If the party could afford to pay what my services were worth —took that into consideration; took into consideration the time I devote, to the length of the trial, and so forth.

Q And, coming down to the fact of having taken into consideration the time devoted, what do you charge per day for the time devoted? A I have never—in those cases I don't charge—in other words—

Q In other words, Mr. LaVecchia, it is simply an idea of yours that an arson case, if the defendant can afford to pay it, is worth twenty-five hundred.

Mr. O'Brien: I object to that as improper.

A That is not—that is not a fact. A lawyer charges not only for the actual trial work, but for the preparation of the case, because that is almost as important as the trial.

Q At what rate? A That all depends on the circumstance, what work he had to do, how many days in the preparation, his expenses that are required, and interviewing witnesses, and so forth.

Q All right. And having found all that, the number of days, how much do you multiply it by per day to learn what the ultimate fee is going to be?

Mr. O'Brien: If the Court please, I think the witness has testified that he fixes his fee not per day, but by the amount of work involved and does not keep a check of the minutes.

The Court: Let him answer the question.

(Question read as follows: "All right. And having found all that, the number of days, how much do you multiply it by per day to learn what the ultimate fee is going to be?"

A Don't multiply it at all; just figure the amount of days used for the investigation, plus the actual trial work, plus your disbursement and set a fee what I consider it is worth.

Q Mr. LaVecchia, you keep on telling me how many days you figure out it is going to take. How can you tell the fee without knowing how much a day it is going to be? A I don't charge by the day. I am—

Q So your charge of twenty-five hundred dollars is reasonable whether you take two days in the preparation and two days in the trial or ten days in the preparation and ten days in the trial? A No.

Mr. O'Brien: Just a minute. I object to that question. It is just a waste of time.

Mr. Schilling: Don't you know the New Jersey State Bar Association has fixed the average fee for the trial of cases at one hundred dollars a day trial fees?

Mr. O'Brien: Objected to as absolutely immaterial. The cases have held that no statutory fixing of fees have anything to do with an attorney's case.

The Witness: Never heard of it.

Q Never did? A No.

Q Don't you think a hundred dollars a day is a reasonable fee for trial work? A In some cases.

Q Well, what cases? In this case? A Personally, no, I don't. I wouldn't go up there and try a case for one hundred dollars a day.

Q What do you want for a day? What do you think is reasonable?

Mr. O'Brien: That is not the question, what the witness would want. It is what is reasonable.

Mr. Schilling: I asked him.

Mr. O'Brien: It is mere repetition.

A Without being paid—without taking into consideration the preparation of the trial, and so forth, I would say that two hundred dollars a day would be reasonable.

Q All right. What is a reasonable fee per day for preparation of a case? A It all depends on what work is being done.

Q Suppose you spend from ten o'clock or nine o'clock in the morning to four o'clock in the afternoon the whole day—or five—what is the reasonable fee per day for the preparation of a case?

Mr. O'Brien: I am going to object to this line of questions. They are not brought out by any testimony of the witness on direct.

The Court: He has a right to cross examine, if he so desires, along these lines, but I will tell you frankly I am not very much interested.

Mr. Schilling: There is no use of going into it is you are not interested.

The Court: Mr. LaVecchia has said, after listening to a question, hypothetical question, that if that work was done, in his opinion, it would be worth twenty-five hundred dollars.

Mr. Schilling: Yes.

The Court: Now, that is about all we want, it seems to me.

Mr. Schilling: Except the basis for arriving at it.

The Court: Well, he has tried to explain it to you what his basis is.

Q Just this one question: What do you figure per day a reasonable charge for briefing questions of law, looking up questions of law and interviewing witnesses in this case, what is a reasonable fee? A Well, I suppose, around a hundred and fifty dollars a day, two hundred dollars a day.

Mr. Schilling: That is all.

The Witness: It all depends on what work is done, what assistance you have and everything else.

Mr. O'Brien: Mr. McDermit.

JAMES McDERMIT, sworn for the defendant.

Direct examination by Mr. O'Brien.

Q You have been practicing in criminal trial courts for about thirty years; is that correct? A Yes, sir.

Mr. O'Brien: I suppose you admit the qualifications.

The Court: Mr. McDermit is a well known lawyer.

Q You heard the hypothetical question put to Mr. LaVecchia, did you not, Mr. McDermit? A Yes, sir.

Q Assuming that question were repeated to you, have you any opinion as to whether or not twenty-five hundred dollars is a reasonable fee for those services? A I would say that twenty-five hundred is a reasonable fee.

Q Mr. McDermit, were you at the Common Pleas Court at the time of the case between Judge Bianchi and Raimondi? A Well, I was in and out a couple of times.

Q Do you remember whether or not you were offered as a witness by the plaintiff in that case?

Mr. Schilling: I object. The record speaks for itself.

Mr. O'Brien: Have you a record there?

Mr. Schilling: Yes, introduce the record in evidence.

Mr. O'Brien: Is it admitted on the record that—

The Court: What is the object of this?

Mr. O'Brien: The point is, we offered at that time to prove the fairness and reasonableness of the contract and Mr. Simandl on behalf of Raimondi objected and the Court excluded it. We now say, because they prevented us from proving it there, they are estopped from coming in the Court of Chancery and saying, "You didn't prove the fairness and reasonableness there."

The Court: That is a matter of argument.

Mr. O'Brien: It is admitted on the record we offered that there.

(Question read as follows: "All right. And having found all that, the number of days, how much do you multiply it by per day to learn what the ultimate fee is going to be?"

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The Court: Mr. McDermit is a well known lawyer.

Q You heard the hypothetical question put to Mr. LaVecchia, did you not, Mr. McDermit? A Yes, sir.

Q Assuming that question were repeated to you, have you any opinion as to whether or not twenty-five hundred dollars is a reasonable fee for those services? A I would say that twenty-five hundred is a reasonable fee.

Q Mr. McDermit, were you at the Common Pleas Court at the time of the case between Judge Bianchi and Raimondi? A Well, I was in and out a couple of times.

Q Do you remember whether or not you were offered as a witness by the plaintiff in that case?

Mr. Schilling: I object. The record speaks for itself.

Mr. O'Brien: Have you a record there?

Mr. Schilling: Yes, introduce the record in evidence.

Mr. O'Brien: Is it admitted on the record that—

The Court: What is the object of this?

Mr. O'Brien: The point is, we offered at that time to prove the fairness and reasonableness of the contract and Mr. Simandl on behalf of Raimondi objected and the Court excluded it. We now say, because they prevented us from proving it there, they are estopped from coming in the Court of Chancery and saying, "You didn't prove the fairness and reasonableness there."

The Court: That is a matter of argument.

Mr. O'Brien: It is admitted on the record we offered that there.

Mr. Schilling: Oh, no. I would say not. If you are going to put it on the record, you will put the whole record in, not one item.

Mr. O'Brien: Then I have a right to ask this witness whether he was offered as a witness.

The Court: I will sustain the objection.

Cross examination by Mr. Schilling.

Q Mr. McDermit, how do you determine twenty-five hundred dollars is a reasonable fee on the question that is asked you? A Why, upon the charge itself, the charge of arson and an attempt to defraud the insurance company, the mere fact of an indictment of that character would be sufficient for me to say that twenty-five hundred dollars would be a proper fee in a case of that kind.

Q The very fact the man is charged with arson? A Yes.

Q Regardless of what time and effort it took to prepare for the trial? A Yes, sir; during the experience that I have had in the matter.

Mr. Schilling: That is all.

HOMER SMITH, sworn for defendant.

Direct examination by Mr. O'Brien.

Q You have had experience in arson cases, Mr. Smith? A Yes, sir; I have.

Mr. O'Brien: I suppose you admit the witness' qualifications?

The Court: Yes.

Q Mr. Smith, assuming that an attorney and counsellor had been practicing seventeen or eighteen years, who had an extensive experience in criminal practice, who had been a police judge for five years, was retained to defend a man charged with the crime of arson and the charge of burning with intent to defraud insurance companies, that the man so charged was worth between fifty or sixty thousand dollars, had an earning capacity of ten thousand dollars a year, that there were twenty-eight thousand dollars of insurance involved and in the balance, and that he represented that man in the police court at the time the man pleaded and that he prepared the case and that in the preparation of the case he examined the building many times, had photographs taken from time to time, expert witnesses to testify to the value, that he interviewed and subpoenaed about twenty witnesses and that he spent three days at the trial, one day waiting for the trial and two days in actual trial, and was there until eleven o'clock at night waiting for the verdict, that he obtained an acquittal on the charge of arson and a disagreement from the jury on the charge of burning with intent to defraud and that he prepared for the second trial, have you any opinion as to whether or not twenty-five hundred dollars is a reasonable fee for those services? A I think it is.

Q What is your opinion? A I think it is a reasonable fee.

Cross examination by Mr. Schilling.

Q How do you arrive at it? A Take into consideration the man's finances, his earning capacity, the charges, if found guilty he will be

deprived of his liberty, and earning capacity as, I believe, he has for two and a half years; further that there is involved a matter of twenty-eight thousand, I think, of insurance, and twenty-five thousand—twenty-five hundred would be less than ten per cent. of the insurance involved, because the conviction alone would dispose of the insurance claims; if you are collecting insurance alone you would be entitled to at least fifteen per cent. for your fee and the criminal charge would dispose of that, because the counsel who tries the criminal case would have in mind all the time the responsibility to the insurance company on the insurance.

Q You have never tried an arson case, have you? A I have prepared one and was retained in one that was not brought. It was all prepared for trial and the state did not move the case.

Mr. Schilling: That is all.

Mr. O'Brien: That is all.

The Court: Is that the case?

Mr. O'Brien: That is our case.

The Court: Well, I suppose you better file memorandums. I have not read the papers but I understand the contract is admitted, but the statement is made that it was fraudulently gotten; it that it?

Mr. Schilling: It is *prima facie* fraudulent, under the cases. I would like to read them to you.

The Court: You can put that in a brief and send it to me.

Exhibit D. 1.

EXHIBIT D. 1.

THIS is to authorize Wolber & Gilhooly, attorneys for Anthony Molinaro or the said Anthony Molinaro to pay to Ovidio C. Bianchi, Esq., purchase price for conveyance of property known as Nos. 417-419-421 Bloomfield Avenue, Newark, New Jersey, as attorney for me, it being understood that I have executed a deed for the above mentioned property which is being held by the said Ovidio C. Bianchi and to be turned over to Anthony Molinaro or Wolber & Gilhooly as attorneys upon payment of the purchase price and apportionments in connection therewith. It is understood that a certain mortgage held by the Second National Bank of Orange, New Jersey, which is being foreclosed is to be paid off, together with costs incurred and that as soon as title questions are cleared up the said Ovidio C. Bianchi is to turn over to Wolber and Gilhooly deed dated Oct. 1, 1925 which I have this day, executed together with my wife to Anthony Molinaro and Rosina Molinaro, his wife, covering the above described premises.

ALLEN RAIMONDI (L. S.)

Signed, sealed and delivered in
the presence of

C. HUBERT DERIVAUX.
O. C. BIANCHI.

Opinion of Vice-Chancellor.

OPINION OF VICE-CHANCELLOR.

Filed February 14, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
AMIELLO RAIMONDI, *Complainant,*	*On Bill, Etc.*
and	*Opinion.*
OVIDIO C. BIANCHI, *Defendant.*	

Edward A. Schilling, for complainant.
Donohue & O'Brien, for defendant.

CHURCH, *V.-C.*

The defendant, Bianchi, obtained a judgment for $2,200 against the complainant in the Essex County Court of Common Pleas, which represented a balance claimed to be due him on a counsel fee, under an express contract, which was denied by complainant.

A bill was filed in this court to restrain the sheriff from collecting the judgment. Application was made for a preliminary restraint and a motion was made to strike out the bill. The matters were heard before Vice-Chancellor Berry, who continued the restraint until final hearing and denied the motion to strike out the bill.

The learned Vice-Chancellor says in his opinion reported in 134 Atlantic 866: "Agreements between attorney and client because of the confidential relation are always subject to the scrutiny of a Court of Equity . . . An attorney-at-law is a *quasi* public officer. He is, in fact, an

officer of the court and a part of the machinery of the law, and as such is charged with the duty of assisting in its administration. Like Caesar's wife he should be above suspicion. Too often the accusing finger is pointed at members of the Bar without just cause. Because of these facts, and in view of the legal profession as a class both courts and lawyers should welcome an inquiry into the fairness of transactions between attorney and client and courts should never hesitate to condemn where the conduct of the attorney has been unconscionable. In no other way can the high reputation of the legal profession, of which its members are justly proud be maintained."

The right to consider the reasonableness of this fee is therefore *res adjudicata,* as far as this Court is concerned.

The defendant contends that it has not been established that any fraud was practiced by the attorney upon the client. This, it seems to me, it not the ground upon which our courts have considered and decided such cases. It is not necessary to show actual fraud. On the broad ground of public policy, the Court because of the fiduciary relation existing between attorney and client, will consider the reasonableness of the fee and the circumstances surrounding the making of the agreement regarding it; and the burden of proof is on the attorney to show the absolute reasonableness of the charge.

In *Dunn* v. *Dunn,* 42 Equity, 341, age page 437, the Court says: In *Condit* v. *Blackwell,* 7 C. E. Gr. 481-485, the Court said: "This fiduciary relation then existing between these parties, the validity of this transaction must be determined by rules of law which are not applicable to ordinary cases. The confidence which the relation of attorney and client begets between the parties and the influence which the attorney thereby acquires, has led to a very close scrutiny of all transactions between them and the law then often interposes to set aside contracts, which, between other parties would be subject to no exception. In such case, the burden of establishing the perfect fairness, adequacy and equity of the negotiation is thrown upon the attorney and in the absence of proof, courts of equity treat the case as one of constructive fraud."

"The transaction must be characterized by the utmost good faith. There must be no misrepresentation and an entire absence of concealment or suppression of any fact within the knowledge of the agent which might influence the principal and the burden of establishing the perfect fairness of the contract is on the agent.

"As I have said above, it is not on the ground of actual fraud that courts interfere, but merely because of the fiduciary relation that is shown to have existed and it not being made to appear that the transaction, whether a gift or contract was perfectly fair and just.

"Weeks, in his work on Attorneys-at-Law says, 'The rule is on the ground of public policy, not a fraud, and prevails though the attorney may be innocent of any intention to deceive and act in good faith.'

"Such is the rule in these cases, than which no principal is more universally approved. I must follow it. I think that an application of the undisputed facts to this text sustains the complainant's bill. Mr. Holt in his answer says that the transaction was fair, just, honorable and

the like. The above-stated rule of law admits that all this may be, and yet the party asking relief at the hands of a court of equity obtains it, a transaction that would not be questioned, in which one of the parties is not a solicitor is often set aside when one of them is such solicitor."

In *Kelly* v. *Schwinghammer,* 78 Eq., Vice-Chancellor Leaming, in considering whether actual fraud must be shown, says: "In this court, it has been expressly determined that where, pending the relation of attorney and client, a bond or other security is given by the client to his attorney as compensation for his services, the transaction will be regarded as constructively fraudulent, in consequence of the confidential relation subsisting, and the means of undue influence which the attorney may exert over his client. In such case the burden is thrown on the attorney of showing its fairness, adequacy and propriety."

Chief Justice Beasley, in *Schamp* v. *Schenck,* 40 N. J. L. 195 (page 200) where a contract for fees was being considered said: "Such contracts will be inspected with jealous vigilance by the courts, on account of the delicacy of the relationship of the parties to them; and the most transparent candor and good faith is required on the part of the attorney in these dealings with his client and on such occasions, a court of equity is ever on the alert."

In *Lynde* v. *Lynde,* 64 N. J. Eq. page 736, the Court says "the burden would rest upon the attorney to show that the bargain was a fair one for the client."

In *Crocheron* v. *Savage,* 75 Eq. 589, it is held: "It is not necessary to find that the attorney was guilty of intentional wrongdoing. The reason that he did not disclose the material facts upon which we have commented is not important. The fact that he did not disclose them is sufficient. The law looks on transactions of this kind between an attorney and his client with suspicion and will not permit a conveyance to the attorney to stand unless the attorney demonstrates the entire good faith of the transaction. It requires him to be absolutely frank and open with his client to disclose every fact of which he had knowledge as well as any professional opinion he may have formed which could in any way affect the client in determining whether or not to make the conveyance."

Complainant was indicted on two counts, one for arson and one for burning with intent to defraud insurance companies. Bianchi says he told complainant that the charges were serious and that he would defend him for the sum of $2,500. At the trial, the arson charge was dismissed on the ground that the building was uninhabited. The jury disagreed as to the other charge. It also appears that in addition an associate counsel was employed, who was to receive $500. It is contended that complainant agreed to all this. Perhaps this is so as complainant felt himself to be in a serious predicament and might have been willing to promise anything to escape conviction. But in *Porter* v. *Bergen,* 54 N. J. Equity, 407, the Court of Errors and Appeals said, "Even if it be conceded that the complainant agreed to the charge, yet a court of equity would not sanction it except upon proof of its perfect fairness."

After the first trial Bianchi was discharged and a second trial was had at which Wilbur A. Mott represented complainant. Mr. Mott, more-

over, has an experience of twenty years in criminal matters, and has been Assistant Prosecutor and Prosecutor of the Pleas. He was paid $750 for his services and testified that an amount not to exceed $1,000 would be reasonable for all services. Victor D'Aloia who tried the case for the State testified that the defense interposed was a simple and ordinary one and that $1,000 would be sufficient. Andrew Van Blarcom, a former Assistant Prosecutor, agreed substantially with these figures.

There was testimony, of course, that Bianchi's charge was reasonable. I believe, however, that the testimony of the witnesses I have mentioned, two of them engaged in the actual trial of this very case, is entitled to the greatest weight. While I concede that "the laborer is worthy of his hire" I think it is the duty of this Court to see that attorneys take from their clients only what their services are fairly and reasonably worth. I think, considering the character of the services and the testimony as to them that $2,500 plus $500 for an assistant is entirely too high.

I think that Mr. Bianchi should receive $1,200 less $300 already paid with no allowance for his associate. If he declines to accept this, I will advise a decree restraining the sheriff from proceeding to collect the judgment.

FINAL DECREE.

Filed August 19, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
AMIELLO RAIMONDI, *Complainant,*	*On Bill, Etc.*
and	*Final Decree.*
OVIDIO C. BIANCHI, *Defendant.*	

This cause coming on to be heard in the presence of E. A. & W. A. Schilling, of counsel with the complainant, and Donohue & O'Brien, solicitors of defendant, and the Court having read the pleadings and having taken proofs in open court, and having heard the argument of counsel thereon, and thereupon it appearing to the Court that the defendant, Ovidio C. Bianchi, on April 19, 1926, recovered a judgment against the complainant, Amiello Raimondi, in the Essex County Court of Common Pleas for $2,200, the balance claimed to be due upon an alleged contract of $2,500 made between said parties for legal services to be performed by the said Ovidio C. Bianchi for the complainant herein; and it further appearing that at the time of the making of said alleged contract the relationship of attorney and client already existed between defendant and complainant, and it further appearing that the reasonableness and fairness of the alleged contract was not passed upon at the trial which resulted in said judgment; and it further appearing that the sum of $500 was charged by James F. X.

O'Brien, associate counsel who assisted the defendant herein in the performance of said alleged contract; and it further appearing that the charge of $2,500 plus $500 for an assistant is unreasonable and too high; and that a charge of $1,200 less $300 already paid with no allowance for defendant's associate is a fair and proper charge or fee:

It Is Thereupon, on this 19th day of August, A. D. 1927, Ordered, Adjudged and Decreed, that the said defendant, Ovidio C. Bianchi, accept the sum of $900 in satisfaction of his judgment of $2,200 against the complainant in the Essex Couny Court of Common Pleas, and in satisfaction of the fee and charge of his associate, James F. X. O'Brien.

And It Is Further Ordered, that the defendant, Ovidio C. Bianchi, within five days from the service upon him of a copy of this decree, file with the clerk of this court, his consent in writing to accept said sum of $900 in satisfaction of said judgment and in satisfaction of the fee and charge of his associate, James F. X. O'Brien, and that in default of the filing of said consent, he be perpetually restrained and enjoined from taking and proceeding to enforce or collect his said judgment against the complainant, or from selling, assigning or transferring the same to any other person.

E. R. WALKER,
C.

Respectfully advised,

Alonzo Church,
V.-C.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between Amiello Raimondi, *Complainant,* *and* Ovidio C. Bianchi, *Defendant.*	*On Bill, Etc.* *Notice of Appeal.*

The defendant, Ovidio C. Bianchi, hereby appeals from the final decere made by his Honor Edwin Robert Walker, Chancellor, on the advice of Honorabel Alonzo Church, Vice-Chancellor, in the above-entitled cause on August 19th, 1927, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes.

Dated, August 19, 1927.

DONOHUE & O'BRIEN,
Solicitors for and of Counsel with Defendant.

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

JAMES F. X O'BRIEN,
Of counsel with Defendant.

Service of the within Notice of Appeal is hereby acknowledged this 19th day of August, 1927.

EDWARD A. SCHILLING,
Solicitor of Complainant.

PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

AMIELLO RAIMONDI, *Complainant-Appellee,* *vs.* OVIDIO C. BIANCHI, *Defendant-Appellant.*	*On Appeal from the Court of Chancery.* *Petition of Appeal.*

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes.

The petition of Ovidio C. Bianchi, the appellant in the above-entitled cause, respectfully shows that petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date August 19, 1927, in a certain cause in said Court of Chancery, wherein the said Amiello Raimondi was complainant, and the said Ovidio C. Bianchi was defendant, in this respect, to wit:

That the said decree adjudges that the reasonableness and fairness of the contract between complainant and defendant was not passed upon at the trial in the courts of law which resulted in a judgment by the said Bianchi against the said Raimondi.

And that the said decree adjudges that the defendant's charge for legal services rendered to the complainant of $2,500 was unreasonable.

And in that the said decree adjudges that a charge of $1,200, less $300 already paid, was a reasonable and fair charge.

And in that the said decree orders the defendant, Bianchi, to accept $900 in satisfaction of his judgment of $2,200 and costs as well as in satisfaction of a certain judgment obtained by an associate counsel of the defendant for $500 and costs.

And in that the said decree adjudges that unless the defendant file his consent to accept $900 in satisfaction of the two judgments above mentioned, then, and in that event, he is perpetually restrained from taking proceedings to enforce collection of his said judgment and from selling, assigning or transferring it.

And the petitioner appeals from the decree of the Chancellor which decrees as aforesaid on the ground that the same is erroneous in that the Chancellor should have dismissed the Bill of Complaint against the defendant, and rendered a decree denying the relief sought in said Bill of Complaint for the following reasons:

1. The finding that the charge made by the defendant for legal services rendered to the complainant was unreasonable and fraudulent is contrary to the weight of evidence.

2. The finding, that $1,200 constituted a reasonable fee for the services and disbursement incident to the legal services rendered by defendant for complainant, was contrary to the weight of evidence.

3. The Chancellor erred in decreeing that the defendant should accept $900 for his judgment at law of $2,200 and costs and in satisfaction of a judgment obtained by his associate, who was not a party to this suit.

4. The Chancellor erred in denying defendant's motion to dismiss the Bill of Complaint on

the ground that it did not set forth equitable grounds for relief in the Court of Chancery.

5. The Chancellor erred in granting an injunction against the enforcement of a judgment obtained at law where there was no proof that the judgment was obtained by fraud.

6. The Chancellor erred in holding that the complainant was entitled to seek relief in the court of equity on the ground that the agreement between the defendant and complainant was either actually or constructively fraudulent because said grounds could have and should have been utilized by the complainant when sued by the defendant in the courts of law, in which defendant herein obtained judgment against the complainant herein, and which defenses were available to complainant herein in the suit at law.

7. The Chancellor erred in not holding that the complainant was not estopped to deny that the reasonableness and fairness of the agreement was not established in the court of law because of the complainant's objection to defendant's so establishing it, when defendant herein sued complainant herein in the courts of law.

8. The Chancellor erred in excluding, on complainant's objection, testimony of witness, James McDermit, that he was ready to testify, in the court of law when defendant obtained a judgment against the complainant, to the reasonableness and fairness of the contract between complainant and defendant and that he was prevented from so testifying by the court at law upon objection by Raimondi's counsel, which testimony and proffer thereof is as follows:

"Q Mr. McDermit, were you at the Common Pleas Court at the time of the case between

Judge Bianchi and Raimondi? A Well, I was in and out a couple of times.

Q Do you remember whether or not you were offered as a witness by the plaintiff in that case?

Mr. Schilling: I object. The record speaks for itself.

Mr. O'Brien: Is it admitted on the record

Mr. Schilling: Yes, introduce the record in evidence.

Mr.O'Brien: Is it admitted on the record that—

The Court: What is the object of this?

Mr. O'Brien: The point is, we offered at that time to prove the fairness and reasonableness of the contract and Mr. Simandl on behalf of Raimondi objected and the Court excluded it. We now say, because they prevented us from proving it there, they are estopped from coming in the Court of Chancery and saying, 'You didn't prove the fairness and reasonableness there.'

The Court: That is a matter of argument.

Mr. O'Brien: It is admitted on the record we offered that there.

Mr. Schilling: Oh, no. I would say not. If you are going to put it on the record, you will put the whole record in, not one item.

Mr. O'Brien: Then I have a right to ask this witness whether he was offered as a witness.

The Court: I will sustain the objection."

9. The Chancellor erred in failing to deny complainant relief on the ground that complainant did not come into the court of equity with

clean hands, in that he was guilty of fraud in obtaining a $3,400 check which he had given to defendant as security under the contract between him and defendant.

10. The Chancellor erred in holding on final hearing that the right to consider the reasonableness of the fee was *res adjudicata* because of a denial of a former motion to dismiss the Bill as not setting forth grounds for equitable relief.

11. The Chancellor erred in holding that it was not necessary to prove fraud in order to be entitled to an injunction against the enforcement of a judgment at law, where the judgment was based upon a contract between an attorney and client.

12. The Chancellor erred in not holding that the complainant was guilty of laches by reason of his failure to seek relief in equity before six months after judgment was obtained in the courts of law.

Petitioner, therefore, prays that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

DONOHUE & O'BRIEN,
Solicitors for Appellant.

JAMES F. X. O'BRIEN,
Of Counsel with Appellant.

Service of the within Petition of Appeal is hereby acknowledged this 19th day of August, 1927.

EDWARD A. SCHILLING,
Solicitor of Complainant-Appellee.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between AMIELLO RAIMONDI, *Complainant-Respondent,* *and* OVIDIO C. BIANCHI, *Defendant-Appellant.*	*On Appeal from Court of Chancery.* *Answer to Petition of Appeal.*

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that a decree was on the nineteenth day of August, last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as is therein stated, but as to substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

E. A. & W. A. SCHILLING,
Solicitors and of Counsel with Respondent.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

AMIELLO RAIMONDI,
Complainant-Appellee,

and

OVIDIO C. BIANCHI,
Defendant-Appellant.

On Appeal from the Court of Chancery.

BRIEF OF DEFENDANT-APPELLANT.

Statement of Facts.

This case comes before the Court on an appeal from a decree made by the Chancellor of New Jersey upon the advice of Honorable Alonzo Church, Vice-Chancellor, in which the defendant-appellant was ordered to accept the sum of nine hundred ($900) dollars in satisfaction of a judgment of $2,200 obtained by him in the Essex County Court of Common Pleas, and also in satisfaction of the fee or charge of his associate in the trial of the criminal case in which the present complainant-appellee was represented and defended by the defendant-appellant.

The complainant-appellee was indicted by the grand jury of Essex County and charged with arson and burning with intent to defraud insurance carriers, and in connection with his defense of these criminal charges retained the defendant-appellant herein who represented him at the trial upon the indictment and obtained for him an acquittal on the charge of arson and a disagreement of the jury upon the charge of burning with intent to defraud.

The complainant had paid the defendant $300 on account of an agreed fee of $2,500 for this defense, which fee was to include disbursements and expenses. Upon refusal of the complainant herein to pay the balance due upon the agreed fee, the defendant instituted suit against Raimondi in the Essex County Court of Common Pleas and obtained a judgment for the balance of $2,200 on April 20, 1926, when the case was tried before the Honorable Dallas Flanagan and a jury. A rule to show cause was obtained by Raimondi and argued on July 1, 1926, when it was discharged. Defendant thereupon issued execution on the judgment, and on October 21, 1926, the complainant filed a bill in Chancery for relief against this judgment at law, and the Court of Chancery granted to complainant the relief sought in said bill. Final hearing was had on January 26, 1927, before his Honor Alonzo Church and after briefs were filed by the solicitors for both complainant and defendant, a memorandum was filed by Vice-Chancellor Church on Ferbuary 14, 1927, and a decree made by the Chancellor pursuant thereto on August 19, 1927. From this decree defendant now appeals.

GROUNDS OF APPEAL.

The defendant-appellant appeals from the whole and every part of the said decree on the ground that it is erroneous in that:

1. The finding that the charge made by the defendant for legal services rendered to the complainant was unreasonable and fraudulent is contrary to the weight of evidence.

2. The finding, that $1,200 constituted a reasonable fee for the services and disbursement incident to the legal services rendered by defendant for complainant, was contrary to the weight of evidence.

3. The Chancellor erred in decreeing that the defendant should accept $900 for his judgment at law of $2,200 and costs and in satisfaction of a judgment obtained by his associate, who was not a party to this suit.

4. The Chancellor erred in denying defendant's motion to dismiss the Bill of Complaint on the ground that it did not set forth equitable grounds for relief in the Court of Chancery.

5. The Chancellor erred in granting an injunction against the enforcement of a judgment obtained at law where there was no proof that the judgment was obtained by fraud.

6. The Chancellor erred in holding that the complainant was entitled to seek relief in the court of equity on the ground that the agreement between the defendant and complainant was either actually or constructively fraudulent because said grounds could have and should have been utilized by the complainant when sued by the defendant in the courts of law, in which defendant herein obtained judgment against the complainant herein, and which defenses were available to complainant herein in the suit at law.

7. The Chancellor erred in not holding that the complainant was not estopped to deny that the reasonableness and fairness of the agreement was not established in the court of law because of the complainant's objection to defendant's so establishing it, when defendant herein sued complainant herein in the courts of law.

8. The Chancellor erred in excluding, on complainant's objection, testimony of witness, James McDermit, that he was ready to testify, in the court of law when defendant obtained a judgment against the complainant, to the reasonableness and fairness of the contract between complainant and defendant and that he was prevented from so testifying by the court at law upon objection by Raimondi's counsel, which testimony and proffer thereof is as follows:

"Q Mr. McDermit, were you at the Common Pleas Court at the time of the case between Judge Bianchi and Raimondi? A Well, I was in and out a couple of times.

Q Do you remember whether or not you were offered as a witness by the plaintiff in that case?

Mr. Schilling: I object. The record speaks for itself.

Mr. O'Brien: Is it admitted on the record?

Mr. Schilling: Yes, introduce the record in evidence.

Mr. O'Brien: Is it admitted on the record that—

The Court: What is the object of this?

Mr. O'Brien: The point is, we offered at that time to prove the fairness and reasonableness of the contract and Mr. Simandl on behalf of Raimondi objected and the court excluded it. We now say, because they prevented us from proving it there, they are estopped from coming in the Court of Chancery and saying, 'You didn't prove the fairness and reasonableness there.'

The Court: That is a matter of argument.

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Mr. O'Brien: Then I have a right to ask this witness whether he was offered as a witness.

The Court: I will sustain the objection."

9. The Chancellor erred in failing to deny complainant relief on the ground that complainant did not come into the court of equity with clean hands, in that he was guilty of fraud in obtaining a $3,400 check which he had given to defendant as security

under the contract between him and defendant.

10. The Chancellor erred in holding on final hearing that the right to consider the reasonableness of the fee was *res adjudicata* because of a denial of a former motion to dismiss the Bill as not setting forth grounds for equitable relief.

11. The Chancellor erred in holding that it was not necessary to prove fraud in order to be entitled to an injunction against the enforcement of a judgment at law, where the judgment was based upon a contract between an attorney and client.

12. The Chancellor erred in not holding that the complainant was guilty of laches by reason of his failure to seek relief in equity before six months after judgment was obtained in the courts of laws.

ARGUMENT ON LAW AND FACTS.

POINT I. The complainant has not shown actual fraud which is necessary to obtain equitable relief against a judgment at law.

The learned Vice-Chancellor, before whom hearing was had, held, as set forth in his memorandum (State of the Case, p. 78, l. 19) that:

> "The right to consider the reasonableness of the fee in question is *res adjudicata* so far as this court is concerned."

The reason for his so holding was evidently that a motion made before the Honorable Maja Leon Berry, Vice-Chancellor, to dismiss the bill in this case was denied on the ground that agreements between attorneys and clients are subject to the scrutiny of the Court of Chancery at all times. Inasmuch as the opinion of the Honorable Alonzo Church quotes the memorandum of Vice-Chancellor Berry, we deem it advisable to call the Court's attention to the fact that Vice-

Chancellor Berry in his conclusions stated as follows:

> "The complainant here (the defendant in action at law) offered to prove at the trial that the services rendered by the defendant were not of the value of the amount claimed, but was not permitted to do so because the complaint was founded on an express contract." (State of the Case, p. 16, l. 38) * * * "Where a client has not had an apportunity in a court of law to test the reasonableness or fairness of his attorney's charges, he will not be precluded here even after judgment obtained." (S. C., p. 17, l. 37).

An examination of the bill of complaint (State of the Case, p. 1 to p. 9) discloses that Vice-Chancellor Berry was in error in believing that any such allegation was contained therein. The reason for his denial of the motion to dismiss the complaint was evidently founded upon a mistake of fact rather than any mistake of law. Appellant contends that this does not excuse in any degree the holding of the Vice-Chancellor before whom hearing was had and that it was his duty to determine whether or not the bill of complainant alleged grounds for relief in chancery and whether or not the proof in the case sustained the allegations of the bill.

In his memorandum (State of the Case, p. 78, l. 22) Vice-Chancellor Church said:

> "The defendant contends that it has not been established that any fraud was practiced by the attorney upon the client. This, it seems to me is not the ground upon which our courts have considered and decided such cases. It is not necessary to show actual fraud."

It is contended in behalf of the defendant-appellant that the holding of the Vice-Chancellor in this respect is erroneous in as much as in the

case at bar a judgment had been obtained in the courts of law, and that any relief to be sought in the Court of Chancery must be sought as against a judgment and not in the nature of a Bill to establish a fair fee between attorney and client. When judgment was obtained upon the agreement for a fee between complainant and defendant, the cause of action lost its identity and was merged in the judgment so that the Court of Chancery was bound to and should have looked at the judgment alone.

In the case of *Coles* v. *McKenna,* 80 New Jersey Law 48, 76 Atlantic 344, Justice Swayze said:

> "The cause of action merged in the judgment, and in the case of a joint debt, whatever extinguishes or merges the debt as to one merges it as to all. * * * Hence the legal maxim, 'transit in rem judicatum'—the cause of action is changed into a matter of record which is of a higher nature and the inferior remedy is merged in the higher."

In the memorandum filed by him (State of the Case, p. 78 to p. 81) the learned Vice-Chancellor cited the following cases to support his inquiry into the reasonableness of the fee for which the defendant obtained judgment at law.

Dunn v. *Dunn,* 42 N. J. E. 431;
Kelly v. *Schwinghammer,* 78 Equity 437;
Schomp v. *Schenck,* 40 Law 195;
Lynde v. *Lynde,* 64 Equity 736;
Crocheron v. *Savage,* 75 Equity 589; and
Porter v. *Bergen,* 54 Equity 406.

Not one of the above cited cases presents a state of facts similar to the one at bar. In none of those cases where relief in Chancery was given on the theory that equity will inquire into the reasonableness of an attorney's feet had a judgment been obtained in the courts of law, and it is contended that where such judgment is ob-

tained as in the case at bar, the Court of Chancery is then limited to determining whether or not the judgment was obtained by actual fraud, and if there is no proof of actual fraud, the Court of Chancery can not interfere.

One of the best-considered cases in the State is *Dringer* v. *Receiver of Erie Ry.*, 42 N. J. E. 573, 8 Atl. 811, affirmed by the Court of Errors and Appeals, 43 N. J. E. 701, 13 Atl. 664.

In that case, in Syllabus 3 and 4, prepared by *V.-C.* Van Fleet, the Court said:

> "3. The only remedies to which an injured party can resort for the redress of wrongs done, or for the correction of errors committed in the trial of a cause, are such as are afforded by a direct appellate proceeding, either in the court of original judisdiction, or in the proper court of review."
>
> "4. In order to justify a court of equity in annulling a judgment or decree, on the ground of fraud, it must be made clearly to appear that the judgment or decree has no other foundation than the fraud charged, and that, if there had been no fraud, there would have been no judgment or decree."

In the Court's opinion, *V.-C.* Van Fleet, speaking of the case, said:

> "He is charged with both corruption and forgery. Now, while I think it would be difficult to imagine anything more detestable in the way of fraudulent conduct, or more dangerous to the safe administration of justice, than the fraud here charged, still I also think it must be admitted that this court is powerless to do anything by way of correction, punishment, or redress of such fraud in this case, unless it is clearly shown that the decree assailed is the product of such fraud, and has no other foundation. *A court of equity may unquestionably annul a judgment or decree which has been obtained by fraud; but, in order to justify such*

> *an exercise of power, it must be made clearly to appear that the judgment or decree has no other foundation than fraud.* In other words, it must be made to appear that, if there had been no fraud, there would have been no judgment or decree. An attempt to exercise a wider or more liberal jurisdiction in cases of this class would, it will be perceived, necessarily enlarge the jurisdiction of courts of equity so as to make them practically courts for the review of the judicial acts of other tribunals, and not tribunals with just sufficient power to redress frauds by undoing what fraud has done. In suits of this kind the court cannot give relief in a doubtful case. In the language of Chief Justice Marshal, 'the equity of a complainant,' to entitle him to relief in such a case, 'must be free from doubt.'"

In the case of *Boulten* v. *Scott,* 3 N. J. E. 231, the Chancellor said:

> "Although a judgment may not be entirely just or equitable, yet unless it be injected with fraud, the consideration or propriety of the judgment cannot be enquired into, and such is the opinion of the court in French et al. *v.* Shotwell, 6 John Chancery Report 235." (New York case.)

In the case of *Kinney* v. *Ogden,* 3 N. J. E. 168, the Chancellor said:

> "Chancery will not relieve against a judgment at law, on the ground of its being contrary to equity, unless the defendant in the judgment was ignorant of the fact in question pending the suit, or it could not have been received as a defense, or unless he was prevented from availing himself of the defense by fraud or accident, or the act of the opposite party, unmixed with negligence or fraud on his part."

In the case of *Mechanic's National Bank* v. *Burnet,* 33 N. J. E. 486, the Court said:

> "But in cases where the grievance he attempts to urge is one that the court which

pronounced the judgment is competent to hear and decide, and he has either urged it there unsuccessfully, or has negligently omitted to do so, this court can give no relief."

In the case of *Doughty* v. *Doughty,* 27 N. J. E. 315, the Court said:

"It is clear that it is competent for this court, upon an allegation that a judgment is founded on fraud, to inquire whether the cause of action spread upon the record is wholly fictitious and groundless, and also whether the plaintiff fraudulently withheld from the court pronouncing it, any fact, which, if disclosed, would have shown he had no cause of action; but it is equally clear, where the merits of the case have been fairly submitted to the original tribunal, even on an ex parte hearing, the court will not, upon an allegation of fraud, enter upon a retrial of the merits, and weigh, adjust and reconcile evidence to see whether or not, in its opinion the original tribunal pronounced a correct judgment. The proof in demonstration of the fraud must be so clear and strong as to render it certain the plaintiff knew, at the time he brought the suit, he had no right of action, and was without expectation of obtaining a judgment unless he was successful in depriving the defendant of an opportunity of making defense."

It may be seen from these cases that there must be proof that the judgment was based and founded upon fraud in order to obtain relief in equity. It is important to note that the cases require that the fraud exist in the obtaining of the judgment and that it be a fraud upon the court which rendered the judgment. An examination of the transcript of testimony in the case at bar will show that the complainant made no attempt to prove fraud in obtaining the judgment, and that the testimony, with the exception of that of the complainant himself, was confined

to the question of the reasonableness or unreasonableness of the fee charged under the agreement between complainant and defendant. The testimony of the complainant is practically nothing more than a reiteration of his denial that he agreed to pay any fee and which was made *res adjudicata* by reason of the judgment rendered by the jury in the suit in the Essex County Court of Common Pleas in which the jury found, by its verdict, that he had so agreed. It is clear that the complainant made no attempt to prove any fraud either in the making of the contract itself or in the obtaining of the judgment on it in the courts of law.

Since there is no allegation in the Bill charging that the judgment at law was obtained by fraud, and since there is no proof in the case of any fraud, the Court of Chancery should have dismissed complainant's Bill and denied complainant's appeal, which in effect requested the Court of Chancery to take upon itself appellate jurisdiction over the Essex County Court of Common Pleas.

POINT II. The complainant sought relief in equity upon grounds which could have and should have been used in the court of law and for this reason was entitled to no relief.

The complainant came into the Court of Chancery on the theory that a contract between an attorney and client is presumptively fraudulent and that in this case, since that point was not considered in the courts of law, it could be brought forward as a ground for relief in Chancery against the law judgment.

In the court of law, the complainant herein denied that he had ever made a contract to pay

the defendant herein the specified sum for legal services to be rendered and based his whole defense upon that alone. There is no testimony in the case and could be no testimony in the case to show that he ever requested the Court to charge the principle of law that such contracts are presumptively fraudulent, and that it is incumbent upon the attorney to prove the bona fides of the contract.

The complainant herein, the then defendant, was content to send his case to the jury on a general denial instead of availing himself of these other defenses. The jury found against him and now the complainant, after trying the case at law on one theory of defense, brought it into the Court of Chancery to try it on another theory of defense which was equally available to him in the court of law.

The courts of New Jersey have held in a long line of cases that equity will not interfere against a judgment at law, unless the complainant was prevented by fraud from introducing his defenses at law, as where a default judgment is improperly taken, and equity will not relieve a party, who, through negligence or otherwise, has failed to present such defenses.

The latest case on this point is the case of *Commercial National Trust and Saving Bank of Los Angeles* v. *Hamilton, et al.,* 133 Atl. 703, decided in the Court of Chancery June 14, 1926. In Syllabus 1, prepared by the Court, it is said:

> "1. Action 24—In law action to recover on note, defense of fraud in inception is available to same extent as in court of equity.
>
> In an action at law to recover judgment on a promissory note, the defense of fraud in the inception of the note is available in a court of law to the same extent as in a court of equity."

Likewise, such defense of fraud would have been available in the case of the contract on which judgment was obtained in this case.

In the above case, *V.-C. Leaming* said:

> "The general rule which has been uniformly recognized in this state touching bills to restrain the enforcement of a judgment at law is substantially as follows: The Court of Chancery will not relieve against a judgment at law on the ground of its being contrary to equity, unless the defendant in the judgment was ignorant of the facts in question pending the suit, or the facts could not have been received as a defense, or unless he was prevented from availing himself of the defense by fraud or accident, or the act of the opposite party, unmixed with negligence or fraud on his part; and that it matters not whether the defendant has presented to the law court the matter which he claims as the ground of his relief or through his negligence has failed to present it." Kinney *v.* Ogden, Adm'r. 3 N. J. E. 168; Reeves *v.* Cooper, 12 N. J. E. 223; Brick *v.* Burr, 47 N. J. E. 189, 19 A. 842; Woolsey *v.* Woolsey, 71 N. J. E. 609, 71 A. 408, aff., 72 N. J. E. 898, 67 A. 1047; Clark *v.* Board of Education, 76 N. J. E. 326, 74 A. 319, 25 L. R. A. (N. S.) 827, 139 Am. St. Rep. 763.

The Court of Chancery should have followed the rule laid down in the above case and refused to grant relief to the complainant upon a defense which he should have interposed in the court of law.

POINT III. Defendant's attempt to prove that he had offered evidence in the court at law to show the reasonableness and fairness of his agreement was improperly overruled by the learned Vice-Chancellor.

At the hearing in the Court of Chancery, the defendant sought to show that he had made an attempt in the court of law to prove the reasonableness and fairness of the agreement between him and the complainant by offering a counsellor at law of this state to so testify as an expert witness and that it was upon the objection of Raimondi's counsel that the law court rejected this evidence. When this proffer of testimony was made to the Vice-Chancellor who heard the case, he sustained the objection of complainant's counsel (State of the Case, p. 73, l. 10) although the reason for it and the proffer of the evidence sought to be adduced had been explained to him (State of the Case, p. 72, l. 27).

It is contended in behalf of the defendant that the complainant, by his act in objecting to the testimony in the court of law, and by objecting to the proof of the offer of that testimony in the Court of Chancery, estops himself to deny that the contract between complainant and defendant was a just and fair one and that he estops himself from claiming that such a contract is presumptively fraudulent and that this presumption was not rebutted in the court of law by the defendant herein.

Having prevented proof of the fairness and reasonableness of the agreement, Raimondi should not now be permitted relief in equity on the ground that there was no such proof.

POINT IV. The complainant did not come into equity with clean hands.

The defendant-appellant contends that the complainant in this case was guilty of trickery and fraud in the very transaction in which he sought relief in the Court of Chancery.

As testified to by Judge Bianchi at the hearing in Chancery (State of the Case, p. 54) Raimondi gave Bianchi and permitted him to hold a $3,400 check to secure the $2,200 balance due on his fee, and that after the trial of the criminal case, Raimondi went to Bianchi and told him that if he would let him (Raimondi) have the check he would take it to Mr. Scheckner whose endorsement was needed as well as Raimondi's and have Scheckner endorse the check, and that thereupon Raimondi would endorse it and return it to Bianchi who could deposit it and give to Raimondi the difference between the fee and the amount of the check (State of the Case, p. 55, l. 20). Bianchi testified that after Raimondi obtained possession of the check by this representation, he never returned either with or without the check. Bianchi was thus dishonestly deprived of the security which he had had. Raimondi's fraud upon Bianchi in the same transaction in which he calls to the Court of Equity to grant him relief should have caused that Court to deny his prayer.

POINT V. Assuming that the Court of Chancery did have the right to inquire into the reasonableness of the fee in this case, the finding of the Vice-Chancellor that the defendant should be allowed $1,200 in satisfaction of his $2,200 judgment and in satisfaction of a fee and charge of his associate in the criminal case was contrary to the weight of evidence.

At the hearing, Mr. Irving Teeple testified (State of the Case, p. 25, l. 34) that from $1,000 to $1,200 would be a reasonable fee.

Mr. Andrew Van Blarcom testified (State of the Case, p. 29, l. 30) that $1,500 would be a reasonable fee.

Mr. Wilbur A. Mott testified (State of the Case, p. 32, l. 27) that from $750 to $1,000 would be a reasonable fee and testified also that he had represented the defendant at the retrial on the charge of burning with intent to defraud.

Mr. J. Victor D'Aloia testified that a reasonable fee would be about $1,000 and that on the retrial when Mr. Mott handled the case, Raimondi had been convicted and sentenced from two and one-half to five years (State of the Case, p. 40, l. 8 and l. 25).

If the above testimony stood alone, it might appear that the fee of $2,500 for disbursements and expenses as well as services agreed upon between the complainant and defendant was unreasonable and unfair, but rebutting that testimony is the testimony of Bianchi himself (State of the Case, p. 51 to p. 53) in which he set forth the services rendered; and the testimony of Mr. Nicholas LaVecchia, who testified (State of the Case, p. 65, l. 13) that $2,500 was a reasonable fee for the services rendered; and the testimony

of Mr. James McDermit (State of the Case, p. 72, l. 10) that $2,500 was a reasonable fee for the services rendered; and that of Mr. Homer Smith (State of the Case, p. 74, l. 33) that $2,500 was a reasonable fee for those services. These three witnesses explained the reason for their belief that the services were worth $2,500 and included therein not only the actual hours or time consumed but the responsibility imposed upon counsel for a man charged with arson and burning with intent to defraud, and the great amount of money involved, to wit, the $28,000 insurance which would depend upon the outcome of the case, and the loss of earnings Raimondi would sustain were he confined in jail for a period of years, having, as was testified (State of the Case, p. 55, l. 33) an earning capacity of about $10,000 a year.

When three outstanding members of the bar could testify that the fee charged was a reasonable and fair one, the testimony of the complainant's witnesses was most certainly rebutted, and the Court should have held that under the circumstances the contract was an equitable and just one.

Under the provisions of the Decree (State of the Case, p. 84, l. 12) the learned Vice-Chancellor advised that out of the $1,200 he allowed to the defendant in lieu of his judgment at law he should pay the fee of his associate in the criminal case, despite the lack of testimony to show that it was he and not Raimondi who retained this associate, and in spite of the uncontradicted statement (State of the Case, p. 65, l. 34) that the associate had been retained by the defendant. After deducting the associate's fee of $500 and Bianchi's expenses as testified (State of the Case, p. 52) of $257, there would be left to

Bianchi as his fee for the preparation and trial of an arson case, the trial alone of which occupied three days, the sum of $443.

All of this testimony is set forth not because we believe this Court will come to the consideration of the reasonableness of the fee (because we believe the arguments heretofore made will dispose of the case) but to show the inequitable result of the Decree of the Court of Chancery.

Further, it is respectfully contended that when Raimondi went to Bianchi, and the question of fee for the services to be performed arose, he need not have continued his retainer of Bianchi, upon being informed that the charge would be $2,500. If he had not desired to pay a fee of this amount he was privileged to take his case to another lawyer. Bianchi told him what the fee would be. There was no misrepresentation or concealment of any kind, and the Court below so found as shown by the remarks in the State of the Case, page 54, line 10.

One lawyer may place a higher value upon his services than another and where the client desires the services of that particular lawyer and knows the fee to be charged by that particular lawyer, there is no reason why that contractual obligation should be nullified by the Court of Chancery because there are other lawyers who would have charged less.

Where the fee is within bounds of reason (and defendant could not have gotten three members of the bar to testify to its reasonableness were it not so), the Court of Chancery is in effect violating the freedom of contract in regulating the fee and altering such an agreement.

Conclusion.

The action of the Court of Chancery in restraining the collection of the judgment at law was not guided by the precedents of that Court which uniformly denied such relief except where actual fraud in the obtaining of the judgment was shown. In this case, the Court disregarded the prior decisions and assumed appellate jurisdiction over the Essex County Court of Common Pleas by going into the facts of the case there tried and nullifying the judgment rendered by that Court.

Were this the correct interpretation of the law as it exists, the Court of Chancery could be and would be an appellate tribunal for the review of judgments obtained in any and every court in the state.

It is respectfully submitted that the Court of Chancery exceeded its jurisdiction in granting the relief to complainant in this case, and it is respectfully urged that this honorable Court set aside the Decree of the Court of Chancery.

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New Jersey Court of Errors and Appeals

AMIELLO RAIMONDI,
Complainant-Respondent,
and
OVIDIO C. BIANCHI,
Defendant-Appellant.

On Appeal from Court of Chancery.

BRIEF OF RESPONDENT.

Statement Under the Rules.

The bill was brought to restrain the defendant from collecting a judgment in the sum of $2,200 recovered by him against the complainant, in the Court of Common Pleas of Essex County, upon an express contract for legal services, entered into by the complainant with the defendant, a practicing lawyer.

The bill, duly verified, alleged among other things that the complainant had been precluded, by the law court from introducing into the issue therein tried, the defense that the contract was unconscionable, unreasonable, and inequitable. The bill further alleged that the contract was in fact unconscionable, unreasonable and inequitable and prayed that the Court of Chancery determine and fix a reasonable fee for the services contracted for, and compel defendant to accept the same in satisfaction of said judgment or in default thereof, be restrained from collecting said judgment.

The proof before the learned Vice-Chancellor Church, disclosed that the trial judge in the suit at law, had precluded the jury from considering any evidence of unreasonableness and unconscion-

ableness of the contract. The proof further disclosed that the contract had been entered into between the parties after the relationship of attorney and client had been entered into, and during the existence of that relationship and that the sum of $2,500, the consideration of said contract was exhorbitant, unreasonable and unconscionable for the services contracted for and rendered thereunder. The learned Vice-Chancellor accordingly entered a decree fixing $1,200 as a reasonable fee or charge for the services performed.

The appeal was taken from the entry of this decree.

ARGUMENT.

POINT I.

The issue as presented by the bill and answer did not require the complainant to prove actual fraud.

An inspection of the bill discloses that it was brought within the express determination of this court in the case of *Borcherling* v. *Ruckelhaus,* 49 N. J. E. 340, wherein Mr. Justice Reed, speaking for this court, said:

> "It is contended that, if the facts set out in the bill constitute an estoppel *in pais,* they were equally available in a court of law as they are as a ground of complaint in a court of equity; that they were presented to the Court in the action at law; and that, therefore, any further litigation of the question whether such facts are efficient against the plaintiff is conclusively settled by the verdict in her favor. The course taken in the trial of the action at law for mesne profits in respect to this defense, appears to be as follows: *the defendant offered to*

> *prove the* expressions, acts, and silence of Mrs. Oehme as they are set out in the bill and *the Court overruled the testimony thus offered upon the ground that an equitable estoppel was not admissible at all as a defense in that case. Now, in this posture of the case, we think* there are two courses of conduct left open to the defendant. He could take an exception to the ruling of the Court and upon a judgment against him, test the accuracy of said ruling by a writ of error. By such action he would undoubtedly be estopped from litigating the *same* question anew in another court. *But we think he could also accept the ruling of the trial court as the law in the case and acquiesce in the correctness of the doctrine laid down,* namely that the defense thus offered was not cognizable by a court of law, in such an action. * * * Now when the latter course of conduct is adopted, *we think the better rule to be that a defendant is not estopped from invoking the aid of a court of equity in establishing the equitable defense which has thus been overruled in a court of law.* We think he had the right to accept the law laid down in the trial of the first cause as the law of *that* case."

The bill in this case discloses that the complainant was prevented by the judge, sitting in the law court, from offering the equitable defense; unfairness, unreasonableness and unconscionableness of the contract for legal services sued upon. Paragraph 12 of the bill alleges:

> "At said trial defendant testified to the making of said express contract and complainant denied the same, and the cause was submitted to the jury solely within the limits of the pleadings, that is on the question as to whether or not the express contract was made."

The bill contains as a part thereof the charge of the judge of the law court (Exhibit A) which

clearly shows that the complainant was precluded from offering the equitable defense alluded to herein; and that defense could not have been passed upon by the jury trying that issue, who were bound to take the law as charged by the Court.

In addition to this, the affidavits which accompanied the bill fully disclose that the evidence was offered and refused by the law court.

It was upon this theory that the learned Vice-Chancellor accepted jurisdiction of the issue and said in his opinion:

> "The complainant here (the defendant in action at law) offered to prove at the trial that the services rendered by the defendant were not of the value of the amount claimed, but was not permitted to do so because the complaint was founded on an express contract." (State of the Case, p. 16, l. 38) * * * "Where a client has not had an opportunity in a court of law to test the reasonableness or fairness of his attorney's charges, he will not be precluded here even after judgment obtained" (S. C., p. 17, l. 37).

The defendant has misconceived the nature of this action. That the defense which complainant was precluded from offering in the action at law was an equitable defense is too plain for argument.

The judgment of the law court had the effect only of deciding that the parties had entered into the alleged contract *and nothing more.* Its reasonableness, conscionableness and fairness had not been passed upon or adjudicated in the law court and therefor that question, notwithstanding the judgment at law, was a proper one for the Court of Chancery to inquire into.

A careful reading of the cases cited by the appellant disclose that they are in nowise in conflict with the law as above outlined, when applied to the issue as laid in the pleadings of this suit.

POINT II.

The contention of the appellant under this point, is fully and completely answered by this court in the case of *Borcherling* v. *Ruckelhaus, supra.* The equitable defense of this complainant was not permitted by the judge in the law court.

In fact the case cited in support of the contention of the appellant, *Commercial National Trust Bank* v. *Hamilton, et al.,* 133 Atl. Rep. 704, is authority for the following proposition:

> "An equitable defense which the law court could not entertain may be made the basis of equitable relief even after the judgment in the action at law. * * * And when an equitable defense has been tendered and rejected by the law court, relief may be entertained in equity without first reviewing the action of the law court."

POINT III.

The learned Vice-Chancellor was correct in refusing to permit secondary evidence as to what transpired in the law court.

The State of Case, page 72, shows that the objection to the proffered testimony was on the ground that the record itself should be introduced as the best evidence of the proceedings in the law court. In fact counsel *for respondent offered to introduce the record itself* which appellant's counsel refused to do.

The appellant therefore has no basis for complaint.

POINT IV.

The argument as to "unclean hands" of the complainant is so unsound upon its face as to require no answer. It suffices to say that the evidence of the appellant, urged as the basis of this contention, was denied by the respondent, and upon this issue of fact, the learned Vice-Chancellor decided adversely to the appellant.

POINT V.

The evidence fully supports the findings of the learned Vice-Chancellor.

Bianchi says, $2,500 is reasonable. Mr. La Vecchia testified that he thought $2,500 for Bianchi and $500 for his associate, not unreasonable. He admitted he had never tried an arson case and on cross examination he was unable to itemize the service and fix a per diem charge. He merely felt that arson was a serious charge and the indictment justified the fee.

Mr. McDermit testified that the fee was not unreasonable. On cross examination he admitted that his method of determining the reasonableness is the ability of the client to pay the amount.

Mr. Smith said he felt $2,500 for Bianchi and $500 for his associate was not unreasonable. He has had experience in only one burning case and a comparatively short experience at the Bar.

As against this testimony, complainant produced the testimony of such attorneys as Mr. Mott, for many years Prosecutor and Assistant

Prosecutor of the Pleas of Essex County; Mr. Van Blarcom, former Assistant Prosecutor of the Pleas of Essex County and a lawyer practicing before the criminal Bar for many years; Mr. Teeple, of twenty years' experience as a lawyer, and specializing in criminal law; and Mr. D'Aloia, former Police Court Judge and Assistant Prosecutor of the Pleas and a practitioner for twenty years, mostly in the criminal courts.

Mr. Mott, who tried the case after Bianchi's discharge and the disagreement of the jury at the first trial testified that the case presented no great difficulties, that his charge for the second trial was $750 and that a fee between $750 and $1,000 was a fair and reasonable charge.

Mr. Van Blarcom testified that $1,500 would be a substantial charge and that against this should be credited the $500 charged by the associate counsel, so that in his opinion a fee of $1,000 for Bianchi would fairly and reasonably compensate him.

Mr. D'Aloia, who tried the case for the State, testified that the defense interposed at the trial was a simple and ordinary one and that $1,000 for his services would be ample.

Mr. Teeple testified that between $1,000 and $1,200 would be a fair and reasonable fee.

Considering the testimony of the complainant against that of the appellant it must lead to the conclusion that the findings of the Vice-Chancellor were in accord with the weight of the evidence.

We insist that the decree of the Court of Chancery was agreeable to equity and that the same should be affirmed.

E. A. & W. A. SCHILLING,
Solicitors of Respondent.

Filed after the Oral Argument by leave of Court.

New Jersey Court of Errors & Appeals

AMIELLO RAIMONDI, Complainant-Respondent and OVIDIO C. BIANCHI, Defendant-Appellant.	On Appeal ADDITIONAL BRIEF FOR RESPONDENT.

At the oral argument, a question was presented by the Court which had not been discussed by either of the parties to this litigation in their respective briefs. The question was whether or not the fact that the complainant had applied to the lower court for a rule to show cause, which was granted by the judge without exceptions reserved, and which was subsequently argued before the trial judge and the new trial refused, precluded the complainant from going into equity, to secure relief upon the equitable defense which had been rejected by the law court, under a ruling that the issue tried in that court was solely a question of whether or not the express contract had been made.

The case of Isham vs. Cooper, 56 N. J. E. 398 in some respects answers this question. In that case, after a review in the Supreme Court, a bill in Chancery was filed and in that case, Emery, V. C. said:

> "The principal question involved on this application for injunction is whether the grounds now relied on by the complainant to enjoin the collection of the judgment on the verdict were set up as defenses and decided adversely to the complainant in the action at law. * * * * * * *"

The Vice Chancellor reviewed the entire case to determine whether or not the defense which was claimed had not been interposed in the law court was in fact passed upon by the jury, and in that case he concluded:

> "To grant now in equity a re-trial of the case solely upon the separate defense of mistake would be, as it seems to me, a review of correctness of the decision of the Supreme Court as to the manner in which the defense of mistake, **when once admitted** *in a court of law, should be treated in connection with other defenses, rather than an instance of exercising the undoubted jurisdiction of a court of equity to sustain an equitable defense which is not admissible and has been overruled at law.*" (Italics mine.)

In this case however, there can be no doubt that the defense, that the contract was unreasonable and unconscionable, was not permitted to be introduced in the law court and never was passed upon by the jury in the law court. The only legal principle that could be invoked to preclude the respondent from applying to the court of equity for relief would be the principle of *res adjudicata* which under the facts and circumstances of this case could not be interposed.

This court in the case of Metropolitan Savings & Loan Association v Dughi, et al, 49 Atl. Page 542, laid down the true rule: Garrison J. said:

> "Where a defendant in an action at law is prevented from making a particular defense that goes to the merits, because of a ruling that such defense is not cognizable at law, is

> not estopped by the judgment rendered in the Court of law from applying to a court of equity for relief upon the matter that consistitutes the defense so overruled."

The Court is respectfully referred to the case of Commercial Union Assur. Co. v New Jersey Rubber Co. 51 Atl. Rep. p. 451 which is pertinent to the question herein discussed.

E. A. & W. A. SCHILLING,

Counsel for Respondent.

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