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Petition of Appeal

To the Honorable The Court of Errors and Appeals in the last resort in all causes:

10 The humble petition of DOMINIC SINISI and LENA SINISI, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, EDWIN ROBERT WALKER, Chancellor of New Jersey, bearing date the eighteenth day of November, Nineteen Hundred and Twenty-nine, wherein the said DOMINIC SINISI and LENA SINISI were complainants and the said JOHN MILTON was defendant, in this respect, to wit: that the said decree adjudges that the complainants' bill be and the same is hereby dismissed with costs to be taxed.

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And your petitioners humbly appeal from the whole of said decree of the Chancellor, which decrees, as aforesaid, upon the ground that the same is erroneous, for that the said Chancellor should have decreed that the defendant pay over to the complainants the monies received by him on behalf of the complainants, less such amount as the said Chancellor should fix as his fair and reasonable compensation for services rendered by him to said complainants, as set forth in the Bill of Complaint, together with the complainants' costs; and also for that the said Chancellor by his decree did not ascertain and fix such fair and reasonable compensation which complainants should pay or allow to said defendant for said services.

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Your petitioners therefore pray that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside and for noth-

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Petition of Appeal

ing holden; and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

WARREN DIXON,
Solicitor and Of Counsel with Appellants. 10

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Answer to Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

10	DOMINIC SINISI and LENA SINISI, <i>Complainants-Appellants,</i> vs. JOHN MILTON, <i>Defendant-Appellee.</i>	On Appeal from the Court of Chancery. ANSWER TO PETITION OF APPEAL.
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20 The answer of John Milton, the above named appellee, to the petition of appeal of Dominic Sinisi and Lena Sinisi, the above named appellants.

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admits that a decree was, on November 18th, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned, and as there-
 30 in set forth; but as to the substance and form of said decree, this appellee begs leave to refer there-
 to when the same shall be produced.

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

JAMES A. HAMILL,
Solicitor for and of counsel with Appellee.

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Bill of Complaint

IN CHANCERY OF NEW JERSEY

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

The complainants, DOMINIC SINISI and LENA SINISI, of Jersey City, New Jersey, respectfully show that: 10

1. Complainants are and during all times hereinafter mentioned were husband and wife.

2. During the times hereinafter mentioned, defendant JOHN MILTON was and is a Solicitor in Chancery and an Attorney and Counselor at Law of the State of New Jersey. 20

3. In and prior to the year 1924, complainants were the owners of certain lands and premises located in Jersey City, and facing upon the Hudson County Boulevard at or near Journal Square.

4. In or about June, 1924, the Board of Chosen Freeholders of the County of Hudson, for and in behalf of the County of Hudson, instituted condemnation proceedings and secured the appointment of Commissioners to examine and appraise the said lands and premises and to fix compensation to pay therefor to the complainants and to assess damages, if any, to be awarded for the taking of said property for public purposes. 30

5. Said Commissioners awarded to said complainants the sum of \$117,720.00, as compensation to be paid for such taking of said property. 40

Bill of Complaint

6. Complainants, being dissatisfied with said award, appealed to the Circuit Court of the County of Hudson from the award of said Commissioners and the said appeal was tried in the Hudson County Circuit Court before a jury in or about May, 1925, and an award by said jury was made to complainants for \$140,000.00 for said lands and premises.

7. On or about June 1st, 1925, the said Board of Chosen Freeholders of the County of Hudson filed in this Court a petition to pay said award into this Court for distribution and on or about said date secured from the Chancellor an order permitting said Board of Chosen Freeholders to pay into this Court the sum of \$140,000.00, and a further sum of \$4,544.45, being adjustments on the beneficial interests of complainants plus \$168.63, being interest from May 25th, 1925 to June 1st, 1925; and under such proceedings, the said Board of Chosen Freeholders thereafter paid into this Court for distribution the total sum of \$144,713.08.

8. Subsequent thereto, a controversy concerning the distribution of said funds arose between the ELDORADO RESTAURANT, INC. and these complainants and such proceedings were had thereon that on or about the 17th day of May, 1926, a decree was made by his Honor, the Chancellor, that the said ELDORADO RESTAURANT, INC. was entitled to receive out of said funds the sum of \$16,601.12; and it was further decreed that the Clerk of said Court do pay out of said fund to said ELDORADO RESTAURANT, INC. or its solicitor the sum of \$16,601.12, and to pay to these complainants

Bill of Complaint

or to their solicitor, JOHN MILTON, the balance of the funds in said cause, together with all accumulations of interest thereon.

9. From this decree, an appeal was taken by all the parties to the Court of Errors and Appeals and the said decree was by said Court affirmed. 10

10. Pending such litigation between the parties last above mentioned there was paid out by the Clerk to other lienors the sum of \$56,215.86, leaving as a balance in the hands of the Clerk in Chancery to be paid to complainants, the sum of \$74,845.43 with accumulation of interest.

11. Between July 28th, 1925 and early in 1927, the said monies belonging to complainants were paid over by the Clerk in Chancery to JOHN MILTON, Esquire, as solicitor for complainants; and complainants are informed that the sum so received by said JOHN MILTON from the Clerk in Chancery amounted to \$74,881.67. 20

12. Of the sum of \$74,881.67 so paid to said JOHN MILTON, the said MILTON paid to complainants between July 1925 and early in 1927, the sum of \$57,307.23, leaving a balance in the hands of said MILTON of \$17,574.44. 30

13. In the litigation involving the appeal from the Condemnation Commissioners to the Hudson County Circuit Court and in the proceedings between the parties involving the distribution of said fund as above mentioned, and upon the appeal of the decree of the Chancellor to the Court 40

Bill of Complaint

of Errors and Appeals, these complainants employed the said JOHN MILTON as their attorney and solicitor and he acted for them in the said proceedings.

10 14. Since the termination of said proceedings, these complainants have frequently requested said JOHN MILTON to pay over to them the said balance of money received by him from the Clerk in Chancery, less such sum as should be a fair compensation for his services rendered, together with his disbursements, and said JOHN MILTON has and still does claim that the said monies so received by him were rightfully due to him as compensation for said services rendered and disbursements.

20 15. At the time of the employment of said JOHN MILTON as attorney and solicitor by complainants in said condemnation matter, it was understood and agreed between said MILTON and complainants that his charges for services were to be about \$2,500.00.

30 16. Complainants allege the said fee of said JOHN MILTON, in the sum of \$17,574.44, is an unconscionable charge for the services rendered to complainants by him in said litigations.

17. Complainants tender themselves ready and willing to pay to said JOHN MILTON for his services such reasonable sum as the Chancellor shall consider equitable and just and due to him for such services.

Bill of Complaint

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

1. That JOHN MILTON, who is the defendant in this suit, may answer this Bill of Complaint and each statement therein made; 10

2. That this Court may ascertain and fix a fair and reasonable compensation which said complainants should pay to said JOHN MILTON as compensation for services rendered by him to them in the various litigations and proceedings in this Bill set forth, together with such reasonable and proper disbursements as he may have made on account of said complainants; 20

3. That the defendant may be decreed to pay to the complainants the balance of such funds held by him over and above such reasonable compensation and disbursements as shall be found to be due by this Court; 20

4. That a Writ of Subpoena may issue commanding said defendant to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises. 30

WARREN DIXON,
Solicitor and of Counsel with Complainants.

(Verified)

Answer

IN CHANCERY OF NEW JERSEY

10	Between DOMINIC SINISI and LENA SINISI, <i>Complainants,</i> and JOHN MILTON, <i>Defendant.</i>	}	On Bill, etc., ANSWER.
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20 The answer of John Milton, defendant to the Bill of Complaint of Dominic Sinisi and Lena Sinisi, complainants, says that:

1. Defendant admits as true the allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh paragraphs of said Bill of Complaint.
- 30 2. As to the allegations of the Twelfth paragraph of said Bill of Complaint defendant says that the moneys so withheld by him were in part in payment of services rendered by him for said complainants and the balance thereof being distributed by the defendant for and on account of said complainants.
3. He admits the allegations of the Thirteenth paragraph of said Bill of Complaint.
- 40 4. He admits that as stated in the Fourteenth paragraph of said Bill of Complaint he claims that the moneys so received by him, other than

Answer

those paid out for and on account of the said complainants, were rightfully due him as compensation for services rendered. The remaining allegations of said paragraph Fourteen are denied.

5. He denies the allegations of the Fifteenth and Sixteenth paragraphs of said Bill of Complaint. 10

And for further answer to said Bill of Complaint said defendant says he is entirely ready and willing to account for all moneys received and disbursed by him for and on account of said complainants and to have fixed by this court the compensation to be paid by said complainants to him for his services, the reasonable value of which said services rendered by defendant to complainants defendant says is in excess of \$25,000. 20

This defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN J. MULVANEY,
Solicitor for and of counsel with defendant. 30

Reply

IN CHANCERY OF NEW JERSEY

10	Between DOMINIC SINISI and LENA SINISI, <i>Complainants,</i> and JOHN MILTON, <i>Defendant.</i>	}	On Bill, etc., REPLICATION
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20 The complainants join issue on the answer of
 the defendant.

WARREN DIXON,
Solicitor of Complainants.

Dated, February 21, 1928.

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Final Decree

IN CHANCERY OF NEW JERSEY
66/669

Between DOMINIC SINISI and LENA SINISI, his wife, <i>Complainants,</i> and JOHN MILTON, <i>Defendant.</i>	}	On Bill, &c. FINAL DECREE	10
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This matter coming on to be heard in the presence of Warren Dixon, solicitor of complainants and James A. Hamill, of counsel with John J. Mulvaney, solicitor of defendant, and it appearing that John J. Mulvaney, solicitor of defendant, has departed this life and James A. Hamill having been substituted in his stead as solicitor of the defendant, and the court having examined the pleadings and having taken proofs orally and in open court thereon and having heard and considered the arguments of counsel and the court being satisfied that the complainants are not entitled to the relief sought for by them in their bill of complaint: 20

It is on this 18th day of November, one thousand nine hundred and twenty-nine, ORDERED, ADJUDGED AND DECREED that the complainants' bill and the same is hereby dismissed, with costs to be taxed. 30

E. R. WALKER, C.

Respectfully Advised,
JOHN BENTLEY, V. C. 40

Opinion

IN CHANCERY OF NEW JERSEY

10	Between DOMINIC SINISI and LENA SINISI, his wife, <i>Complainants,</i> and JOHN MILTON, <i>Defendant.</i>	}	ON BILL &c. 66-669. OPINION
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August 29, 1929.

20 WARREN DIXON, Esq.,
 For the Complainants,

JOHN J. MULVANEY, Esq., *Solicitor,*
 JAMES A. HAMILL, Esq., *of counsel,*
 For the Defendant.

 MEMORANDUM OF OPINION

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(This memorandum is not to be published in
 the official or unofficial reports.)

BENTLEY, V. C.:

40 On bill for an accounting.

Opinion

In 1923 the complainants held title to a parcel of real estate which was subsequently condemned by the County of Hudson for a public improvement. In the spring of that year they consulted the defendant for the purpose of protecting their interests in such contemplated acquirement by the county. After the condemnation proceedings had been instituted the defendant made preparation for the hearing before the commissioners and appeared and represented the complainants thereat, which resulted in an award of \$117,000 for the land taken. Thereafter the defendant perfected an appeal to the Circuit Court and upon the trial thereof appeared for his clients at that time and the verdict of the jury thereon was the sum of \$140,000. The county representatives, feeling that they could not safely distribute the amount of the judgment which had been entered upon the verdict, deposited the same with the Clerk of this court. Thereafter, the defendant initiated and carried through the necessary proceedings to secure a distribution under the direction of this court. One of the interested parties, a tenant in the property which had been condemned, claimed the sum of \$43,000 as the value of the unexpired portion of a lease which he held under the complainant, and others claimed varying sums. The amount decreed to represent that value was \$17,000. Both the former landlord and former tenant felt themselves aggrieved by such decree and each appealed therefrom. The defendant represented the complainant in resisting the appeal of the former tenant and also in their cross-appeal. In each appeal there was a decree of affirmance by the Court of Errors and Appeals.

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Opinion

10 In compensation to himself for the services which he had rendered, the defendant retained the sum of \$17,500. The bill declares this sum to have been grossly excessive and is based upon the extensive authority vested in a court to scrutinize the dealings of its officers in their confidential relations with clients. This power is so firmly established that no issue is presented as to its existence.

20 The defendant's services may be divided into two periods, one extending from the time he was engaged by the complainant, to and including the entry of judgment in the Circuit Court, the other embracing the services from that time until the decisions by the Court of Errors and Appeals and the withdrawal of the last of the money deposited by the condemning authorities with the Clerk. The former extended over a period ranging from about the spring of 1923 until the Circuit judgment on the 25th day of May, 1925. Within that period of time the defendant took upon himself the entire preparation, both for the hearing before the condemnation commissioners and the trial in the Circuit Court. He employed experts, both on the value of the freehold and the improvements. Anyone who has gone carefully through one of these proceedings will admit that it is a laborious and somewhat complicated and difficult duty. It requires unearthing, analyzing, considering, applying, distinguishing and explaining of innumerable sales and leases made under the most varying and confusing circumstances, all of which must be taken into account. It requires an education as to the terms and surrounding circumstances of all the comparable transactions. It

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Opinion

is further necessary that one so engaged shall be completely prepared to demonstrate to the tribunals the fallacies existing in the testimony of opposing experts so that those tribunals shall not be imposed upon. All of these matters were taken care of by the defendant in the most careful, painstaking and intelligent manner. My knowledge of these proceedings, which dates back to a time more than three years ago, convinces me that the interests of the complainants could not have been more zealously and skilfully preserved by any member of the bar, and I have had some experience with this particular specialty of our law. 10

Now, on the day that the appeal was to be tried in the Circuit Court the defendant reminded the complainants, or at least the husband, that up to that time no compensation had been paid him and, of course, the implication was that some understanding should be reached before he should proceed to render further services affecting the rights of the complainants in the premises which, up to that time, had been fixed at the not trivial sum of \$117,000. There can be no question in the mind of any impartial person that it was then agreed that his compensation was to be one-half of any sum that should be allowed by the jury as the value of the lands condemned, above the amount that had theretofore been fixed by the commissioners in condemnation, if any. In other words, that if the jury found that the award represented the fair value of the property, his services, both in that court and all previous services, should inure to the benefit of the complainants without the payment of anything by them to the defendant. In view of this contingency, I do not see how it 20 30 40

Opinion

can clearly be said that \$11,500 was excessive. This amounted to slightly more than 8% of the value of the land as determined by that jury. In view of the contingency upon which the defendant depended for any remuneration for his service, I do not think that such a percentage would have been unfair to the complainants if it had been in payment for the efforts of the defendant in the Circuit Court alone. Contingent fees of 25 per cent of judgments recovered are common and, I think, considered very reasonable. Now, when it is considered that this amount was to pay and discharge the obligation of the complainants to the defendant for all the services of the defendant in both tribunals, I think they came off very well.

I have already said that there can be no doubt of the making of this agreement. That is based upon the evidence furnished by a letter written by the complainant wife on March 31st, 1927, and addressed to the defendant. At this time the entire condemnation proceeding and all of its ramifications had been completed and every cent of the money representing the verdict had been withdrawn from the office of the Clerk. Every cent claimed by the defendant had been deducted as the withdrawals were made and the balances had been transmitted to the complainants. He had also paid \$2750 to another member of the bar who had rendered some service to the complainants.

Now, after all of these transactions, Mrs. Sini, on March 31st, 1927, wrote to the defendant

Opinion

complaining of the amount of his charges. No previous complaint appears to have been made. After saying that such fee which the defendant had seen was paid to the other member of the bar, she says, "you should have taken care of him, as at the time you retained the \$3500 no mention was made that a balance was still due, it being understood that \$3500 was your fee for the entire case, outside of the \$11,500." The final hearing in this case was commenced on January 21st, 1929, on which day this letter was put in evidence, and was continued over until February 5th, following. The force of the concluding language just quoted from her letter must have become apparent to this complainant during the 15 days' intermission, so, upon the resumption of the hearing on the latter date, she again took the stand and testified as follows, in answer to the following question:

Q. What do you mean here when you say "outside of the \$11,500?" A. I should have written here "which he was withholding and which was supposed to be returned to us toward the end of the case."

The defendant's counsel forbore from cross examining her on this most peculiar explanation of what she had written and I do not believe there is any necessity for me to show further why I am sure the contingent fee was agreed upon.

To summarize this phase of the case, I consider the sum of \$11,500 as a moderate charge, either upon an express agreement to pay that sum or, of course, a very much more moderate amount,

Opinion

in view of the risk that counsel ran that the jury might not disagree at all with the condemnation commissioners or in a very trifling amount.

10 The other phase of the case involves the charge of \$7,000 for the defendant's services after the verdict at the Circuit. There lay in the office of the Clerk the sum of approximately \$146,000 which it became necessary to have disbursed by orders of the Court in a somewhat complicated situation. Taxes and other liens had to be discharged and controversies threshed out and determined with tenants. The work of initiating and carrying out all of these matters devolved upon the shoulders of the defendant. He first secured an order upon the Clerk to pay out sums sufficient to extinguish the tax liens and encumbrances upon the property to avoid the losses that would have fallen upon his clients by reason of interest and penalties in larger percentages than would have accrued under the deposit with the Clerk. Then came the initiation of proceedings to clear the complainants from their contests with their former tenants. These involved considerable difficulty, which the defendant testifies he resolved, in part, by an audience with the Chancellor, out of which was evolved the practice that was pursued with the latter's approval.

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30

Again came the tedious preparations for the hearings as to these disputes where there was involved, not the precise question that had been presented to the condemnation commissioners but the substantially different subject of the value of the unexpired terms of leases which had been

Opinion

violently terminated by the condemnation of the land.

After the hearing in these contests which were referred to me I found it necessary to call for the submitting of briefs, which were supplied. After considerable thought upon the questions presented I advised an order which reduced the aggregate amount claimed by the two principal tenants by the sum of over \$25,000. 10

The complainants and the defendant having the largest claim, feeling aggrieved, each appealed from the decree of this court. The appeal of the complainants was perfected and argued by the defendant, and the cross-appeal contested. This consumed a great deal of time and resulted in the very substantial saving to the complainants above referred to. For his services in this court and the Court of Errors and Appeals the defendant has charged his former clients \$7,000. 20

Neither am I able to see that this further charge was more than the services were worth. It must be borne in mind that a very large sum was involved. The counsel selected by the complainants was one of the most eminent lawyers in the State; a practitioner of enormous activities and of the highest ability and standing. As already said, he exercised the greatest skill and attended to the affairs of the complainants with the utmost fidelity. The results obtained for his clients amounted to upwards of \$50,000, securing for them as he did an increase in the sum of \$23,000 over the award of the condemnation commissioners and over \$25,000 in the reduction of the claims upon 30 40

Opinion

10 the fund advanced by the former tenants, in the face of experienced counsel of high standing. He also secured about \$4,000 in interest which they would not otherwise have enjoyed. In addition to that, there must be taken into account the further fact that he was not dealing with poor and ignorant people or some unfortunate person whose entire prospects were in the balance.

20 Comparison is made in complainants' brief of the amount of the defendant's charges and the salary of a member of this court. Sight must not be lost, however, of the fact that this compensation was for work performed over a period of more than three and one-half years and that it was not until almost all of it had been completed that any compensation was enjoyed. I cannot express my own views any clearer than quoting the language of Vice-Chancellor Lane in *Hitchcock v. American Pipe & Con. Co.*, 89 N. J. Eq., 440, at page 459:

30 It is hard for judges in considering the question of the amount of counsel fees to keep out of their minds the amount of their own compensation. They are prone to forget that the assumption is that lawyers of more than mediocre ability will remain on the bench because of love of the exercise of power, of interest in the work, of the dignity of the position, of its comparative permanency, without regard to the amount of compensation. That this assumption is warranted is indicated by the calibre of the overworked judges of the federal district

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Opinion

courts with their ridiculously inadequate salaries and the figure to which it is suggested that congress should raise their salaries, which, while not so inadequate, is yet wholly inadequate.

His order in that case was reversed in 90 N. J. Eq., 576, not upon the amount allowed, but because he was without jurisdiction to allow counsel fees for services performed in another court.

10

Even considering all these proceedings as but parts of one whole, I do not think the complainants have been overcharged when it is remembered that they were represented in a statutory tribunal and three courts of this state, which required over three years and a half to terminate even by the exercise of the greatest diligence, involving almost \$150,000 and which has resulted so beneficially to them.

20

It is further urged against the defendant that any agreement for remuneration to which her husband may have consented cannot bind Mrs. Sinisi. In view of the relationship between the complainants, many reasons will occur to show why this is not true. But I think it is sufficient to say that the correspondence introduced shows that she was entirely familiar with every move that her husband made in the premises and that she accepted the benefit of the defendant's reliance upon her husband's promises.

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The reduction of the counsel fee which I allowed in *Farlee v. Farlee*, 101 N. J. Eq., 111, does not have any bearing on the case at bar. That

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Opinion

was a matrimonial proceeding involving no questions of any difficulties and, as I recall it, none of law. Furthermore, every case such as this must be decided upon its own facts and circumstances and little aid can be secured from others.

- 10** Great reliance is placed by counsel for the complainants on the opinion of Vice-Chancellor Church in re New Jersey Refrigerating Co., 142 Atl., 176 (not yet officially reported.) In that case the receivers had previously been allowed \$75,000 and their counsel \$52,500. Notwithstanding these allowances and additional ones in the case of a subsidiary corporation the Vice-Chancellor made further allowances of \$10,000. I can perceive no
- 20** similarity to the case at bar. In re N. J. Refrigerating Co., 101 N. J. Eq., 109.

The bill should be dismissed.

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James O'Neill—For Complainants—Direct

JAMES O'NEILL sworn on behalf of the complainants, testified as follows:

Direct Examination y Mr. Dixon:

10 Q. Mr. O'Neill, under subpoena, you produce here some records from the County Clerk's office?

A. Yes, sir.

Q. —in the matter of Sinisi and the Board of Freeholders? A. Yes, sir.

Q. What file number is that? A. The file number is 33-72.

Q. Among the papers filed do you find any that are filed by Mr. Milton? A. Yes, sir.

Q. How many? A. In three of the files I find Mr. Milton.

20 Q. And have you them in there? A. Yes, sir.

Q. May I see the title to those. One of these papers— A. I think that is his.

Q. His name is on the paper itself. Is there a file number? A. The file date is September 29, 1924.

30 Q. It is entitled "Before James F. Minturn, Justice of the Supreme Court, in the matter of the application of the Board of Chosen Freeholders of Jersey City, a Municipal Corporation of the State of New Jersey, for the appointment of three commissioners to fix the compensation to be paid for certain lands of Dominic Sinisi and George H. Martin, situate in Jersey City, County of Hudson, and State of New Jersey, to be condemned and taken for public use in the widening of the Hudson County Boulevard?" A. Yes, sir; the paper is marked "On Petition, &c., notice. John Milton, Esq., attorney for owners, 1 Exchange Place, Jersey City."

40

James O'Neill—For Complainants—Direct

Mr. Dixon: The body of the document, which I offer in evidence, has the same title and is as follows:

“Circuit Court of the County of Hudson, State of New Jersey. Take notice that Dominic Sinisi and George H. Martin hereby appeal from the award made in the above-entitled matter by Theodore H. Smith, William C. Heppenheimer and William C. Aster, Commissioners, to the Circuit Court of the County of Hudson. Dated September 29, 1924. Signed John Milton, attorney.” 10

Q. The second document bearing Mr. Milton's signature was filed when? A. October 6, 1924. 20

Q. And bears the same endorsement, I think, practically? A. Yes.

Q. And the body of the instrument is what?

A. “To the Board of Chosen Freeholders of the County of Hudson, of the State of New Jersey. Take notice that the above-named defendant has appealed from the award made in the above-entitled matter by Theodore H. Smith, William C. Heppenheimer, and William C. Aster, Commissioners, to the Circuit Court of the County of Hudson. Dated October 1st, 1924. Signed John Milton, Attorney. And service of the above notice is hereby acknowledged October 3rd, 1924.” Signed by the board of Chosen Freeholders of the County of Hudson by Thomas F. Meehan, County Attorney. 30

Mr. Dixon: I offer that in evidence.

James O'Neill—For Complainants—Direct

Q. The third document is what, Mr. O'Neill?

A. On appeal, rule for judgment.

Q. Have you the judgment book? A. I have the judgment roll, yes, sir.

10 Q. Will you turn to that? A. (Witness producing book) It is on page 434.

Q. It is found in what book and what page?
A. Judgment book No. 35, Circuit Court Judgments, page 434, case number 33-722.

Q. That is simply the judgment roll? A. Yes.

Mr. Hamill: When was that filed?

A. June 1, 1925.

20 Q. Does the rule for judgment show when it was granted and entered? A. Why, this rule was granted May 14, 1925, and actually entered May 25, 1925.

Q. That consists of one page and a little over a half of typewriting? A. Yes, sir.

Mr. Dixon: I offer those in evidence. That is all.

30 The Court: Are you through with Mr. O'Neill?

Q. You came down under subpoena and work in the County Clerk's office? A. Yes, sir.

Q. What is your position? A. General clerk and have custody of the records.

Q. And those are the records of the County Clerk's office? A. Yes, sir, those are the files from the County Clerk's office.

40 The Court: Are you now through with him for good, Mr. Dixon?

Oliver J. Hicks—For Complainants—Direct

Mr. Dixon: Yes, sir.

The Court: Are you through with that, Mr. Hamill?

Mr. McNulty: Just a moment. I want to examine the files before he goes. 10

The Court: The witness may step down.

Mr. Dixon: I have a gentleman here from the bank I would like to have sworn.

OLIVER J. HICKS sworn on behalf of the complainant, testified as follows: 20

Direct Examination by Mr. Dixon:

Q. Mr. Hicks, where do you live? A. 219 Oak St., Weehawken.

Q. What is your occupation? A. Assistant-Treasurer.

Q. Of what? A. Trust Company of New Jersey.

Q. What branch? A. County of Union Branch. 30

Q. In July of 1926 will you state whether or not Mr. Milton as trustee opened an account in that bank? A. In 1926, July 14th, he deposited \$28,000.

Q. How was that account opened; in whose name? A. John Milton, Trustee.

Q. Was he trustee of Sinisi? A. Simply "John Milton, Trustee."

Q. Did he have any other trustee account in that bank? A. No, not that I can recall. 40

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Q. And when was the account closed? A. February 18th, 1927.

10 Q. How was it closed? A. Withdrawal. First, there was a withdrawal of interest on January 8th of \$560 on the money deposited July 14th, 1926, and a final withdrawal February 18th, 1927, of \$28,000.

Q. And what kind of an account was that as to interest bearing? A. It was entitled to interest during the time it was in there.

Q. Was it put in there for any special time? A. Just savings account.

Q. And what interest was that entitled to draw? A. Well, 4% annually. 2% he was entitled to. It was only in there about six months.

20 Q. It didn't draw any interest from January to February? A. No, sir.

Q. Would your records show how he drew that out; that is, as to whose order? A. No, sir.

No Cross Examination.

30 DOMINICK SINISI, sworn in his own behalf, testified as follows:

Direct Examination by Mr. Dixon:

Q. Mr. Sinisi, you are one of the complainants in this case, are you? A. Yes, sir.

Q. Where do you live? A. 234 Thirty-third St., Woodcliff.

Q. Are you married? A. Yes, sir.

40 Q. And your wife's name? A. My wife's name is Lena Sinisi.

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Q. In 1924 you and your wife were the owners of property in Jersey City? A. Yes, sir, 289 Boulevard.

Q. And that property was taken by the County? A. By the County in a condemnation suit.

Q. To widen that road? A. Yes, to widen the Boulevard. 10

Q. Where was that property located? A. Well, opposite the Tube station.

Q. What, if anything, now stands on the ground that was occupied by your building? A. This end of the bridge.

Q. And is the building still there? A. Where the building used to stand.

Q. Nothing stands on it now? A. Nothing stands on it now. 20

Q. You had that taken from you by condemnation proceedings? A. Yes, it was taken by condemnation proceedings.

Q. Were proceedings brought against you? A. Against me, yes.

Q. And whom did you employ to look after your interest? A. I employed John Milton.

Q. Do you remember when that was? A. Well, the case was given to John Milton the very first time the condemnation took place, which was in 1922, in July. 30

Q. 1922? A. Yes, the latter part of 1922 was the first notice that I received from the Freeholders of the condemnation proceeding.

Q. Was it then that you saw Mr. Milton? A. I saw Mr. Milton about a month or so after that—after I received notice.

Q. When did you first see him with reference to that matter? A. The only time I saw him was in the office of Louis Messano. 40

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10 Q. Who is Louis Messano? A. A personal friend of mine that had all my papers, and when the condemnation started in July 1922, I went to him and I says, "Mr. Messano, we are friends but I think I will have to take this case away from you and get someone else"; and he says "All right" and he suggested I get John Milton. I says, "Well, I will tell you; I don't like to go to Mr. Milton, but so long as you suggest him and you are a friend of mine and you are his assistant I will do so." I wouldn't give him the case unless the man would give me a fair price of what he would charge me. I says—

20 Mr. Hamill: If Your Honor please, this wasn't in the presence of Mr. Milton.

Mr. Dixon: No, it was not. I was going to stop him when you made the objection.

The Court: Don't tell us what was said unless Mr. Milton was there to hear it.

A. So he produces Mr. Milton in the court house, and he says to me, "I will take the case."

30 Q. Well, did you see him at any other time?
A. I didn't see him since, until 1924 when the condemnation started.

Q. Did you have any meeting in his office? A. Not until 1924 when he came to talk it over again. I gave him the case in 1922, in August or September and when I went to see him he says, "I will take care of you."

Q. There was nothing done then? A. Nothing done until 1924; nothing spoke about until then.

40 Q. Now, then, in 1924, did you see Mr. Milton again in regard to it? A. Yes, in 1924. It was

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the early part of the summer I know, because I lived in Asbury Park, that I went down to his office. They were supposed to have a meeting in regard to the bridge and I went to his office, and there was quite a large meeting of the property owners there.

Q. Would you say how many? A. Yes, there was five or six—something like that. 10

Q. Where was his office? A. His office was in this building, in the rear.

Q. On this floor? A. On this floor; and so I went to his office and there were some other people who owned property on the Boulevard, and we had a little meeting there to find out what is to be done and what action was to be taken with the Freeholders, and one man, Mr. Pierce, he says, "How about the fee?" and I told him I heard the fee Mr. Milton has set in this case is \$2500. I didn't ask any questions. This was in his office. That is the only thing he had to do. 20

Q. Did you ever have any talk with him about fees? A. No, that is the only thing I heard in that open meeting.

Q. Now, then, after that interview what was the first thing that you know that was done in regard to the condemnation matter? A. Well, I didn't have any until I was subpoenaed to the court house before the Commissioners. 30

Q. Did you go before the Commissioners? A. I went before the Commissioners.

Q. Do you know who the Commissioners were? A. Yes, I know. I think it was Heppenheimer, Astor and Smith, if I'm not mistaken.

Q. And what happened before the Commissioners? A. Well, evidence was produced as to the value of the property by real estate experts. 40

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Q. The value of your property and your wife's?

A. Yes.

Q. And what experts were produced? A. There was produced Mr. Ryer, Mr. Cannon, Mr. Gaddis, and Mr. Connelly.

10 Q. Well, were they testifying on your side or for the county? A. Testifying on my side.

Q. Do you know who was produced for the county? A. I think it was Mr. Makray and somebody else; I can't think of the other name. I think it was somebody on Montgomery Street.

Q. Do you remember the date when that hearing started? A. I don't remember exactly the date it started.

20 Q. Were you there throughout the whole proceedings? A. I was there throughout the whole proceedings.

Q. Where was that proceeding held? A. It was held in the court-house.

Q. Whereabouts in the court-house? A. In one of the assembly rooms I guess; I don't know.

Q. About what time did it start? A. The case started 10 or half past 10 in the morning. It was supposed to be 10 o'clock, and naturally—

30 Q. Sometime after 10 o'clock? A. Somewheres around 10 o'clock.

Q. What did the Commissioners do, if anything? A. They had the hearing and took all the testimony.

Q. How long did it take you to put in the testimony? A. Well, it must have been a couple of hours or so—two and a-half or three hours.

40 Q. Was it completed on that one day? A. Oh, they begun the other case, too, next to my place in the afternoon. My case was finished sometime in the afternoon and then they begun the other case.

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Q. When did you hear of the award after that?

A. I heard of the award in the Jersey Journal down at the store. I saw it in the paper.

Q. When was that? A. About the 21st or 22nd of September; something like that.

Q. Well, after you heard the award did you then see Mr. Milton? A. Yes, I came to Jersey City to see Mr. Milton. 10

Q. Did you see him? A. I saw him in his office, yes.

Q. And did you talk with him? A. I was talking with him, yes.

Q. What, if anything, was said about any further proceeding? A. I said, "Mr. Milton, I'm not satisfied with \$117,000, because you know how I stand; because the building cost me more, and I am entitled to appeal." At that time the house next door—the Arlington Company owned the frame building alongside of me and they had an appeal made on that \$48,000 and it was increased over \$100,000. 20

Mr. Hamill: I object to this conversation. I don't see what relevancy it has.

The Court: I don't suppose he knows of his own knowledge, does he? 30

Mr. Dixon: I don't know.

By the Court:

Q. How do you know that? A. It was published in the paper. It was in the paper that there was a \$48,000 increase. 40

*Dominick Sinisi—For Complainants—Direct**By Mr. Dixon:*

10 Q. You were quoting what you discussed with Mr. Milton? A. That is what I discussed with Mr. Milton. I discussed the appeal the next day. It was \$48,000 increase, and I thought I was entitled to an increase, and so I wanted an appeal. The people next door had an appeal already made and they had an increase of \$48,000 over a \$100,000, and because the house next door was increased \$48,000 I thought I was entitled to an increase.

Q. Well, what further was said? A. He said "All right; you are entitled to an appeal" and he said he would make an appeal for me, that's all.

20 Q. Did you say anything about any charge? A. No, I didn't ask him about any charge; I didn't say anything.

Q. At these interviews was your wife there? A. No, I was all alone.

Q. Now, do you know whether or not an appeal was taken? A. Yes, I know an appeal was taken.

Q. What is the next you know about the appeal? A. I know when the appeal came through in 1925.

30 Q. How do you know it came through? A. He notified me; sent me notice to come up there.

Q. Did you go? A. I went up to see about it.

Q. Where did you go? A. Up to the courthouse before Judge Ackerson.

Q. What happened there? A. The same evidence was presented to the jury—the same evidence that we had in the condemnation proceeding.

40 Q. The same witnesses? A. The same witnesses.

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Q. Do you know when that was tried? A. I don't remember just the date. It was started about 10 o'clock in the morning.

Q. Were you there in the morning? A. I was there at the trial until the jury came out.

Q. It started what time? A. 10 o'clock in the morning. 10

Q. When did it finish? A. I think the judge charged the jury about 3 o'clock.

Q. The same day? A. Yes.

Q. When did the jury come back? A. At 3:45.

Q. You were there? A. I was there until the jury came out. No, it was 4:45; that's it.

Q. And they brought in this increased verdict? A. They brought in \$23,000 increase.

Q. Were there any other proceedings in the condemnation matter that you know of? A. No other condemnation proceedings. This was the finish. 20

Q. Now, at the time of these condemnation proceedings was your property encumbered at all? A. Yes, the property, after the property was taken away, after the appeal was made, they took the property away from me.

Q. No, I mean was the property encumbered before the condemnation? I mean by "encumbered," did it have mortgages or any lien on it? A. Oh yes, I had mortgages there. 30

Q. What did you have on? A. Well, I got a list here. The Colonial Insurance Co. Do you want the figure?

Q. Yes. A. \$24,752.

Q. Is that a mortgage? A. Yes, that is first mortgage. Then I had Dominick Belleza, \$10,743.03. The next one was Louis J. Messano, \$4,247.83. 40

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Q. What other encumbrance? A. Next was Frank Desevo, \$5,368.83.

Q. The next one? A. \$739.83, and the cost of condemnation \$5,198.62. This was all the mortgages.

10 Q. Did you have a lease on that property? A. I had a lease on the property to the Eldorado Restaurant Company.

Q. For how long? A. Well, they had it 10 years with an option of five, which case was tried in this court.

Q. Never mind that now. A. Then Dr. Martin had a lease.

Q. What was that? A. He had about one year, I guess, or 9 or 10 months more.

20 Q. What part of it did he have? A. Two rooms in the front, first floor.

Q. Did Mr. Milton, so far as you know, have any knowledge as to these encumbrances? A. Of course he did, yes.

Q. Did he at the time of the condemnation? A. Oh yes, at the time of the condemnation.

Q. Who was Dr. Martin? A. Dentist. He had a lease on the first floor there and the lease had about 9 or 10 months more to go.

30 Q. What is his full name? A. George Martin.

Q. Did you see George Martin in Mr. Milton's office? A. No, I never saw George Martin there.

Q. Now, after the condemnation the money was paid into the Court of Chancery? A. Into the Court of Chancery.

Q. And then was there a controversy between this restaurant proprietor and you? A. Yes, sir.

Q. And a suit was brought in the Court of Chancery against you and your wife? A. Yes.

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Q. And who represented you in that suit? A. John Milton.

Q. Do you know when that was started, about? A. Well, I don't remember when it was started. I don't remember that now.

Q. What do you know about the case? A. Well, I only know that Mr. Milton told me that at the condemnation proceedings the lease was cancelled and when it was before this court nothing was said about it as to what it was worth. 10

Q. Was the case tried? A. Yes.

Q. Before whom? A. Vice-Chancellor Bentley.

Q. Do you recall when it was tried? A. Well, I think it was December 8th or 9th, some day like that. I think it was in December.

Q. Was an appeal taken from the Vice-Chancellor's decrees? A. Well, yes, we did take an appeal; yes. 20

Q. Who took the appeal? A. Mr. Milton told me that Goldberg took the appeal and we had to take a cross-appeal.

Q. Anything said about the compensation in regard to that? A. Yes.

Q. What was said about that? A. Well, it was said that after this court decided it—I went down to see Mr. Milton with Mr. Mulvaney to settle the question and get through with it. The moment we got in the office we were told an appeal was already filed by Mr. Brogan and we had— 30

Mr. Hamill: Mr. Milton told you that?

A. Yes. He said it was filed already by Mr. Brogan.

Q. Is that all that was said about it? A. He said that Brogan had got the appeal, yes. 40

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Q. Were you present at the trial of the case before the Vice-Chancellor? A. Oh, I was there, yes.

Q. How long did the trial of that case take?

A. I guess I was here all day.

10 Q. Did it take more than one day? A. Oh no, finished the same day.

Q. And when the appeal was taken was there a record printed in book form? A. Yes.

Q. Who paid for that? A. I paid for it.

Q. How much did you pay, do you know? A. He give me a bill for \$275.

Q. And you paid for that? A. Yes.

Q. And have you a copy of that record? A. I got one copy there, yes.

20 Q. Did you hand me a copy? A. Yes, I handed you a copy of the record.

Q. Is that a copy of the record (showing witness copy)? A. Yes, that's a copy of the record.

Q. And the first page is an index, is it? A. Yes.

Q. And then it begins with page 1? A. Yes.

Q. And what is the number of the last page in the record? A. Page 129.

Q. 129 pages in the book outside of the index?

30 A. Yes.

Q. Now, before these witnesses who testified in your behalf on the condemnation proceeding came in court before the Commissioners had you seen any of those parties? A. Well, I didn't see them since the condemnation.

Q. Had you before that? A. Oh yes, I met them in Mr. Milton's office.

Q. And whom had you met there? A. Mr. Milton—they were all there.

Dominick Sinisi—For Complainants—Cross

Q. The witnesses, I am talking about. A. The appraisers, you mean?

Q. Yes. A. Yes, Mr. Ryer, Mr. Cannon, and Mr. —

Q. Did they render bills for services? A. Oh yes.

Q. Who paid those? A. I paid them. 10

Q. Paid them all? A. I paid them for the condemnation and for the appeal.

Q. And who sent you those bills? A. Mr. Ryer sent the bill to Mr. Milton and Mr. Milton presented it to me and I gave my own check.

Q. Do you know how much? A. \$500. Cannon's was \$55.50, Mr. Wahl \$50, and Mr. Gaddis \$50 and Mr. Connelly's was settled by Mr. Milton.

Q. Did you pay it? A. He paid it for me, you know. 20

Q. You didn't pay Mr. Milton for that? A. No, he paid that.

Q. How much was that, do you know? A. I think he compromised for \$300.

Q. He told you that? A. Yes.

Q. All the rest you paid? A. All the rest I paid, yes. It was with the exception of one bill. Mr. Wahl was paid by Mr. Milton, too, on the leasehold. 30

Mr. Hamill: I didn't get that.

The Court: He means for the proceedings to fix the value of the lease in this court.

Q. And that was paid by Mr. Milton? A. Mr. Milton paid Mr. Wahl. 40

Dominick Sinisi—For Complainants—Direct

Q. You didn't pay that? A. No, Mr. Milton paid that himself.

Q. Do you know how much that was? A. It was fixed at \$750.

10 Q. Now, did Mr. Milton give you any money during the proceedings and up to 1927? A. Yes.

Q. To you or your wife? A. Yes, the first check was given to me. I think it was in the first part of August, 1925, of \$20,500; but it was not given to me direct. He didn't give it to me—didn't mail it in a letter to me but he sent it to me through Louis Messano.

20 Q. And when was the last that you got from him? A. The last check I got from him was given to me. I called him up on the 'phone for the check and he says "I will mail it to you" and he gave it to Louis Messano the same day and he called me up and gave me the check. That was the only way the check was given to me through him.

Q. In your bill of complaint you state between July, 1925, and early in 1927, you were paid the sum of \$57,307.23. Is that right? A. Yes.

30 Q. How did you make up those figures? Did you have a memorandum of it? A. Well, the first three I got from him except the one check which was right from the Chancery Court. All these checks were from Mr. Milton. The first one is for \$20,500; the second one was \$6500, and the last one was \$22,725, and the last one was direct from the Clerk in Chancery and that was \$4,000 and something.

40 Q. What did you say? A. I don't recollect the exact figure. It was \$4,000 and something. I don't know how much it was. Mr. Milton must have a record of that. He sent me the check just

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as it was. I got the check from Mr. Milton, but it was the same check from the Chancery Court endorsed to me.

Q. Do you remember when you got that check?

A. It must have been in the month of March or the last part of March or the first part of April, I don't remember the date.

10

Q. Now, pending this litigation over the lease, was any money paid to Mr. Milton by the Clerk in Chancery which he held for you? A. Well, he paid the leasehold, yes.

Q. (Question read at request of counsel). A. I don't know anything about that.

Q. Didn't you get some that he held in trust?

A. Oh, you mean what he had for me?

Q. Yes. A. I didn't think you meant that.

20

Q. Tell us about that. A. You see, when the Court of Chancery here allowed me \$32,000 which Mr. Milton got from the Chancery Court he gave me a check for \$20,500 and he held \$11,500, and after the appeal was made in this court there was at least \$10,000 more pending the appeal of the Eldorado Restaurant and I received \$6500, and when it went from this court they gave me \$10,000 more. Mr. Milton cashed that and gave me \$6500 and after the appeal was made by the Supreme Court he collected the \$28,000 which I put into a surety bond in order to get 4%. He drew that out of the bank and gave me \$22,725 out of \$28,000.

30

Q. Did he put any in trust for you then? A. Yes, this was supposed to be put in trust for me.

Q. Where did he put it? A. In the Trust Company of New Jersey, but I had to give 1% surety bond to take the \$28,000 out of the court and put it into the Trust Company. In other words, we

40

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did that to get a little more interest on the money.

Q. You got a surety bond? A. Yes.

Q. And Milton held the cash to secure the bond? A. Yes.

Q. And you paid on account of the bond what?

10 A. \$280. I have a check for that. I gave that to Mr. Milton and he put the money into the bank for me.

Q. Now, after the last payment of moneys received from the Clerk in Chancery did you secure from Mr. Milton any further moneys? A. Oh sure; I applied to get the final account.

20 Q. What did you do in regard to that? A. I went down to the office once or twice and I couldn't get him, and then I had him on the 'phone one day and I says, "Mr. Milton, I think you got too much money belonging to me and I want you to give me a final account and give me the balance," and he says to me over the 'phone, "I can do nothing more for you; I think I have done enough"; and I told my wife about it and she went over to see Mr. Milton. That was after he had finished the case.

Q. Did you ever get a final account? A. I never got a final account; no, sir.

30 Q. Did he ever do any other work for you that you know of? A. That's all.

Q. How about the Court of Appeals; do you know what he did there? A. I will tell you: There were two cases up on appeal, Mahoney and myself, and we came down to settle and we couldn't settle, and he said "I want to appeal", and I says, "I don't think we want to bother any more"; and Mr. Mahoney couldn't settle with Brogan—

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Mr. Hamill: I object to any reference to what happened to the case of Mahoney.

Mr. Dixon: He says they were together.

Mr. Hamill: Two clients and attorney consulting each other at the same time. 10

Q. Did he have anything to do with your case?

A. He had the appeal made, with the understanding that I should pay for the book \$275, and he says "I will take a chance"—

Mr. Hamill: Is he referring to the Mahoney appeal?

A. No, I don't mean that. 20

Q. Did Mahoney have anything to do with your appeal? A. No, we went together.

Q. Where? A. To Mr. Milton's office.

Q. Who did? A. Mahoney and I.

Q. Who is Mahoney? A. Mahoney used to own the building next door.

Q. And you and Mahoney went to Milton's office; did you see Milton? A. Yes, I said we called there to pay the \$15,000 and settle the case and to be through with it, and Mr. Milton told us— 30

Mr. Hamill: I object to that.

The Court: This is what Mr. Milton said.

A. Yes. Mr. Milton said that appeal was made in both cases. We wanted to settle if we could; we were tired of waiting, and he says 'We have 40

Dominick Sinisi—For Complainants—Direct

got to make an appeal as you have paid for the cost of the book, and I will take the case fifty-fifty like a good sport," and I have never seen him since.

10 Q. Now, did you have any correspondence with Mr. Milton? A. I have a few letters there, yes.

Q. When did you first learn that Mr. Milton charged \$17,000 or the balance, whatever it amounted to? A. That's the figure I made after all the money I received.

Q. When did you first learn that he was intending to retain that as payment for his services?

Mr. Hamill: I object to that.

20 A. He didn't exactly say it was "for my services."

Q. What was it for? A. He didn't say nothing. He never mentioned anything to me.

Q. Never said anything about it? A. Never said anything about it.

30 Q. When you had the meeting at Mr. Milton's office at which it was stated that he would charge you about \$2500, or \$2,000, for his services in these condemnation proceedings—

Mr. Hamill: He didn't say at the meeting at Mr. Milton's office. The testimony is that Mr. Pierce asked what he would charge and he said Mr. Milton said \$2500. He didn't say he made any agreement with him.

40 The Court: Let Mr. Dixon finish his question first.

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Q. —did you understand that the charge of \$2500 was to be to each one of you or—— A. Oh no, to each one. I understood——

Mr. Hamill: I object to that.

The Court: Well, he didn't say.

10

Mr. Hamill: My objection is as to the form of the question. He said "Did you understand." It isn't what he understood, it was what he said in the court-room.

Mr. Dixon: I think if Mr. Hamill will examine those cases he will make his understanding quite clear.

20

Mr. Hamill: You did ask him what he understood.

Mr. Dixon: Of course, I did.

The Court: There is no jury here. Proceed.

Q. Now, your wife at that time was a half owner of this property? A. Oh yes.

Q. Did you report to her in regard to what Mr. Milton would charge? A. Yes, I told her that at the beginning of the case, yes.

30

Q. Was she willing to have that acquiesced in? A. Well, I suppose she was satisfied.

Q. Did she object to it? A. No. I expected to pay him something.

40

*Dominick Sinisi—For Complainants—Cross**CROSS-EXAMINATION by Mr. Hamill:*

Q. You were acting, you mean, for yourself, and your wife with you in these matters? A. Not exactly with my wife. Whatever I do I go to her and tell my wife.

10 Q. And she approved of what you did? A. Yes. I talked it over.

Q. And she said it was all right? A. Yes.

Q. She said it was all right to her? A. She said it was all right.

Q. And she knew you were hiring Mr. Milton? A. Yes.

Q. And so when you went there you went there on behalf of your wife and on behalf of yourself? A. Naturally, she being half owner.

20 Q. You went there to represent your wife because you and she owned the property? A. All right.

Q. I want to know; is that right, Mr. Sinisi? A. She was—it is right. I am her husband and whatever I do I ask her if it is all right and she says—

Q. And she told you it was all right? A. Nothing wrong.

30 Q. She told you to go and see Mr. Milton? A. All right.

Q. And you made the contract for her and for yourself? A. I didn't make no contract.

Q. You consulted Mr. Milton? A. That's all, I consulted him. No contract was made only what he said at the open meeting there, at the end, when I saw so much money taken out, I asked him.

Q. You had no agreement? A. Yes, sir.

40 Q. You had no agreement with him and you

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wanted to know naturally? A. There was no agreement but I took it for granted it was twenty-two or twenty-five hundred dollars and that was right. I didn't ask him any amount.

Q. But you didn't say anything about that \$2500 when you told him about the accounting?

10

A. Of course I did. I always understood \$2500 was supposed to be the fee; I always said \$2500 was supposed to be the fee.

Q. You always said that to him, did you? A. Yes, but he took more, and naturally I objected; sure.

Q. And you had some correspondence with Mr. Milton? A. Yes, yes, sure.

Q. In which the matter of fees was referred to? A. Yes.

20

Q. Now, I show you a letter dated April 25th, 1926, that is signed "Dominick Sinisi?" A. Yes.

Q. And that was sent from Woodcliff? A. Yes.

Q. That is your letter? A. Yes.

Q. Also another letter of July 19, 1926, sent from Woodcliff; that is your letter? A. Yes.

Q. And also another letter—

The Court: What is this for?

Mr. Hamill: I want them identified. I want to prove the signatures.

30

The Court: If you haven't any agreement why do you do that?

Mr. Hamill: I have them all in a sheet and I was going to hand them over to him in a sheet to mark them for identification.

40

Dominick Sinisi—For Complainants—Cross

Q. And also this other letter written from Woodcliff, and dated October 20, 1926. That is your letter, isn't it? A. My wife wrote it, sure.

Q. You asked her to write that letter? A. My wife wrote it.

10 Q. And you knew she was writing it? A. That's right.

Q. And you had it written for you? A. Yes.

Q. And this one is dated January 12, 1927; you wrote that letter? A. I did, yes.

Q. And this one of January 4th, 1927; you wrote that letter? A. Right.

Q. And this one of February 18, 1927? A. That's right.

Q. You wrote that letter? A. That's right.

20 Q. And this letter of February 23, 1927? A. Right.

Q. That is your letter? A. That is my letter, yes.

Q. Sent from Woodcliff? A. Yes.

Q. And this one of March 15, 1927; that is your letter, is it? A. That's right.

Q. It was signed by Mrs. Dominick and it was signed for you? A. Yes.

Q. She was writing the letter for you? A. Yes.

30 Q. And this letter of March 31, 1927? A. Yes.

Q. Signed by Mrs. Sinisi? A. Yes.

Q. That was your letter? A. Yes.

Q. She wrote it and wrote it for you? A. Yes.

Q. And this letter of March—what is that, March— (handing the letter to the court).

The Court: March 2nd, I guess.

40 Q. This letter of March 2nd, 1927, that is your letter, too? A. Yes.

Lena Sinisi—For Complainants—Direct

Q. And all of these letters that I have called your attention to are your letters? A. Yes.

Mr. Hamill: I ask that they be marked for identification.

(Marked D-1 for identification.)

10

Q. Now, that proceeding in Chancery, Mr. Sinisi, was to find out the value of the Eldorado lease, wasn't it? A. Yes.

Q. And they wanted \$43,000? A. Yes, whatever they wanted. They wanted \$60,000 at first.

Q. \$60,000 and then they presented a claim for 43, didn't they? A. I don't know; I didn't see the paper.

20

Q. That was reduced by the court to \$15,400 and some dollars? A. Yes.

Q. Mr. Milton represented you in that? A. Yes, but Mr. Milton told me the lease was made before the proceedings started, and he said "Don't worry about the lease;" that the lease was condemned with the building.

(Mrs.) LENA SINISI, sworn on behalf of the complainants, testified as follows:

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Direct Examination by Mr. Dixon:

Q. Mrs. Sinisi, you are the wife of the last witness? A. I am.

Q. Where do you live? A. 234 Third St., Woodcliff, N. J.

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Lena Sinisi—For Complainants—Direct

Q. You are half owner of the property that was condemned for improving the Boulevard? A. I am half owner of the property under condemnation proceedings.

10 Q. Prior to the condemnation did you ever see Mr. Milton in regard to taking charge? A. I never saw Mr. Milton during the proceedings.

Q. Did you know anything about his charges, or what they were to be? A. I knew what his charges were going to be from my husband. My husband was supposed to attend to everything in the proceedings.

20 Q. Just before the employment of Mr. Milton in the condemnation proceedings in regard to your property, what did you understand, if anything, his charge for services was to be in that condemnation proceedings?

Mr. Hamill: I object. The only way that she had any information about this was through her husband. Mrs. Sinisi, I understand, was never in Mr. Milton's office and never saw Mr. Milton in the proceeding.

A. I never did see Mr. Milton.

30 Mr. Hamill: Now, how can she tell what she understood. She understood from him. How can that bind the man with whom the husband made the contract; how can it be evidence against him? It is Sinisi's testimony told twice, once by him and another time by his wife.

40 The Court: I suppose that is one of the things I have to determine, whether or not

Lena Sinisi—For Complainants—Direct

these complainants have any just cause of complaint as to the amount of the fees retained by Mr. Milton. I suppose that is the purpose of it.

Mr. Dixon: I think both parties have asked the parties to fix what would be a reasonable amount. We come in here and ask the court to say what, under the circumstances, was reasonable. That is our complaint.

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Mr. Hamill: I withdraw the objection.

A. My husband kept me well posted.

Q. What did you understand, if anything, Mr. Milton expected to charge for the condemnation?

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A. From \$2,000 to \$2,500.

Q. Did you see Mr. Milton at any time in regard to the payment of the balance of the money that he had in his hands? A. Well, when we received the last check, or which was supposed to be the last one, why I was thoroughly dissatisfied because he did not send the full amount that was due us, and I felt it my duty being that my husband had tried to get in touch with Mr. Milton and he refused to see him—he sent the check through Mr. Louis Messano—I deemed it my business to go down, because I was half owner of the property, and I was thoroughly dissatisfied with the amount that we had received, and I went down to see Mr. Milton after we received the last check, and that was the first and last time I saw him.

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Q. Where did you see him? A. I saw him at the court-house at the prosecutor's office.

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Lena Sinisi—For Complainants—Direct

Q. Now, what conversation did you have with Mr. Milton at that time? A. Well, I saw Mr. Milton and I spoke to him——

10 Q. What did you say? A. I said to Mr. Milton that we were thoroughly dissatisfied with the whole amount; that we had expected we would receive the balance of all the money that was due, and I told him about the \$11,500, and then I referred to the money which he sent to Mr. Louis Messano and instead of getting a check for \$28,000 besides the rest of the money that we were to receive we only received from him out of the \$28,000 was \$22,725. And all Mr. Milton said to me was, "Well, I see that you are dissatisfied in reference to the money that you have received,"

20 and I says "Yes, I certainly am dissatisfied because I had understood that the last check that we received we were to receive all the money which he was holding. And then, furthermore, I referred to the check which he sent to Louis Messano and I says: "He didn't do a thing in the case; why did you give him the money?" He says, "I'll see that you are satisfied; I will send you a check."

30 Q. What do you mean? A. The check that he sent to Messano.

Q. You haven't told us about that. Did you have any conversation? A. No, I had a conversation with Mr. Milton.

Q. What was it? A. In reference to the \$11,500 which he had retained, and then the last check which we received, you see he held out something which he paid to Mr. Messano.

40 Q. You are the first that has spoken about that; now what was it. A. He paid a check of \$1,750. My point was, why did he want to pay him money.

Lena Sinisi—For Complainants—Cross

Q. What was said? A. That was all that was said. Mr. Milton answered, "I see that you are not satisfied with the check that I sent you by him; I'll send you a check." I says, "Yes, we are not satisfied; we were under the impression that you were going to charge from \$2,000 to \$2500 and you have all the rest of the money retained"; and he says, I see that you are not satisfied with the check you have received," and I said "By no means." He says, "I will see what I can do; I will send you a check." 10

Q. Did he send you a check after that? A. He sent us a check for a very small amount.

Q. How much did he send you after that? A. He sent a check for \$1250.

Q. Did you ever see him after that? A. I never saw him after that, but I was under the impression when I left the office that we were going to receive a pretty big check because we hadn't received all the money, and being that he was going to charge \$2,000 to \$2500 for the entire case I thought there was quite a big sum coming to us. 20

Q. Did you write any letters to Mr. Milton? A. Well, I have written those letters that you showed to my husband. If you show me the letters I can recognize them. 30

CROSS-EXAMINATION by Mr. Hamill:

Q. You rememer when your husand first consulted Mr. Milton, Mrs. Sinisi, in 1922? A. In 1922? Yes, sir. He kept me well posted and I knew everything that was going on.

Q. Did he represent you at that time? A. He did. Whom do you mean? 40

John Milton—For Defendant—Direct

Q. Your husband. A. Oh, my husband; yes, he kept me well posted.

Q. He represented himself and you? A. Naturally, because he was the one that had the case.

Q. That is all.

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Mr. Dixon: That is the case, Your Honor.

 THE DEFENSE

JOHN MILTON, the defendant, sworn in his own behalf, testified as follows:

Direct Examination by Mr. Hamill:

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Q. Mr. Milton, you are an attorney and counsellor at law of the New Jersey bar, practicing in Jersey City? A. I am.

Q. For how many years? A. I have been attorney for 26 years, approximately, and counsellor three years less than that.

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Q. Will you indicate, generally, the scope of your experience and some of the clients you have represented? A. Well, I have been in active practice ever since I was admitted to the bar in 1903. I have occupied three official positions, City Attorney of Jersey City, Corporation Counsel, and Prosecutor for Hudson County. I have appeared in all of the courts of this state and in the Federal Courts of this district many times. I have represented at various times important interests, such as the U. S. Steel Corporation, International Mercantile Marine Company, Standard Oil Co., Delaware, Lackawanna & Western Railroad, Cen-

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John Milton—For Defendant—Direct

tral Railroad of New Jersey, Pennsylvania Railroad, the Erie Railroad, and a number of other corporations and private individuals.

Q. Now, have you had experience in condemnation matters? A. I have.

Q. Will you tell us, in a general way, what experience you have had. A. I represented a corporation in the acquisition in Jersey City of six square blocks of property; I represented Jersey City in the acquisition of some 60 different pieces of property; I represented several property owners whose properties were acquired by the County of Hudson in connection with the widening of the Boulevard; I represented The Arlington Company, the Ren-Rel Building, Journal Square to which reference was made by Mr. Sinisi and Mr. Pierce; and also the James J. Sullivan property which was acquired by Jersey City as a part of this improvement; I have also acted in a number of cases in which the State Highway Commission has condemned various properties in this community. 10 20

Q. And you have also, I suppose, appeared for the City as counsel from time to time and in condemnations where you represented the other side? A. Yes, I have. 30

Q. Now, Mr. Milton, will you tell us what services you have rendered for Mr. and Mrs. Sinisi, beginning from 1922 when Mr. Sinisi said he first consulted you about it? A. Those services, Mr. Hamill, can best be divided for convenience into what might be called five separate phases. Mr. Sinisi first saw me with Mr. Messano in 1922. He is mistaken, however, when he says he saw me in my office in the court-house, because in 1922 I had no office in the court-house. I was not Prosecutor 40

John Milton—For Defendant—Direct

10 until March, 1923. When he saw me he saw me in this building at my office. He is likewise mistaken when he says he saw me on this floor, the 10th floor of this building, in July, 1924, because I didn't move to this floor until October, 1924. He did see me in my office in 1922 when I was a member of the firm of Treacy & Milton, which was not dissolved until October, 1924.

20 At that time letters had been received by Mr. Sinisi from the then County Counsel, now Mr. Vice-Chancellor Fallon, advising him that they would take his property for that improvement. Mr. Sinisi talked with me and Mr. Messano and then and there retained both of us. There was no question about my being retained, and we were retained on behalf of himself and his wife, both and at that conference the first question that arose was, what were the rights of the tenants in the property, the two principal tenants being Dr. Martin, the dentist, who occupied one or more offices in the building, and the Eldorado Restaurant to whom Mr. Sinisi had made a lease for five years with a renewal of ten, and which had then about 13 or 14 years to run.

30 Mr. Messano and I discussed what was the best method to protect Mr. Sinisi in respect of those leases. The state of the law with regard to the respective or relative rights of a landlord and tenant was, to my mind, in a very chaotic condition. In some of the jurisdictions Mr. Messano and I briefed the question. The rule was that a tenant was entitled to be paid damages for a breach of his lease, while in some jurisdictions the rule was that a tenant was entitled to a portion of the fund based upon the value of the leasehold. The law

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John Milton—For Defendant—Direct

in this state was not any too clear; and we discussed whether or not it was possible to foreclose one or more of the five mortgages that Mr. Sinisi had on his property and thus wipe out those leases and buy in the property at the foreclosure sale.

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Between that time and June, 1924, I met Mr. Carlyle Garrison, a lawyer of this city, who represented Dr. Martin. I met him on several occasions.

Q. Dr. Martin, the dentist? A. Yes. I met him on several occasions and discussed with him a possible settlement of Dr. Martin's claims. We exchanged a number of letters about it, and to inform Mr. Garrison of all of the facts I got from Sinisi a duplicate set of the plans of the building, so that Garrison and I might have them in our conference. I suppose before the condemnation proceedings started I met Mr. Garrison five or six times, in an effort to adjust Martin's claim. He was claiming in the neighborhood of five or six thousand dollars. That represents some of the work that was done up to the time of the condemnation proceedings which began in June, 1924.

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The Court: You mean the hearing?

A. No, sir; the proceedings. A petition was filed in the early part of June, 1924, and notice of the appointment of commissioners was brought to me by Mr. Messano. I attended—

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Q. That was in June, 1924? A. June, 1924. I attended at the hearing on the appointment of the commissioners.

Q. What were you there for, Mr. Milton? A. Well, a very important step in the condemnation, Mr. Hamill, is to see that the proper kind of com-

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John Milton—For Defendant—Direct

missioners are appointed, men who are apt to view your client's situation at least in a broad way. This was a very important improvement. It contemplated the expenditure by the County of Hudson of several million dollars in the taking by
10 the county of several parcels of real estate, and among them was the property of Mr. Sinisi and the property of the Arlington Company, or a part of it, the property of Mahoney, the property of the Journal Square building which owns the Ren-Rel building, and some property north of there.

Q. And you were there to meet the commissioners? A. Precisely. After the Commission was appointed the first property taken up for
20 consideration, as I recall it, was the property of the New Jersey Bergen Square Realty Company. It was a part of the Bowl. That was the opening question in the proceeding, and it was my information and understanding from having talked with County Counsel Fallon that the experts which he employed to testify for the Bergen Square Realty case were to testify in all of the cases, and believing the values to which they would testify would be relevant and have an im-
30 portant bearing upon the Sinisi case I attended the sessions of the Commission which were held to fix the value of the Bergen Square Realty Company. I attended a number of the sessions and I borrowed a copy of the testimony that was taken so that I might study it and prepare for the Sinisi case. I can't tell now how many of those sessions I attended prior to the Sinisi case but there were quite a number.

When we got ready for the Sinisi case, which
40 was sometime in the month of July, and as the

John Milton—For Defendant—Direct

result of an arrangement with Mr. Sinisi, I employed Mr. Gaddis, Mr. Thomas A. Ryer and Mr. Connolly. Mr. Connolly was employed for the purpose of fixing the value upon the building. I went with Mr. Connolly two days going over that building from top to bottom. We had an estimate furnished by Mr. Sinisi which showed the consideration paid, and we were checking against that. I had a number of conferences with Ryer and Gaddis preliminary to the testimony being taken in the Sinisi case. I went over with them the testimony given by the County's experts who were Mr. Samuel Garrison and Mr. Makray. The Sinisi testimony was taken, and as I remember it, developed a record of about 150 pages. It consumed practically all of one day. It was not finished on that day but was adjourned over to September, and in September was resumed so that the tenant might put proof in in respect to the value of his leasehold and the value of his fixtures which he had in the place.

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After the testimony was finished the case was summed up before the Commission, and argued, and, sometime in the late part of 1924, the Commission made its award of \$117,000. Now, that closed what went on before the first and second phases of it and the services that were rendered before the condemnation proceeding and the conferences with Mr. Garrison as well as for services in the proceeding.

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Q. Do you know what value the County experts put on the property? A. Yes, sir, one of them testified to \$90,000 and another testified to a value slightly under \$100,000.

Q. And the award was \$117,000? A. Yes, sir; our experts testified to a value of \$140,000.

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John Milton—For Defendant—Direct

Q. Now, will you tell us about your appeal to the Circuit Court. A. Mr. Sinisi came to see me after the award was made and talked with me about an appeal. He wanted an appeal taken and an appeal was taken. Notice of appeal was given; the necessary application made for the striking of the jury and the jury was struck. Some eight or nine months elapsed between the time the case was summed up before the Commission and the trial of the appeal in the Circuit Court which was not tried until the latter part of May, 1925. I had obtained from the condemnation commissioners, or one of them, a complete copy of the record of all the testimony taken before them, which involved some 1600 pages of testimony. The same experts who had testified before the Commission were employed by the County on the appeal, and I had to read, and did read in conjunction with Mr. Ryer, the 1600 pages of testimony so that we might prepare for the cross-examination of those county experts. That consumed—I can't tell how much time, but it consumed a number of days. I had a number of conferences morning, afternoon and night with Mr. Ryer at my office in the preparation of the trial.

When we appeared at the court-house for the trial Mr. Sinisi, Mr. Messano and myself had been standing in the court-room after the jury had been impanelled and before they were sent out to view the property. This we thought would consume one day, but it consumed two days. As we were standing there, as a result of a discussion among us there, Sinisi asked me if I would try the appeal on a contingent bases. I said, "What do you mean?" He said, "half of what you get over \$117,000."

John Milton—For Defendant—Direct

Mr. Dixon: Now, I object to this. If it is the purpose of the defendant to set up a compromise, I object, because that is not mentioned in the answer at all of the defendant to the bill of complaint.

The Court: I assume it is for the purpose of showing what the feeling of the complainant was as to the services, or at least one of them before the services were rendered. 10

Mr. Hamill: It bears on the testimony of Mr. Sinisi.

Mr. Dixon: I don't think he said anything about the contract of \$2500. I think you are mistaken there. 20

The Court: Counsel is talking about the alleged settlement when he turned over the \$2,000 or \$2,500. I will allow the testimony.

A. He said "Half of anything you get over \$117,000." I talked for a minute with Mr. Messano and said, "Mr. Sinisi, all right, you are on" and the case was tried and it took two days, and the jury brought in a verdict of \$143,000, \$23,000 more than the condemnation commissioners awarded. And another thing was to examine the law with respect to the interest on the award of the jury, carrying that interest on the full amount of the jury's verdict back to the date of the Commissioner's report. I think the law was likewise somewhat in doubt on that subject in this state. 30

John Milton—For Defendant—Direct

I think in the principal case there was an opinion by Mr. Justice Black in the Acquackanonk Water Company matter. I made an examination of the law and had several conferences regarding it and it was increased \$4,000, and interest on the \$4,000 to September, 1924, right down to the date of the date of the judgment less some credits which Mr. Sinisi had in the way of rent. After the entry of the judgment the County proceeded under the Eminent Domain Act to file petition with the Chancellor to pay the money into court and to enter the judgment of the Circuit Court action. That closed what might be called the third phase of the matter.

The County counsel, in pursuance of a policy of extreme caution which he had adopted in all of these cases, joined as a party in that proceeding everybody who had been a tenant in the building that he could get any information about at any time, and he had joined to the proceeding persons who were not in the building at the time the money was paid into court but had moved out. That caused more trouble, because of the unsettled practice at this time in ascertaining the rights of the owner with respect to the division of the fund, and I had to go down and talk the matter over with the Chancellor himself, and I went to Trenton and ascertained about the procedure there. We finally worked out the procedure, and we had to give notice to all the parties in the petition. We included five mortgagors, Jersey City as a lienor, and some tenants that had moved out of the building, Dr. Martin the dentist, and the Eldorado Restaurant. I think the original record is here; and it led to my drawing that

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John Milton—For Defendant—Direct

bundle of papers shown in this record (referring to the original file).

The Court: That is the original file in the Clerk's office?

A. Yes, sir. 10

Q. Well, would that contain complainant's petition for the funds? A. Yes, sir.

Q. Also the order thereon calling for the persons named to assert their claims? A. Yes.

Q. And including also the payment of moneys for taxes by the Colonial Life Ins. Co., the Mes-sano mortgage, the Desevo mortgage and two complainants and the moneys admittedly due them \$32,000— 20

Mr. Dixon: I don't know what you are reading from.

A. A memorandum paper.

Mr. Dixon: Papers drawn and filed by you?

A. Yes. 30

Mr. Dixon: Are they in this bundle?

A. They should be in this one.

Mr. Dixon: In one of those two?

A. Yes.

Mr. Dixon: They would have your name endorsed on them? 40

John Milton—For Defendant—Direct

A. I think so, in most cases.

Mr. Dixon: You don't refer to Thomas Meehan?

10 A. No.

Q. Also the order of reference? A. Yes.

Q. You also procured a waiver on the part of James Corubia of moneys paid in court? A. That is correct.

Q. Also proof of notice of tenants to file claim? A. That's right.

Q. Also proof of service of notice of application of complainants to the funds? A. That's right.

20 Q. Also order authorizing the Clerk in Chancery to pay Geo. Martin tenant \$1,000 in settlement of his claim? A. That's right.

Q. Also petition of the complainants for leave to withdraw balance of \$28,000 in excess of \$17,000 allowed to remain in court to cover the Eldorado Restaurant claim upon giving bond? A. Yes, sir, and my statement is there, Mr. Hamill, that \$28,000 is the fund that was withdrawn so that Mr. Sinisi might get more interest on it in the savings bank than the Clerk in Chancery pays. I think the Clerk in Chancery pays a little less than 2%. I had arranged for a bond for \$28,000, the interest on which was regularly sent to Mr. Sinisi.

30 Q. Also the order carrying the petition into effect? A. Yes, sir.

Q. Also securing the bonds and having the same approved and filed? A. Yes, sir.

Q. Also procuring money in the Trust Company of New Jersey? A. Yes, sir.

40 Q. Notice for day of hearing? A. Yes, sir.

John Milton—For Defendant—Direct

Q. Also memorandum of Vice-Chancellor Bentley and the testimony submitted by the Eldorado Restaurant at the time of hearing? A. Yes, sir.

Q. Also the final decree? A. Yes, sir.

Q. Also the settlement of the final decree? A. Yes, sir.

Q. Also notice of appeal to the Court of Errors and Appeals? A. Yes, sir.

Q. And petition of appeal? A. Yes.

Q. Order to distribute money? A. Yes, sir.

Q. After affirmance by the Court of Errors and Appeals? A. Yes, that's right. Now, in addition to this, Mr. Hamill, I had to check the accuracy of the claims made.

Q. If I suggest the subjects to you will you say whether it is so or not? A. Yes, sir; I will.

Q. Did you, in addition to the foregoing, also examine and pass upon the accuracy of the County's petition for leave to pay the money into court? A. I did.

Q. Also make an examination and investigation of the accuracy of the claim of Jersey City for taxes to Jersey City to the amount of \$5,887.56? A. I did.

Q. Also to examine and investigate the accuracy of the claim of Colonial Life Ins. Co. for \$24,000 with interest on mortgage? A. I did.

Q. And also as to the claim of \$10,000 with interest of Bellezzi as mortgagee? A. I did.

Q. And the same as to claim of Desevo, mortgagee, for \$5,000 and interest? A. I did.

Q. And also the same as to the \$4,000 mortgage and interest of Muro? A. I did.

Q. Also the same with reference to the claim of Messano for \$4,000 and interest on mortgage? A. I did.

John Milton—For Defendant—Direct

Q. Also as to claim of Messano for \$3500? A. Yes.

Q. Also examining and resisting application of Eldorado Restaurant to retain in custody of Clerk \$46,000 pending appeal? A. I did.

10 Q. And also examining the claim of the Eldorado Restaurant as tenant asserting it to be entitled to \$50,851.66? A. I did.

Q. Also examining claim of Geo. H. Martin as tenant, for damage suffered by reason of forced removal? A. Yes, sir.

Q. And also did you go to Trenton to find out what other claims were filed with Freeholders on that fund? A. Yes.

20 Q. Also examine notice of appeal of Eldorado? A. Yes.

Q. Now I think I have suggested to you the more important of the primary steps taken by you? A. Yes, sir. That leaves the trial of the question before Vice-Chancellor Bentley with respect to the relative rights of these two tenants that were finally left after all of the lienors were eliminated. Those two tenants were Martin and Eldorado Restaurant, and after some negotiation, we settled with Martin, paid him off and got rid of it. The Eldorado case was one that was tried. That was a different one than the other case on the appeal. It was the value of a leasehold and it required an examination of approximately 40 leases which were made at various times to the property of that general section 26 which was put in evidence by the expert for the Eldorado restaurant.

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Q. Mr. Makray? A. Yes, sir; and the assignment of leases being put in by Mr. Ryer, our expert. I actually visited the scene of these leases

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John Milton—For Defendant—Direct

a number of days, going over them with Mr. Ryer lease by lease. I went over them on the plat book with Mr. Ryer in my office. I dont' know how many days we put in, but we spent a number of days checking up the rental and material value, and the materiality of the leases. That was practically every lease that has been made in that neighborhood for five years or more. The importance of the leases was to show the trend in values of leaseholds in that vicinity, both before and after the projection of the contemplated improvement.

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The trial by Vice-Chancellor Bentley, as I recall it, took a day. The claim of the Eldorado Restaurant as first advanced was over \$50,000. During the progress of the trial that claim was amended and cut down to \$43,000 and finally it was allowed at \$15,000 by the Vice-Chancellor. The excess over \$15,000 represents the moneys they had on deposit with Sinisi as a landlord. Our experts thought the leasehold was worth only \$8,000, as I recall it.

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That closed the 4th phase of the matter, and after the work was done in the Court of Chancery and a decision rendered Mr. Sinisi came to my office in this building and spoke to me about the matter of an appeal. He is mistaken when he says I told him we had to take an appeal. I never told him that and the record will bear me out—will indicate that we took the first appeal and that Mr. Brogan filed a cross-appeal. Sinisi put the proposition to me, "there ought to be an appeal. The last time, we gambled and you got an allowance on account of the increase. Now I think you ought to gamble again and give me a chance." I says, "What do you mean?" He said,

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John Milton—For Defendant—Direct

10 “You ought to take an appeal and not charge me anything and if you cut it down I will give you one-half”; and I says, “All right, I will take the appeal if you will pay for printing the book.” I took the appeal. The record was prepared and printed, and a brief prepared and the case argued in the Court of Errors and Appeals.

Q. Who argued the case? A. I did, sir. The matter was closed out and the \$28,000 obtained from the trust company and that sum less the charge that I made was remitted to Mr. Sinisi.

20 Q. Outside of all this work in detail did you do any work writing letters? A. Yes, sir, I think I counted the number of letters in my file and it was somewhere in the neighborhood of 150 letters that I wrote. This work went on intermittently, not very much in 1922, 1923 and 1924, but was very active from March, 1924, to 1927 when the decision of the Court of Errors and Appeals came down. It occupied over three years.

Q. This is the state of the case in the Court of Errors and Appeals (showing witness document)?

A. It is; yes, sir.

30 Q. Now, then, after that what was done? A. I remitted to Mr. Sinisi the balance of the money in my hands, less what I felt I was entitled to. I cleaned up the matter and finished the Chancery matter and sent him a check.

The Court: When was that?

A. Late in February, 1927.

40 Q. I want to show you—have you a statement there? Do you want to put in a statement you have there? A. You do it your own way. Go ahead; you are my lawyer.

John Milton—For Defendant—Direct

Q. If you have a statement there of moneys will you let us have it? A. Yes, sir.

Q. Tell us what you did with the moneys after the Court of Errors and Appeal rendered the decision? A. July 28, 1925 I was paid \$32,000 by the Clerk in Chancery, as a result of an order to that Clerk, and out of that \$32,000, I took \$11,500, representing one-half of \$23,000 increase in the jury's verdict over the award.

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Q. Did Mr. Sinisi know that you did that? A. He did and did not make any complaint about it in 1925, until he got the last check. He allowed me to keep that money for over two years. I sent him a check through Mr. Messano and had the check for his endorsement and his wife's endorsement for \$20,500. In 1926 I received a check from the Clerk in Chancery, on June 15th, for \$10,000, \$6500 of which was sent to Mr. Sinisi by check dated June 15, 1926, and \$3500 of which I retained on account of services.

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Q. Did he say anything about this? A. He did not. He spoke about it and said that he was satisfied with it and made no complaint about any charge I made him until late in February, 1927.

Q. How did that happen? A. You have the correspondence there.

30

Q. Have you now told us about all the money that you have turned over to Mr. Sinisi? A. No, sir.

Q. Continue your statement? A. In February, 1927, after the Court of Errors and Appeals had affirmed Vice-Chancellor Bentley I withdrew the moneys in the Trust Company of New Jersey, \$28,000, and sent Mr. Sinisi, by my check dated February 17, 1927 \$32,725.26. I received \$1750,

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John Milton—For Defendant—Direct

of which I paid to Mr. Louis Messano, together with an earlier \$1,000 I gave him which made him in receipt of \$2750. I sent a check to Ryer and Hague for \$1,000 in payment of their bill for their services in working on the leasehold and testifying before Vice-Chancellor Bentley. Later on Mr. Ryer returned me a check for \$250 which I gave to Mr. Sinisi.

10 Q. Out of that thousand you paid \$250 to Sinisi? A. Yes, sir. I paid M. T. Connelly \$300 in settlement of his bill for \$500 for services which he had rendered in testifying to the value of the land before the Condemnation Commission in 1924. Sinisi went around with me over two days. I retained those sums of money to cover the Ryer and Connelly bills because I had become personally responsible for the payment of both of them for what they had done. After I had sent Mr. Sinisi the check he came to my office, as his wife explained, about the fact that I had charged him \$3500. They were very much dissatisfied with the additional charge I made, and I told them that I thought the charge was a fair one but I would rather have them satisfied.

20 Q. You refer to the last \$3500? A. Yes.

30 Q. As to the first one there was no complaint? A. No.

Q. But as to the second one there was? A. That's right.

Q. And in order to pacify them or to satisfy them you returned some money to them? A. I finally gave them \$1250, yes, sir.

Q. Do you want us to understand that they made no objection to the other two at all? A. If

John Milton—For Defendant—Direct

you will let me have the correspondence I will read you a letter which is typical of several that I received.

Q. Are these the letters that they sent to you?

A. They are.

Q. I show you a letter, dated "Woodcliff, July 19, 1926, and another one from the same place dated October 20, 1926— A. Yes, sir.

10

The Court: Wouldn't it help you if you picked out all the letters and let Mr. Dixon see them?

Mr. Hamill: All right, sir.

A. The letter to which that has reference to was written January 4th, 1927, and it was the 5th of such letters that I received:

20

Woodcliff, N. J. Jan. 4, 1927.

Dear Mr. Milton:

As I am short of funds at present, would ask you to kindly try and obtain the six months' interest due on the \$28,000 which the Trust Company pays on January 1st.

30

Thanking you for giving the above your attention, and awaiting to hear from you, I remain,

Yours very truly,

Dominick Sinisi.

40

John Milton—For Defendant—Direct

The \$11,500 he had had since July 1925; the first \$3500 charge since June, 1926. The first complaint I had from the Sinisi's, or objection to any charge, was on February 18, 1927, when I got this letter from Mr. Sinisi:

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Dear Mr. Milton:

Your letter of the 17th inst. received and contents carefully noted.

20

It is needless for me to write that I was disappointed to note that you have deducted another \$3500, stating that this is for balance of service exclusive of any services rendered on appeal, as you had already deducted \$3500 in June, having stated at the time that this amount was for services rendered on the case, besides the \$11,500 which you deducted, being half of the increase. Mr. Milton, I am sure that if you were in my position, you certainly would not pay such a big fee, as you know very well that after having paid the Appraisers' Bills, etc., I am not getting any of my money back invested.

30

Will you kindly send me a check for the \$1500 which you kept to cover the bill of Ryer & Hague and M. T. Connelly as I will settle these bills, having settled the other bills myself.

Referring to the check from the Chancery's office, would appreciate you sending same to me at an early date as possible.

Please consider the amount of your fee that you have charged me and kindly send

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John Milton—For Defendant—Direct

me a check for the balance, as you know that I have already paid out a great deal of money, having lost and not making one cent profit on the building. Please consider this, and I am sure that you will agree with me.

10

Thanking you for giving the above your attention and awaiting to hear from you, I remain,

Yours very truly,

Dominick Sinisi.

That is the first time Mr. Sinisi made any objection to any fee I charged him.

20

Q. I wish you would read the letter of February 23rd, 1927? A. That letter is as follows:

Dear Mr. Milton:

Your letter of the 21st received and in reply would say, that as far as your fee is concerned, you never mentioned that there was still a balance of \$3500 to be paid to you, having deducted \$3500 at the time the \$10,000 was paid. And I think that after having deducted the \$11,500 making in all \$15,000, that you are charging me enough. You know frankly that you should not have deducted another \$3500, therefore, I wish that you would send me a check for this amount, as I am, certainly, entitled to same, in view of the fact that there was no mention made that there was still a balance to be paid.

30

40

John Milton—For Defendant—Direct

10

I have had an interview with Mr. Ryer and he insists on the \$1,000 and I am not going to discuss the matter with him further, as you know that \$250 will be well paid, having paid out the same amount to the other Real Estate men. And several other Real Estate men have stated that Mr. Ryer's fee of \$1,000 is entirely too high and that \$250 will be about the right sum to pay.

20

Regarding Mr. Connolly's fee, would say that I cannot understand why I should pay such an amount, when he appeared only once and you know very well that he was not a good witness. I will not pay him any more than \$50 and I wish that you will send me a check for the balance.

Kindly settle the whole matter, including the balance from the Chancery Court at an early date as possible and oblige,

Yours very truly,

Dominick Sinisi.

30

Mr. Hamill: I offer those letters that have been read into the record in evidence.

(Letter from the Complainant Dominick Sinisi to the defendant, dated January 4, 1927, is admitted and marked Exhibit D-2.)

40

(Letter from the same to same, dated February 18, 1927, is admitted and marked Exhibit D-3.)

John Milton—For Defendant—Direct

(Letter from the same to same, dated February 23, 1927, is also admitted and marked Exhibit D-4.)

Mr. Hamill: I desire to also offer in evidence the following letters, from Mr. Sinisi to Mr. John Milton, the witness on the stand. They were identified by Mr. Sinisi.

10

The first is a letter of April 25, 1926.

(Admitted in evidence, marked Exhibit D-5, and is as follows:

Dear Mr. Milton:

Not having heard from you up to this writing, and being anxious to hear what the decision will be, in reference to my case which came up on December 8th, 1925, would ask you to kindly see what you can do toward trying to have the above matter settled.

20

Thanking you kindly for giving same your attention, I remain.

Yours very truly,

30

Dominick Sinisi.

Mr. Hamill: Also letter of July 19, 1926.

(Admitted in evidence, marked Exhibit D-6, and is as follows:

40

John Milton—For Defendant—Direct

Dear Mr. Milton:

10 Your letter of recent date received and I was glad to note that you opened an account in the Trust Company of New Jersey (Union Hill Branch) in your name as Trustee by depositing \$28,000 in my matter.

I sincerely trust that you will do all you can towards speeding the Appeal.

Thanking you for taking care of the above, I remain,

Yours very truly,

20

Dominick Sinisi.

Mr. Hamill: Also the following letter dated October 20, 1926, from same to same.

(Admitted in evidence, marked Exhibit D-7, and is as follows:

Dear Mr. Milton:

30

I was in to see you the other day, but was told that you were out.

As you know that I am anxious to know what is being done in my case, would appreciate if you will kindly keep in touch with me as to what is being done.

Will you please be so kind as to send me a Copy of the Brief, or if you wish me to call, I will do so.

40

John Milton—For Defendant—Direct

Thanking you for the interest you are taking in the matter, I remain

Yours very truly,

Dominick Sinisi.

10

Mr. Hamill: Also letter of January 12, 1927, from same to same, dated January 12, 1927.

(Admitted in evidence, marked Exhibit D-8, and is as follows:)

Dear Mr. Milton:

Your letter of recent date with enclosure (check for \$560 interest) received, and wish to thank you for giving same your prompt attention.

20

Mrs. Sinisi and writer sincerely hope to hear some good news from you real soon.

Yours very truly,

Dominick Sinisi.

30

Mr. Hamill: Also letter from same to same, dated March 15th, 1927.

(Admitted in evidence, marked Exhibit D-9, and is as follows:)

Dear Mr. Milton:

Confirming our telephone conversation of this morning, would say that I trust you

40

John Milton—For Defendant—Direct

had our check signed (Balance of money which we are to receive from Chancery's Office) and that you will send same to us immediately upon receipt.

10 In reference to Mr. Ryer's bill, as well as Mr. Connelly's bill, would say that if they do not accept the amount mentioned in our letter to you under date of February 23rd, Mr. Sinisi prefers settling these bills himself, as he cannot understand why Mr. Ryer should charge more than any other Real Estate man. Mr. Sinisi, as well as the writer appreciate the fact that you have succeeded in having Mr. Ryer reduce his bill \$250, but this is not at all satisfactory.

20 Mr. Connelly's bill is entirely too high. You know that he did not do a thing, and the amount we wish to pay him is sufficient. The fact remains that we will pay same without fail, after having received check for \$1500 from you which is still due us, but not the exorbitant amount which they ask for. You know that we are right.

Thanking you kindly for giving the above your immediate attention, I remain

30

Sincerely yours,

L.S.

Mrs. Dominick Sinisi.

Mr. Hamill: Also letter from same to same, dated March 31st, 1927.

(Admitted in evidence, marked Exhibit D-10, and is as follows:)

40

John Milton—For Defendant—Direct

Dear Mr. Milton:

As we have not heard from you up to this writing regarding bills for Messrs. Ryer & Connolly, would ask you to kindly send us a check for the \$1500 which you are holding, as we feel perfectly justified in paying these bills ourselves.

10

Mr. Sinisi has had several interviews with Mr. Messano regarding the \$1,750 which you gave to him and he cannot see his way clear to return the money to us. In the first place, we cannot understand why you paid the \$1700 to Mr. Messano out of the \$28,000 which was due us, as he did not do a thing on the Case, you having done all the work. Furthermore, you passed that remark yourself to me when I was down to see you about three or four weeks ago. If you felt that he was entitled to any commission on account of he having turned the Case over to you, we feel that you should have taken care of him, as at the time you retained the \$3,500 no mention was made that a balance was still due, it being understood that \$3,500 was your Fee for the entire Case, outside of the \$11,500.

20

30

You stated that you would like to see us satisfied, therefore, we wish that you would settle the whole matter at once.

Awaiting to hear from you at an early date, I remain

Sincerely yours,

Mrs. Dominick Sinisi.

40

John Milton—For Defendant—Direct

Mr. Hamill: Also letter from same to same, dated March 3rd, 1927.

(Admitted in evidence, marked Exhibit D-11, and is as follows:)

10

Dear Mr. Milton:

Your letter of the second inst. received, with enclosure (check for \$1250) and wish to thank you for same.

20

Kindly try and settle Bill with Mr. Ryer and Mr. Connolly at an early date as possible. You know that their bills are entirely too high, especially Mr. Connelly's, and the amount stated in my previous letter is sufficient.

Awaiting to receive the above check as well as check from Chancery Court, and thanking you for interest taken, I remain

Yours very truly,

Dominick Sinisi.

30

Q. Mr. Milton, some statement was made here by Mr. Sinisi about your fee for this work and that you told him how much it would be; do you know what you said on that subject? A. Mr. Sinisi made the statement that Mr. Pierce asked me what I expected to charge for trying the condemnation cases and that I said \$2500. That is not the fact. I made no such statement to Mr. Pierce or to Mr. Sinisi, or to anyone else. So far as the charge to Mr. Pierce is concerned, the fact is, which I have confirmed by referring to my files since Mr. Sinisi testified, that upon the \$87,-

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John Milton—For Defendant—Direct

000 award I charged Mr. Pierce slightly under \$6,000 for trying the matter before the Condemnation Commission and in the Circuit Court. The question of the tenants' rights was settled. There was no Chancery proceeding and no Court of Errors and Appeals proceeding.

10

Q. Now, Mr. Sinisi referred to some conversation with Mr. Mahoney in your presence; tell us what you said. A. Mr. Sinisi said that he came to my office with Mr. Mahoney and that the appeal taken to the Court of Errors and Appeals was an appeal in both cases. That is not the fact. No appeal was taken in the Mahoney case and I never made any such statement in Mr. Mahoney's presence.

Q. I think you told us it was you who took the appeal in the Sinisi case and Mr. Brogan took the cross-appeal. A. That is a fact. Our appeal was taken first, and if you will look at the printed book you will see that that is so.

20

Q. Did you ever make any statement at any time to Sinisi about \$2500 being the fee? A. I did not.

Q. How much money for all the services you have detailed did you charge Mr. Sinisi as a fee? A. It is substantially fourteen thousand five hundred and some odd dollars, in addition to which should be taken into account \$2700 that I paid to Mr. Messano.

30

Q. Do you consider that a reasonable fee? A. I do.

40

*John Milton—For Defendant—Cross**CROSS-EXAMINATION by Mr. Dixon:*

Q. Mr. Milton, you spoke of being retained by Mr. Sinisi together with Mr. Messano in 1922; you said that Sinisi retained you and Messano; is that correct? A. Yes, sir.

10 Q. What do you mean by "retained?" A. I don't mean that he paid me any retaining fee; I do mean that at my office in this building in 1922 he stated to me and to Mr. Messano, in the presence of both of us, that he wanted us to represent him and his wife.

Q. You understood that you were retained jointly with Messano? A. I did.

20 Q. And you understood that you were to act jointly with Messano throughout the proceeding? A. I would say so, but I regarded myself as primarily responsible for it.

Q. But you understood that Messano represented him throughout the proceeding? A. Yes, sir; I think so.

Q. Throughout the condemnation proceeding? A. Yes, sir.

Q. And did that apply also to the subsequent litigation in this court? A. Yes, sir.

30 Q. And was it on account of the services that Messano rendered to Sinisi that you paid him the \$2700? A. Yes, sir.

Q. Who fixed that amount for his services? A. I did.

Q. After consultation with the Sinisis? A. No, sir.

Q. And when did you fix that? A. At the time that I sent Mr. Messano the checks.

40 Q. When was that? A. The first time, a thousand dollars, in 1926, I think; the second time in

John Milton—For Defendant—Cross

1927, when I sent him a check for \$1700. The first one may have been paid in 1925; I am not sure whether it was in 1925 or 1926.

Q. The first check was how much? A. \$1,000.

Q. How much was the second? A. \$1750.

Q. Will you state what services were performed by Messano for that? A. Yes; as I recall it, prior to the institution of the condemnation proceedings, Mr. Messano—

10

Q. No, I'm not concerned with what happened prior to your retainer. A. Well, I didn't intend to say anything about prior to the retainer; I mean during the period from July, 1922, and the time when Mr. Messano and Mr. Sinisi came to my office in 1924, when the condemnation proceeding was actually begun. In that period Mr. Messano consulted me quite a number of times in reference to the law regulating the right of a tenant to receive a part of the money to be awarded for a part of the property. He made some examination of the law and gave me a brief on that subject, in addition to the examination I made of it.

20

Q. Did you examine the law? A. I did; yes, sir, after the condemnation proceeding was begun. He attended at the hearings in the Sinisi case; he was at my office with me when I conferred with the real estate men; he was at the trial of the appeal in the Circuit Court and he worked with me in the Chancery matter, involving the right of a tenant, going over the leases, and was here at the trial.

30

Q. Did Messano represent any of the tenants in the case? A. No, sir. There were two tenants, and one of them was represented by Mr. Brogan.

40

John Milton—For Defendant—Cross

Q. Those were the only tenants there were? A. The only tenants who filed claims.

Q. Were there any others interested in the property besides the tenants? A. None excepting lienors.

10 Q. And you kept books of account? A. I did, yes.

Q. And case dockets? A. No, sir; I don't keep case dockets. I haven't kept them for years.

Q. You have no case dockets of the Sinisi case? A. No, sir.

20 Q. Any available record of the time you spent upon the Sinisi case? A. No, sir. When my firm was in existence we used to keep a time ledger, and after that was dissolved in 1924 I abandoned it. I found it was too much detail.

Q. So you have no records at all of the services rendered in the Sinisi case since 1924? A. Beyond the papers that have been filed. I have no record, no.

Q. Well, you heard your counsel reading a list from a paper pertaining to this matter, did you not? A. Yes, sir.

Q. Did you prepare that list? A. I did.

Q. Personally? A. Yes, sir.

30 Q. From what? A. I prepared that from the file which contains copies of the papers.

Q. What file? A. File in my office, and the original file in the Court of Chancery, I think.

Q. What is the original file in the Court of Chancery? A. What is it?

Q. Yes; have you it before you? A. The file is here; yes, sir.

40 Q. You showed me a number of papers in one file while you were on the stand? A. I handed you one bundle.

John Milton—For Defendant—Cross

Q. That is the bundle (showing bundle of papers to witness) that I was examining while you were on the stand; are there any documents in that file—which is numbered, Clerk's docket 58-320; also 46-581, and that file pertains to the Sinisi case? A. No, this is the Goldberg case, the one handed to me by the Vice-Chancellor. I didn't even look at it. 10

Q. Who is Goldberg? A. They were the owners of property that was taken, in part, by the county.

Q. Where was their property? A. Either immediately adjacent to the Sinisi property or very close to it.

Q. And I notice the name of Wahl here; who was he? A. Wahl was one of the owners. 20

Q. Of the same property? A. Called the "Wahl-Goldberg property"; yes, sir.

Q. This other file docket appears to be 58-320, isn't it? A. Maybe 322; I'm not sure. 58-322, that's right.

Q. And that's the one that applies to the Sinisi Case, isn't it? A. I haven't looked at it; it would seem to be so from the captions of the papers.

Q. Now, the only papers that were drawn and filed through your office are those with the blue covers, aren't they? A. No, sir. 30

Q. Any others? A. Yes. I notice one that was not in that group. (Witness examines papers.) The ones with the blue covers and three white ones.

Q. And one with no back on the papers? A. That is 4.

Q. Now, taking the first one of these with a white back; that original consists of one sheet, doesn't it? A. Yes. 40

John Milton—For Defendant—Cross

Q. Filed July 1st, 1925. What is it? A. Acknowledgment of service.

Q. By whom? A. By Messano.

Q. For what? A. Of an order dated June 9, upon Messano and Desevo who were the mortgagees.

10 Q. They were indignant with Sinisi? A. I don't think so in the ordinary accepted sense. There was no question about their mortgage being due and they wanted the money.

Q. Were you consulting Messano about those mortgages? A. I think, to save the time and expense of serving them in any other way, Mr. Messano got authority to acknowledge.

20 Q. Now, this second paper with the same description as the last, filed March 19; what is that? A. Remittitur from the Court of Appeals to the Court of Chancery.

Q. Was that drawn in your office? A. Yes, sir.

Q. Not by you? A. I think so.

Q. Dictated by you? A. I think so, Mr. Dixon.

Q. Now, another paper is filed March—what date? A. I don't know; it is so blurred. It looks like March the 10th.

Q. Call it March the 10th, 1927. A. Yes, sir.

30 Q. What is it? A. It seems to me to be a remittitur.

Q. And the other is a copy? A. Well, this may be a true copy of the original remittitur.

Q. Drawn in your office? A. Yes, sir.

Q. You didn't dictate it, did you? A. I am quite sure I did.

Q. Now, the next one is a paper of the same description filed July 23, 1925; and what is that?

40 A. Why, that is a waiver of any claim to the moneys in court, signed by Messano on behalf of

John Milton—For Defendant—Cross

James Carubia, who is Mr. Sinisi's rother-in-law, to expedite a settlement of the matter.

Q. Did you draw that? A. I think so. It is on my paper from the office.

Q. I mean, did you dictate it? A. I am quite sure I did.

Q. Aren't all these things what would be drawn by a clerk? A. No, I don't think so.

Q. You think you dictated all of those? A. I think so.

Q. Why didn't Messano draw this? A. I don't know why he didn't; I know that I did.

Q. Now, who was Martin? A. George Martin was the dentist in the building; had an office in the building, was a tenant, and was represented by Carlyle Garrison.

Q. Did you represent him? A. No, sir.

Q. Did you take an appeal for him from the award? A. I heard you read that this morning and I must confess I was mystified about that. I don't know why he was included in the appeal.

Q. It was drawn in your office? A. Yes, sir.

Q. Didn't you draw it? A. I think I did. I am free to confess after three or four years I can't tell you why it was done.

Q. As a matter of fact, you did represent him, didn't you? A. I did not, sir; no, sir.

Q. You didn't charge him for your services? A. No, sir; not a penny. I never represented him. Carlyle Garrison represented him.

Q. Well, you don't think I could have misread that? A. No, certainly not.

Q. I think it was in two papers. A. That might be.

Q. Now, the balance of these papers that were

John Milton—For Defendant—Cross

drawn in your office amount to 13? A. That seems to be right.

Q. Will you kindly look them over and state what they are? A. The first one I pick up is a final decree in a litigation between Sinisi and Messano.

10 Q. And consists of how many typewritten pages? A. Oh, two and one-half.

Q. Did you draw it? A. I did.

Q. You dictated it? A. Yes, sir. The next one is an order authorizing the Clerk to pay \$28,000 from the moneys in his hands, and consists of one typewritten page.

20 Q. Did you dictate it? A. I did, sir. The next paper is an order for the further withdrawal of funds amounting to something over \$17,000, consisting of two pages.

Q. That is, an order made by the Chancellor on the consent of the parties? A. Yes, sir.

Q. You drew that? A. Yes, sir.

Q. Did you dictate it? A. Yes, sir.

30 Q. How long is it? A. Two pages—short of two pages. The next one is an order for the withdrawal of moneys, consisting of 4 pages, and authorizes the payment of the various mortgages, five in number, I think, and the payment to Jersey City of the taxes, and the payment of \$32,000 to Sinisi.

Q. Did you dictate that? A. I did; yes, sir. The next one is half a page of typewriting, being a notice of appeal from Vice-Chancellor Bentley's decision to the Court of Errors and Appeals.

Q. And dated when? A. May 27, 1926.

40 Q. And served—— A. May 27, 1926. The next

John Milton—For Defendant—Cross

one is amended notice of appeal, dated May 29th, 1926, acknowledged May 29, 1926.

Q. And consists of how much? A. Oh, half a page of typewriting.

Q. Did you dictate those? A. I think I did, yes; I am pretty sure I did. The next one is a petition of Sinisi's requesting the payment of the fund in court to them, and making their claim to the whole fund less the mortgages, consisting of two typewritten pages and a very short affidavit.

10

Q. Did you dictate that? A. Yes, sir; I did. The next one consists of six typewritten pages, with short supplementary affidavits and it has proof of service of notice of application for the withdrawal of the moneys and a petition of the Sinisis for the withdrawal.

20

Q. Proof of service on whom? A. Proof of service on Frank E. Williamson, solicitor for the Colonial Life Insurance Company.

Q. Anybody else? A. That's all. There may be an acknowledgment on the back of it.

Q. These notices are to whom? A. To Williamson as solicitor for the Colonial Life and Messano for the mortgagee, Brogan solicitor for the Mayor, and Garrison solicitor for Martin.

Q. Did you draw that proof of service? A. I'm not sure as to the proof of service.

30

Q. How about the notice? A. I am sure I drew the notice. The next paper is an order of reference, reciting the proceedings and the application of the fund to various purposes, referring the matter to Vice-Chancellor Bentley—just a short order consisting of three typewritten pages.

Q. Ordinary order of reference consented to? A. No, a little unusual.

40

John Milton—For Defendant—Cross

Q. But consented to by the parties? A. I think so; yes, sir. The next one is a half a page of typewriting. It is an ordinary order of designation fixing a time for the hearing.

10 Q. Did you draw that? A. To the best of my recollection, I did; yes, sir. The next one is an order on the application of Sinisi for calling upon all the parties joined in the counter petition to file their claims and for publication in case that we weren't able to serve them.

Q. Did you draw that? A. I think I did.

20 Q. Is that the paper you referred to as having been drawn after a conference with the Chancellor as to the procedure? A. Yes, sir. The next one is an order to disburse moneys in accordance with the final decree after affirmance. It doesn't seem to be signed.

Q. You drew that? A. That is my best recollection; yes, sir. The next one is a proof of service consisting of two typewritten pages. I don't know whether I drew it or not. I doubt it. It shows service of the order calling upon the parties to file their claims. And then there are four other papers endorsed on their own backs.

Q. You have reference to these? A. Yes.

30 Q. All the other papers were drawn by other counsel? A. I think so, Mr. Dixon; yes, sir.

Q. Mr. Meehan and other counsel? A. Yes.

Q. For which you made no charge against Sinisi? A. No, only so far as I was required to ascertain the facts.

Q. Did you, as a matter of fact, make any charge against Sinisi for any of these documents that were drawn up? A. Which documents?

40 Q. Any of them that you have spoken of; did you make any entry of charge in your book? A.

John Milton—For Defendant—Cross

For a specific paper? No, sir.

Q. For the time it took you to dictate them? A. No, sir; I did not.

Q. Didn't you have any account with Sinisi anywhere in your books of account showing your account with Sinisi? A. You mean as to the amount of time spent on this case? No, sir. 10

Q. Of charges made by you. A. We probably have what I might call a financial sheet showing any moneys we laid out for him, yes.

Q. You kept no account of any charges for services against him? A. No, sir.

Q. How many other property owners did you represent during that time? A. I represented, as I stated this morning, the Arlington Company, the Journal Square Company, James Sullivan, Pierce, Daniel Mahoney—I am speaking of the properties that were condemned. 20

Q. And were their properties condemned? A. Yes, sir.

Q. All of them? A. Yes, sir.

Q. And you kept no account for services with any of those parties? A. No, sir.

Q. Were those the property-owners that were present in your office when Mr. Sinisi was there on one occasion? A. No such meeting ever took place. 30

Q. He said he was in there when somebody else was there taking up some matters similar to his. A. I certainly have no recollection of it, Mr. Dixon.

Q. Did you have any meeting of property-owners in your office at any time? A. I don't recall.

John Milton—For Defendant—Cross

Q. In regard to the condemnation? A. I might have.

Q. Well, did you invite Sinisi there? A. My recollection is not clear on that; I think not.

10 Q. Is it clear that you didn't have Sinisi there at some meeting when you think you did have a meeting at your office and you know that Sinisi wasn't there? A. Let me put it this way: I am reasonably sure that he was not there, because the people that he mentioned, their property was north of the bridge, and so far as I recollect it there was no community of interest between them.

Q. This Sullivan property; was that Margaret Sullivan? A. No, that was James Sullivan, the lawyer.

20 Q. How much did you actually charge Sinisi for the condemnation case up to the time of filing the—— A. I made no charge in that.

Q. You have no idea of what your services were worth, then? A. Oh, I think for the trial of the condemnation case, in view of the amount involved, would have been worth easily \$7500—easily that.

30 Q. How much did you charge them for the trial in the Circuit Court on the appeal? A. I made no charge other than the agreement I stated to you this morning.

Q. What? A. Other than the agreement I stated this morning.

Q. Did you charge him half of the increase? A. Yes, sir.

Q. You made that charge of half of the increase? A. Yes, sir, actually deducted the amount due him and kept the check, retaining that amount.

John Milton—For Defendant—Cross

Q. And retained one-half of the excess? A. Yes.

Q. And you charged him \$7500 for the proceedings up to that time? A. No, I understood you to ask me what my services would have been if I had made any charge.

Q. And you charged what? A. I said I made no charge only in the way that I have indicated.

Q. You said you charged him half of the increase that you secured before the jury for the trial in the condemnation proceeding before the jury? A. I think so.

Q. How much did that amount to? A. \$11,500.

Q. And didn't you make any charge for services rendered prior to that? A. I had not made any; no sir.

Q. What do you mean by you had not? You had someone make one, didn't you? A. Yes, in the circuit.

Q. How much did you charge him for that? A. Well, I didn't fix any amount, as I recall; I deducted \$3500 from the check, on account of the Chancery work, that I sent Mr. Sinisi.

Q. Well, you were entitled to \$11,500 for specific services and you charged it up, didn't you? A. Yes, sir.

Q. That is, for the trial of the case before the jury, and you charged him \$11,500 for that? A. Yes, sir.

Q. And you did retain more than that? A. I did.

Q. How much more did you retain? A. All told, \$7,000 less \$1250.

Q. That would be—— A. \$5750.

Q. Now, did you pay Messano the \$2700? A. Yes, sir.

John Milton—For Defendant—Cross

Q. Was that for the services he rendered in the trial of the appeal? A. It covered everything.

Q. Did he take any part in the trial of the case in Chancery? A. Oh yes, he was here.

10 Q. What part did he take in that? A. Not a very active one, but he was here and spent a day, and he worked on the leases with me.

Q. And that is the case in which the complicated legal questions arose? A. Yes, sir.

Q. Before Vice-Chancellor Bentley? A. Yes, sir.

Q. Did you brief them? A. Yes, sir; I did.

Q. And it was because of his position that you took an appeal? A. Yes, sir.

20 Q. And you argued the same questions before the Court of Errors and Appeals? A. Yes, sir.

Q. And briefed them? A. Yes, sir.

Q. And is this the brief that you submitted to the Court of Appeals? A. It is.

Q. That is your brief? A. Yes, sir.

Q. And it consists of 17 printed pages? A. That is correct.

Q. And a discussion of these serious legal questions appears upon page 3, does it not? A. Yes, sir.

30 Q. Pages 3 and 4? A. That's right.

Q. And the discussion of these serious legal questions appears upon page 3, does it not? A. Yes, sir.

Q. Pages 3 and 4? A. That's right.

Q. And in that discussion you cite two New Jersey cases and Elliott on Contracts? A. That is correct.

Q. And the discussion was as follows: It is so short I would like to read it:

40

John Milton—For Defendant—Cross

Before discussing the testimony, it may be convenient to invite attention to some legal principles applicable to the case, first pointing out that the fund in court represents the value of the entire fee at the time the petition was filed, June 11th, 1924. Consequently, the values of the various estates in the land must be ascertained as of that date.

10

That was one of the legal propositions? A. I don't think so.

Q. And then you say:

The value of a leasehold interest is the difference between the market value of the lease, and the rent actually paid.

20

And then you cite two New Jersey cases and Elliott on Contracts; is that the difficult question?

A. That was one of the questions; yes, sir.

Q. And then you say:

The true method of calculating the value of an unexpired lease is not by ascertaining the yearly rental value and then multiplying the figures by the number of years the lease has to run, but by calculating its value by the annuity tables; that is, by multiplying the annual by the value of one dollar per year for the number of years in the unexpired term.

30

And in support of that you cite three New Jersey cases? A. Yes, sir.

40

John Milton—For Defendant—Cross

Q. Was that the other legal difficulty? A. Yes, sir.

Q. And then you say to the Court of Errors and Appeals:

10 The correctness of the application of these principles was conceded by counsel for the tenant.

A. That's right.

Q. Was there any difficulty about that? A. There wasn't, apparently.

Q. Now, all the rest of the brief deals with the testimony involved, doesn't it? A. I think that is so; yes, sir.

20 Q. Well, I don't want you to "think" about it. A. Well, I haven't looked at it for some time, Mr. Dixon.

Q. You have had it in your hands and seen it? A. (Witness examines document.) Yes, that is so.

30 Q. Isn't it a fact that you borrowed the testimony that had been submitted to the Commissioners in condemnation for reading, in order to try all of these cases that you had and not the Sinisi case? A. No, that is not the fact. I think in fairness it might be said that the information that I obtained in that way was helpful to me in the other cases. There is no doubt about that.

Q. Which case did you try first? A. The Sinisi case, as I recollect it, was tried first.

Q. Don't you know? A. That is my recollection—my best recollection.

Q. How many did you try, all together? A. I

John Milton—For Defendant—Cross

think I tried two, the Sinisi case and the Pierce case.

Q. And only two? A. Yes, sir; the other two were settled, as I recall it. The County made some advance, two or three thousand dollars, the Wahl-Goldberg and the Mahoney cases.

10

Q. Well, these were all in your office at the same time? A. Substantially so; yes, sir.

Q. You have no records to show which you tried first? A. I haven't; no, sir.

Q. How many hours did you spend in the trial of the condemnation case before the jury? A. The Sinisi case?

Q. Yes. A. My recollection is that it took just short of two days—two court days.

Q. Do you remember what time you started? A. Started 10 o'clock in the morning and finished sometime the next day.

20

Q. You have no record of that? A. No, sir.

Q. There is a record in court, isn't there? A. I would think so.

Q. How many hours did that cover of your time, as you estimate it? A. The actual trial?

Q. Was it 10 to 1? A. 10 to 4 the first day, and I would say 10 to 1 the second day—some part of the afternoon.

30

Q. Now, on the trial of the case before the Commissioners how many hours did you spend? A. In the actual presentation of the proof for the first day I would say—oh, two and one-half or three hours; and the second day, an hour.

Q. In the trial of the case before the Court of Chancery how many hours did you spend? A. One full day.

Q. Beginning at what time? A. 10 o'clock and finishing at 4.

40

John Milton—For Defendant—Cross

Q. You didn't have any charge figured per hour that you charged them? A. No, sir; I don't charge on that basis.

10 Q. On what basis do you charge? A. Well, it all depends, sir, upon the amount of work involved—the results obtained and the amount of money involved.

Q. Well, you knew that a large part of the 50% of this money didn't belong to Sinisi? A. That is not correct.

Q. How near correct is it? A. The liens on the property and taxes aggregated \$52,000 and the award was \$140,000.

20 Q. There were other liens besides the taxes and the mortgages? A. The tenant's claim; I can't tell you what it was worth.

Q. Didn't you tell him what it was? A. No, sir.

Q. What they claimed? A. What they claimed I only knew when the petition was filed in the Court of Chancery.

Q. Didn't you know before that? A. No.

Q. What they claimed? A. No.

30 Q. Didn't you talk about it in the way of a settlement? A. We talked with Martin; we tried to get Martin to settle, and afterwards when the tenant I think filed his claim, or just before he filed his claim with Brogan.

Q. Didn't you talk about any settlement with Brogan before he filed his papers? A. I think not; I don't recollect. The only settlement that I talked about was with Mr. Martin and Mr. Sinisi, and he was to pay him \$200.

Q. Now, you appeared before Justice Minturn, I understand, at the time the Commissioners were appointed? A. Yes, sir.

40

John Milton—For Defendant—Cross

Q. Did you represent merely Sinisi or the others, too? A. I can't tell you, Mr. Dixon; I may have been retained at that time on behalf of the others; I'm not certain about that.

Q. Don't you know you were? A. Why, I probably was. I think perhaps you are right. 10

Q. And so whatever you did there, the results you obtained in the appointment of those commissioners, wasn't all charged to Sinisi, was it?

A. No, it wouldn't have been fair to do that.

Q. How much did you charge them for that?

A. I didn't make any specific charge.

Q. Did you have anything in mind when you got through with it of what it was worth? A. No, sir.

Q. This alleged agreement which Sinisi made was on the eve of the trial—as you were going into the trial, I understood you to say? A. Yes. 20

Mr. Hamill: I don't want to interrupt you, but I understand this case is being tried on the theory of *quantum meruit*?

Mr. Dixon: I'm not sure about the theory. I supposed that was the theory, but I understand now that this charge was based upon one fact, the *res*, and Mr. Milton has so stated. 30

Mr. Hamill: I understand you stated to the court this morning that you wanted the court to fix a reasonable fee and we joined in that. Now, Mr. Milton stated Mr. Sinisi said that the charge was to be \$2500; but that was for only one part of the work alone. Mr. Sinisi agreed to pay \$11,500. 40

John Milton—For Defendant—Cross

I don't understand that he is confined to that if the value of his services was reasonably worth a greater compensation.

10 Mr. Dixon: I don't suppose he is. I haven't said anything about that. He has testified that he charged that figure to Sinisi. That is what I want to find out about, whether he informed Mrs. Sinisi about this charge.

Q. Did you so inform her? A. I did not.

Q. That you were going to charge her one-half of whatever the *res* was? A. No, I didn't; I dealt with her husband only during all the three years.

Q. Didn't you know that she was a half owner?

20 A. Yes, sir.

Q. And you didn't think it was necessary to consult her about that? A. No, because her husband was acting for her, in my opinion.

Q. How did you know he was acting for her?

A. Because in the entire work that had been done prior to that, from 1922 to 1925, I had never seen Mrs. Sinisi and Mr. Sinisi transacted all the business.

30 Q. You had never seen Mrs. Sinisi during those two years? A. Oh yes.

Q. The thing was suspended, wasn't it? There wasn't anything done between 1922 and 1924? A. No, I am referring to 1925 and you asked me about the agreement with Mrs. Sinisi; I said in that three-year period I had all the transactions with Mr. Sinisi; I dealt with him entirely.

Q. You didn't deal with Mr. Sinisi until 1924?

A. Except on one or two occasions, in June, 1924.

40 Q. And that is when these proceedings started up afresh? A. Yes, sir.

John Milton—For Defendant—Cross

Q. Now, you identified certain letters that were sent to you by Mrs. Sinisi; did you reply to any of them? A. I think I did.

Q. Have you copies of those letters that you sent to her or to Mr. Sinisi? A. I gave Mr. Hamill all the copies.

10

(Mr. Hamill produces papers and hands them to counsel.)

Q. I show you a letter of June 2nd, 1926, to Dominick Sinisi; did you send that? A. Yes, sir.

Mr. Dixon: I offer it in evidence.

(Admitted and marked Exhibit C-1.)

20

Q. And one under date of August 23, 1926? A. Yes, sir.

Mr. Dixon: I also offer that in evidence.

(Admitted and marked Exhibit C-2.)

Q. That is signed by you, is it? A. No, sir.

Q. By whom? A. Someone in my office.

Q. That is dated January 8, 1927? A. Yes, sir.

30

Mr. Dixon: I also offer that in evidence.

(Admitted and marked Exhibit C-3.)

Q. I show you another of February 17, 1927, consisting of two pages. A. Yes, sir.

Mr. Dixon: I offer it.

(Admitted and marked Exhibit C-4.)

40

John Milton—For Defendant—Cross

Q. Also one of February 21, 1927. A. Yes, sir.

Mr. Dixon: I offer it.

(Admitted and marked Exhibit C-5.)

10 Q. And one of March 2, 1927. A. Yes, sir.

Mr. Dixon: I also offer that.

(Admitted and marked Exhibit C-6.)

Q. And one of March 31, 1927. A. Yes, sir

Mr. Dixon: I offer it.

20 (Admitted and marked Exhibit C-7.)

Q. Did you ever render Sinisi any statement?

A. Yes, sir.

Q. Do you know when? A. Why, I can't fix the date. On more than one occasion I gave him statements when he came to my office.

Q. Did you give him more than one? A. I think so, Mr. Dixon.

30 Q. Did you keep any copies of them? A. I don't recall.

Q. What? A. I may have; I don't recall.

Q. You never gave them a final statement did you? A. I considered the letter that I wrote him, sending him the checks, a final statement.

Q. Is it among those letters? A. Yes, sir.

Q. You think that was a final statement? A. Yes, sir.

Q. To which letter do you refer?

40

John Milton—For Defendant—Cross

The Court: You mean the letter in which you gave accounting of \$28,000?

A. Yes, sir.

The Court: That is Exhibit C-4.

10

Q. Don't you state in that letter that it is not a final statement? A. If I did I have forgotten about it.

Q. Well, this is the final one you gave him, anyhow? A. I think so, yes. There may have been additional moneys that, after checking up with the Clerk in Chancery, was due to Mr. Sinisi for interest.

Q. So you never gave him any final statement? A. I sent him that bill.

20

Q. But you never sent him any bill for services? A. No, sir.

Q. So that the only way he could figure it out was by the process of addition and subtraction? A. That may be so.

Q. Well, isn't it so? A. Yes, sir.

Q. And the last proposition you had to deal with in that particular was this letter which says, "I will have a complete statement from the Clerk in Chancery of all the moneys paid out within a few days and send it to you?" A. Yes, sir. That, I think, I did with a check. Mr. Sinisi mentioned a check this morning around \$4,000.

30

Q. That was the check that was made payable to or to you; do you remember? A. I don't recall that.

Q. Endorsed over? A. If it was made payable to me it was endorsed right over to him.

Q. There was some dispute about the charges

40

John Milton—For Defendant—Cross

made by Sinisi's experts, was there not? A. Yes, sir; there was.

Q. And were the disputes over the charges for services rendered upon the trial before the jury?

A. I don't think I understand that.

10 Q. Well, there bills of experts for services, you testified, which were disputed by Sinisi. A. Yes.

Q. And those bills were some that were rendered by Ryer and Hague? A. Yes, and some others by Connelly.

Q. And those were for services partially rendered on the trial before the jury? A. No, sir.

20 Q. Before whom? A. The Connelly bill was for services rendered before the Condemnation Commission and also before the jury, and the Ryer bill which was for services rendered in the Chancery proceeding was disputed.

Q. The bills for services rendered for appearing before the jury were not disputed? A. By Ryer?

Q. Yes, or Gaddis. A. I never heard of it.

Q. Or by Gannon? A. I never heard of any dispute.

Q. Well, they testified before the jury, didn't they? A. Yes, sir.

30 Q. Who paid them? A. Mr. Sinisi.

Q. By check? A. I don't know.

Q. Do you know what the bills were? A. I don't even know that.

Q. Didn't you give him the bills? A. I may have; I can't tell you, Mr. Dixon. I may have sent them to him.

Q. Do you remember when the trial ended before the jury? A. In May, 1925.

40 Q. I show you three checks that appear to have

John Milton—For Defendant—Cross

passed through the bank as paid by Sinisi for services; do you think those were the checks that were paid for these services? A. Well, I am willing to say to you they were.

Q. There were no other services rendered between May and August? A. No, sir; not that I know of. 10

Q. Well, you know, don't you? You would be the one to know? A. Yes, surely.

Q. These amount to about \$1550? A. That's right.

Q. Did you deduct that \$1550 before you divided up the amount? A. I don't think so.

Q. Any other experts paid for the trial before the jury besides these three? A. Not that I know of. 20

Q. You say you spent sometime looking over the buildings before any proceedings were begun before the condemnation? A. No, after the condemnation proceedings were begun.

Q. And after the Commissioners were appointed? A. Yes.

Q. How long did you spend? A. On two occasions with Mr. Connelly, several hours each day.

Q. What time of the day? A. I can't say.

Q. How many hours did you spend there the first day? A. I would say about two hours. 30

Q. And the next day? A. About the same time.

Q. What was the purpose of your being there? A. Well, we expected to put in proof with respect to the cost of the building,—both its original cost and its reproduction cost. I wanted to be familiar with the type of the building. I certainly didn't want to examine Connelly without being able to visualize that building pretty thoroughly. 40

Edward P. Stout—For Defendant—Direct

Q. It took you five or six hours to do that? A.
A. We went over the building very thoroughly.

Q. You are an expert; you didn't have to look
it over five hours? A. No, sir; certainly not. By
the time that I went from my office and went to
the building and looked it over and talked with
10 Mr. Connelly and got back to my office I consumed
easily two hours and a-half.

EDWARD P. STOUT, sworn on behalf of the
defendant, testified as follows:

Direct Examination by Mr. Hamill:

20 Q. Mr. Stout, you are an attorney and counsel-
lor at law of this state? A. I am.

Q. How long have you been an attorney? A.
I was admitted at the June Term, 1907.

Q. How long have you been a counsellor? A.
Since June, 1910.

Q. And you have practiced actively in Hudson
County and in the state of New Jersey during all
of that time? A. Yes, sir.

30 Q. And will you indicate, in a general way, the
character of your work. A. Well, I have during
that period of time been engaged as a general
practitioner, specializing in tax litigation. For a
term of years I was assistant corporation counsel
of Jersey City, and for 8 years, I think, of
that period I had charge of its tax litigation and
had to do with railroad property values not only
in Jersey City but in Weehawken, West New
York, Hoboken and Bayonne in respect to first
and second class railroad property.

40

Edward P. Stout—For Defendant—Direct

Q. And have you had experience in condemnation proceedings? A. I have had considerable experience in condemnation proceedings.

Q. And are you able to state the value—reasonable value—for services rendered in condemnation proceedings? A. I think so.

Q. Now, Mr. Stout, assume a lawyer of 25 years' experience in active practice; that he has represented such interests as the Standard Oil Company, D. L. & W. Railroad, Lehigh Valley Railroad, Central Railroad of New Jersey, Armour & Company, Cudahy Packing Co., The Trust Company of New Jersey, and other corporations in New Jersey; was corporation counsel for Jersey City for 9 years; prosecutor of the pleas four or five years; that he was retained in 1922 to represent a land owner in a proposed condemnation of property consisting of land upon which there was then erected a building; that other tenants were in the property, two tenants, one of whom possessed a lease which was for the duration of ten years with the privilege of renewal for 5 years and on which there remained 12 years of an unexpired lease, and that the other lessee had to be settled with;

Assume that he was compelled to hold conferences with the attorneys representing the interests of both lessees; that it necessitated from 10 to 12 letters to the attorneys of one of the lessees, and that he finally succeeded in procuring a reasonable settlement of that lease.

Assume also that he examined this building on two occasions and conferred with an expert as to the value of the building; that he studied the plans of the building; that he endeavored to settle amic-

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Edward P. Stout—For Defendant—Direct

ably the tenants' claim for compensation on account of their losses; that when the petition for condemnation was filed he appeared in court in order to satisfy himself that the commissioners appointed would be satisfactory, in a sense—that they would be proper commissioners, and capable commissioners, to take the question of the value of the property under consideration.

10

Assume further that in order to properly prepare his case and put himself in possession of information which would be valuable to him in the presentation of his case before the commissioners; that he attended at the hearings of the commission where other property-owners had their property under trial and consideration.

20

Assuming further that he made an analysis of the sales of property in that vicinity, and that he analyzed their records consisting of 1600 pages of testimony in order to equip himself to present the case of his client clearly before the commission.

Assume further that he had a number of conferences preceding his appearance before this commission; also that he did appear for several days before the commission.

30

Assume that the property was valued by the experts for the condemning municipality at \$90,000; that there were encumbrances amounting in all to \$52,000 or \$54,000, as well as other incumbrances in the shape of municipal liens to the extent of four or five thousand dollars.

Assuming that he presented the case and an award for \$117,000 was made by the commission after his services were rendered to the client in the presentation, argument and trial.

40

Assume that afterwards he presented an ap-

Edward P. Stout—For Defendant—Direct

peal to the Circuit Court because his client was dissatisfied with the amount of money awarded by the commission, and that he tried the case before the Circuit Court.

Assume also that the client was in a position where, by reason of the fact that the condemner had appealed, which made it impossible for him to withdraw the appeal and accept the award of the commission; and that the trial and the preparation for trial involved the spending of many days, necessitating conferences with experts and with the owner, the analysis and study with experts the sales and other factors which affected the market value of property; that it necessitated an examination and investigation of the legal aspects of the situation and of the cases bearing on the situation. 10
20

Assuming that he tried the case before a jury personally for substantially two days, and that the award of the commissioners of \$117,000 was not sustained, or, rather, that the jury tried the case de nova and brought in a verdict of \$140,000, to which counsel had the sum of \$4,000 added in the way of interest, on presenting to the counsel for the condemner considerations which moved the conviction that interest should be added when the question of interest hitherto had been a doubtful one. 30

Assume that he obtained a rule for judgment and entered judgment, and that after this had been obtained the counsel for the condemner had paid the money into the Court of Chancery, and that on account of the carefulness of counsel for the condemner to represent his client, a municipal body, he had joined in interest any person having 40

Edward P. Stout—For Defendant—Direct

any interest whatever of any kind in the property, requiring that notice should be given to them.

10 Assuming that one of the lessees claimed that his lease was worth over \$50,000; that in the course of the hearing before the court he was persuaded by the presentation of facts and by the facts offered by counsel for the owner that he should reduce his claim, and he reduced it voluntarily to \$43,000; that the hearing proceeded and eventuated in the Court of Chancery, through one of its honorable Vice-Chancellors reducing the claim to \$15,000.

20 Assume further that the procedure in this respect, that is to say, regarding the application for payment of the moneys into court and settlement of the claims of the parties having an interest in the property was doubtful and that counsel for the owner had to defer to His Honor the Chancellor and make it appear what course to be followed.

30 And assuming that after these Chancery proceedings had terminated an appeal was taken to the Court of Errors and Appeals, which involved conferences, the filing of papers as well as preparing them in the proceeding before the Vice-Chancellor, which necessitated the preparation and filing of at least 15 papers;

Assuming that briefs were prepared and that counsel of the character I have indicated appeared before the Court of Errors and Appeals and argued the case personally;

40 Assuming that difficult and novel questions arose regarding the value of leases and continued throughout the entire proceeding; that after this had been done counsel had rendered other services to his client in the way of enabling him to

Edward P. Stout—For Defendant—Cross

draw funds out of the Court of Chancery where the interest was less than 2% and place them in a stable investment where he was enabled to obtain 4%;

Assume further that all of these services pertaining to the whole situation necessitated much detail work, connected with which was the writing of from 75 to 100 letters; 10

What would you consider the reasonable value of those services?

Mr. Dixon: I object, on the ground that there are so many assumptions in the question which have not been proved in the case, and the question is so vague I don't believe any expert, no matter how ready he is, can give an intelligent opinion. 20

The Court: Oh, I don't call to mind any assumption that had no basis in the testimony or proofs. There being no jury here, I will allow it to stand.

A. At least \$22,500.

CROSS-EXAMINATION by Mr. Dixon:

30

Q. You have had your experience in the law department of Jersey City, or a large part of it?

A. I beg pardon.

Q. You have gotten your experience in the law department of Jersey City—the experience that you have detailed? A. No; I got a considerable part of it.

Q. You have been in the law department of Jersey City? A. I said so, yes. 40

Edward P. Stout—For Defendant—Cross

Q. For how long? A. For 10 years.

Q. In what capacity? A. As an assistant corporation counsel.

Q. And who was the corporation counsel? A. Mr. John Milton a part of the time, and a part of the time—

10 Q. How much of the time? A. I think for four years.

Q. That is, the defendant here? A. Yes.

Q. And who else? A. Thomas J. Brogan.

Q. The present corporation counsel? A. Yes, sir.

Q. And you have been in charge of the office how long? A. Since last April.

20 Q. Now, as far as condemnation proceedings are concerned, did you have any experience while in the office defending those condemnation proceedings or were you on the other side, generally? A. I don't recall defending any condemnation proceedings while I was in the law department, but I had condemnations, both on behalf of the city and also for private clients.

Q. You did do the work for the city? A. I certainly did.

30 Q. And, in your opinion, the work that is entailed upon the condemner more or less than that entailed upon the defendant or owner of the property? A. I would be inclined to say on the owner of the property.

Q. Do you think that is a complicated situation to defend, to prove the value of the property? A. I would say "yes" to that.

40 Q. That takes considerable law-school learning to present it properly before the commissioners or the jury? A. Yes, I would say that a very few lawyers know how to do it, in my experience,

Edward P. Stout—For Defendant—Cross

and I have handled thousands of cases.

Q. You have never presented one on behalf of the owner, have you? A. Yes—not while in the law department but for private clients.

Q. When? A. Why, the last was about 2 years ago.

Q. And you employed experts? A. Yes, sir. 10

Q. And had them make a report as to what they thought the fair market value was? A. Yes.

Q. And they testified? A. Yes.

Q. And is that very complicated? A. I don't think "complicated" is the right word; I say that it calls for skilled ability for a lawyer to properly prepare to represent the owner in a condemnation case.

Q. It calls for skilled ability for a lawyer to prepare and put in evidence in an assault and battery case, doesn't it? A. Very true, but that doesn't call for the expert ability that a condemnation would. 20

Q. You know Mr. John Milton, don't you? A. I certainly do.

Q. He was your corporation counsel? A. He was the corporation counsel of Jersey City, not mine.

Q. I mean, over you? A. Yes, sir. 30

Q. You were his assisant? A. Yes, sir.

Q. Do you know of his ever having defended any of these cases for property owners while he was corporation counsel? A. No, I have no such knowledge.

Q. Did you know that he defended a case for a property owner before he became corporation counsel? A. Just a minute——

Q. Don't bother about minutes ;answer the 40

Edward P. Stout—For Defendant—Cross

question. A. That he defended a condemnation case before he became corporation counsel? No, I have not.

10 Q. Do you know of any case where he defended the property owner before he became corporation counsel? A. No, I don't know why I should know it. I don't keep track of other lawyers' business.

Q. Do you know of any case that he defended the property owner after he ceased to be corporation counsel? A. Yes, sir; I know that he represented James A. Sullivan, where the property, I think, stood in the sister's name. It was condemned by Jersey City for a part of the Veterans' Square Plaza.

20 Q. Well, I don't know; where is that? A. Well, you ought to keep in touch with current events.

Q. Well, go on. A. And he succeeded—I have forgotten now—in raising the award before the jury on appeal. I think it was something like \$15,000; and I learned in that case that John Milton was the most worthy advocate in a condemnation case that I have ever been against.

Q. You were against him? A. Yes, sir; he was my adversary.

30 Q. What other cases do you know of? A. I think that is the only case in which he has been an opponent of mine in condemnation, but I know about these particular cases referred to here today, through the newspapers.

Q. And that is all you do know or have had experience in regard to defending? A. I would say "yes," actual knowledge.

Q. Now, you think he raised the amount in this Sullivan case \$15,000? A. I think it was \$15,000.

40 Q. What do you mean, that you were satisfied

Edward P. Stout—For Defendant—Cross

that the commissioner was wrong? A. No, that the commissioner was right. We had very fine commissioners in that case, the same ones that sat in the condemnation of the Evening Journal property.

Q. And because he beat you to the extent of \$15,000 you think he ought to have for that service how much? A. I have never appraised what he should have for that. But I say in that case he demonstrated that he had rare ability in the trial of a condemnation case. 10

Q. I know, but how much do you think his services were worth in that case? A. Oh, I should say \$5,000.

Q. How many hours did he devote to it, so far as you know? A. I think only two days in trial. I'm not sure; I think we were two days in the trial. I am not positive whether it was a day or two days. 20

Q. And then you would say that he ought to be paid how much per day for the trial? A. I never figure matters of this kind by the day.

Q. How do you charge? A. Well, I generally take into consideration the skill and ability of the lawyer. The time is simply a factor. The importance and magnitude of the matter is a great factor, and the results achieved is a big factor—how much real service have you rendered to your client. 30

Q. Did you figure, when he was appraising his services at \$5,000 in this \$15,000 raise— A. I didn't say he was appraising his services at that.

Q. I say, when you figured—when you appraised his services as being worth \$5,000 for raising this \$15,000 award that he was beating 40

Edward P. Stout—For Defendant—Cross

the city out of \$15,000 and therefore it was split with his client? A. I think that is an unfair question to ask me. I never had any such thoughts as those in my mind.

10 Q. Do you think that the property was honestly worth what the jury gave to the owner or do you think it was \$15,000 more than it was worth? A. I wouldn't say that. In determining the value of property which is placed upon expert ability I don't know who can say what is the value of property and it depends upon the skill of the attorney in handling the case; largely how much the client gets for his property. That is based upon my judgment.

20 Q. Did he do anything but put on an expert real estate man to give his opinion of the value? A. In these cases, I don't know.

Q. In your case? A. He showed the experts were well qualified to testify by the way he had prepared the case, the sales, and everything that had been done in the preparation of that case down to A No. 1.

Q. Who were the experts in that case? A. In the case against me?

30 Q. Yes, the only case you know about. A. I have forgotten now who they were. I think James F. Gannon, Jr., was one, and I think—I can't recall the name, but I know the party.

Q. Mr. Gaddis? A. No, the expert was on the buildings, taking the rental value of the building in determining its value.

Q. Did you have any experts? A. Yes.

Q. Who did you have? A. My recollection is Mr. Makray and Mr. Dunham. I had another one but I don't think I called him as a witness.

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Q. Did you prepare for your experts? A. I certainly did.

Q. They didn't prepare the data for you? A. They collected the sales, making an examination of the records for recent sales, and then they brought a list of those sales to my office and I went over them, they analyzing them and I compared the value of the property sold with the value of the property under condemnation, and there was a lot of work spent in doing that. 10

Q. You think a fair compensation for your services would have been \$5,000? A. That is what I would have charged if I had had the opportunity.

Q. And you have had how many of those a year? A. Oh, I didn't do them by the year. I don't know how many I had, when I was in the law department; about 10 or 12 condemnations. My work was largely on the tax end of it which involves the same proposition, the value of the property. 20

Q. Now, how much do you think his services were worth in the Court of Chancery suit? A. In reduction of the lease claim—that claim of the lessees?

Q. Yes. It took a day and half to try. A. The result was a big victory; I would say at least \$5,000. 30

Q. If it took a day and half or two days to try, and these are the dockets—will you look at those and tell me if there is anything in those proceedings that you can discover, that is intricate. A. I heard you go over those papers with Mr. Milton. I don't know of anything intricate in them.

Q. Anything that any ordinary lawyer's clerk 40

Edward P. Stout—For Defendant—Cross

wouldn't be able to draw? A. Well, I don't think I would put it in the hands of a clerk that never had had experience. I know I dictate my own papers.

10 Q. Were you at all involved in this litigation as counsel? A. No.

Q. Mr. Brogan was? A. I don't know; I wasn't.

Q. I show you page 3 of the brief filed in the Court of Appeals; anything in there showing a series of legal propositions that needed a great deal of research and study? A. It probably took a lot of research and study before you got to the point where you could make a brief like that. One sheet may be worth a thousand sheets.

20 Q. I ask you to look at it. A. I have looked at it. I don't know what work was back of that that convinced Mr. Milton that he could make those statements.

Q. They were agreed to by the other side. A. He may have convinced his adversary that it was right.

30 Q. And you think he ought to have about \$5,000 for that procedure, do you? A. That isn't a fair way to put it, Mr. Dixon. All of the proceedings which have been testified to here, that was in the question submitted to me by Mr. Hamill, involved a great deal of thorough and exacting work to present that case as Mr. Milton presented it.

Q. Well, what in your opinion would have been a fair charge for his services in presenting the condemnation case to the Commission? A. \$5,000.

Q. \$5,000 for that? A. Yes.

Q. And \$7,000 for the trial? A. I haven't said anything about seven thousand.

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Edward P. Stout—For Defendant—Cross

Q. Maybe I misunderstood you; what did you say you thought would be a fair compensation for his services before the jury trial and on appeal? A. I haven't said. Measuring the result, that the award was raised from \$117,000 to \$140,000 and the fact that he took it on a gambling proposition which might enter into it— 10

Q. You didn't hear anything in the hypothetical question about gambling proposition, did you? A. Well, I will leave that out. I leave out the speculative proposition, but I would say, irrespective of that, \$10,000.

Q. \$10,000 for the trial before the commissioners, \$10,000 for the trial before the commissioners, and \$5,000 for the trial in Chancery, and \$5,000 before the commissioners, making \$20,000; now how much for the Court of Appeals? A. I put the Court of Appeals and other work which Mr. Milton did, stated in the question, the raising of the \$4,000 interest and getting the money out of the Court of Chancery, and putting it on deposit where the owner could get a larger return, —all of those services I would put, together, somewhere around \$2,000; and I think about \$500 for the work prior to the condemnation. That is my judgment. I think I said \$22,500. That includes the Martin lease and other matters that were up. 20 30

Q. What did he do prior to the condemnation?

A. I am speaking now in respect to the settlement of the claim of Dr. Martin who asserted a claim which was finally settled, as I recall, for \$1,000.

Q. Where did you get that information? A. Wasn't that in the question? 40

Edward P. Stout—For Defendant—Cross

Q. I am asking you, where did you get it. A. I don't know whether I got it in hearing that question or from what was stated before.

Q. You don't know, then, what was in the question? A. I think I know as much of what was in the question as anybody else, but there was a lot in that question.

Q. Now, you say it was worth \$2,000 for getting this money out of the Court of Chancery; what do you mean by that? A. I mean the appeal from the Court of Chancery to the Court of Appeals in respect to the lease transaction.

Q. You mean that you think it was worth \$2,000 for Mr. Milton to present a matter to the court, which was consented to by the other side, to have the Clerk pay out to Mr. Sinisi \$20,000, or thereabouts, of his own money, to be placed in the bank in Mr. Milton's name as trustee, to draw 4% interest in place of whatever interest it did draw in the Chancery Court and for which Sinisi was to give a bond and pay a premium of \$250 or 60 dollars; you think that was worth \$2,000? A. I said nothing of the kind and I think you know I didn't. I said for the services rendered outside of the appearance before the preparation of the case and appearance before the condemnation commission, and the trial on appeal before the Circuit Court, and the services in the Court of Chancery, all of the other services which included the appeal from the Court of Chancery to the Court of Errors and Appeals, and the services in connection with the getting of the money out of the Court of Chancery,—all of the other work, including the writing of these letters and so forth I put in at \$2,000. That is what I said. I might

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allocate a thousand dollars of it to that appeal and a thousand dollars to the residuary matters and the writing of the letters and all of that, which is outside of the condemnation proceedings, the appeal before the Circuit Court and the hearing in this court on the lease.

Q. Do you know what those letters were about? Did you ever see them? A. No.

10

Q. Did you ever hear what was in them? A. No, no.

Q. What do you charge to write a letter? A. I don't charge by letters—so much a letter.

Q. Then you don't know how this charge should be? A. I take into consideration the result of the final determination.

Q. Well, the only letters we have been able to produce here from my client are these exhibits. Glance through those and see how much you think he ought to charge for writing those. A. I don't want to put any approximation on the writing of letters; I don't think anybody could.

20

Q. Then you don't consider the writing of the letters? A. I consider it in conjunction with the rest of the work that he did, that took time and effort.

Q. How many hours do you think he spent on this, all together? A. I don't know that I have given it any consideration.

30

Q. Don't you give any consideration to that at all? A. Well, I did not consider any particular time, no; I couldn't.

Q. If it appeared that he spent not over 17 hours in the whole business would you think that that would be worth \$22,000 under this hypothetical question? A. If he did it in 17 hours and

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Edward P. Stout—For Defendant—Cross

he possessed the skill and ability to do it and get the results that he got in this matter, I would say yes.

Q. Well, he didn't get very good results, did he?

10 A. I think that he got at least \$40,000 more than what another lawyer less skillful than he would have done. I think he created an estate for Mr. Sinisi of at least \$20,000 after paying all the bills.

Q. In other words, you think that Sinisi got \$20,000 more for his property than he should? A. I don't say that. By having a lawyer like John Milton he could get more.

Q. He got all but the \$17,000? A. That is what he earned.

20 Q. Your notion is that Mr. Milton is one of the very few lawyers that can handle that kind of a case? A. I said before that in my experience John Milton is the most skillful lawyer I have ever been up against on condemnation cases. I have never seen John Milton's equal and I have been up against the best of them.

Q. Then, in your opinion, any case in which Mr. Milton is not retained by the property owner; the property owner gets a good deal less than what it is worth? A. I didn't say so.

30 Q. Well, what do you say? A. Less than the property is worth? I say no; that is a hard question to determine what a piece of property is worth. Nobody knows what a piece of property is worth; it isn't an exact science measured by rule.

Q. Then you don't know whether he yet got enough for the property? A. I think he got more for him than most lawyers would have got that I know anything about. He rendered good service.

40 Q. What other lawyers have you antagonized

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with, whom you compared with Mr. Milton? A. I have had you in a tax case.

Q. That was not condemnation. A. I understand; it was a question of value of property.

Q. Well, how about condemnation; that is what I am talking about? A. All right; Judge Sullivan is one lawyer; Robert Carey is another. I don't know, may it please the court, I can't recall these men; I don't know why I should be called upon anyway to answer a question like that. 10

The Court: You have offered yourself as a witness.

A. I don't see how it is proper for me to say why one lawyer is better than others. That is the only issue. 20

Q. You have made it an issue in this case. Do you mean to say that Mark Sullivan and Mr. Carey did not get for their clients what their clients were entitled to for their property? A. I haven't said that at any time.

Q. Well, what do you say? A. I don't know.

Q. Well, you know as much about it as you do that Mr. Milton got what his clients' property was worth, don't you? A. I don't say I know as much about it. I say that Mr. Milton tried the case better than the other lawyers. 30

Q. In your judgment? A. Well, I'm not speaking for somebody else.

Q. Why do you think he tried it the best? A. The way in which the case was prepared; the way in which the case was presented; and his summation of the facts.

Q. You mean he tried the case better before the commissioners or before the jury? A. Both. 40

Thomas J. Brogan—For Defendant—Direct

Q. How would you compare the fees that you would pay for the services of Mr. Milton as you would pay to Mr. Carey? A. I would like to leave him out of the question. I wouldn't undertake to appraise his services.

10

THOMAS J. BROGAN sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Hamill:

Q. Mr. Brogan, you are attorney and counselor at law of the State of New Jersey? A. Yes, sir.

20 Q. Practicing how long? A. As an attorney since the November Term, 1912, and as counselor since the November Term, 1915.

Q. And you have been engaged in active practice in the State of New Jersey and particularly in Hudson County— A. Since 1913.

Q. You are now corporation counsel of the City of Jersey City, and have been for how many years? A. Since January 1st, 1922, 7 years.

30 Q. And before that you were Assistant Corporation Counsel? A. I was Assistant Corporation Attorney for a couple of years, I think.

Q. You have had experience in the trial of condemnation cases? A. Yes, sir; both sides; for the condemning municipality and for the property owner.

Q. That has been quite extensive? A. I would think so.

Q. And you have heard the hypothetical ques

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Thomas J. Brogan—For Defendant—Cross

tion read to Mr. Stout, have you not? A. Yes, sir; I listened to it.

Q. Well, considering that the question was put to you now, what would you say would be the reasonable value of the services outlined in the question. A. I would think about \$20,000.

10.

CROSS-EXAMINATION by Mr. Dixon:

Q. You are concerned in some of this litigation? A. I was concerned in one phase of it. I represented the Eldorado, Inc., which had a lease on Mr. Sinisi's property.

Q. You didn't appear in that? A. I did.

Q. Your petition of appeal was filed on May 29, 1926, I think, wasn't it, according to your record? A. Yes.

20

Q. I wonder if that is in there? A. (The witness looks through papers.)

The Court: I couldn't find it this morning when I went through them. Was it endorsed in your name?

A. Yes, I think so. Here is the proof of claim of the City for taxes. Yes, I have it here, sir: The 29th day of May, 1926. That's mine.

30.

Q. And it was served May 29, 1926, and Sinisi's appeal from the same? A. Correct.

Q. And their appeal was—— A. The same date.

Q. Same date, wasn't it? A. Yes. Which came first I don't know.

Q. That is what I want to know. A. No, I don't know. (Witness looks through papers.) Here is

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Thomas J. Brogan—For Defendant—Cross

the notice of appeal. It is dated May 27, 1926, and service acknowledged on the 27th; so his appeal was, in fact, ahead of mine.

10 Q. Now, Mr. Brogan, what do you think he did to earn \$20,000? A. Well, I don't know what he did. I assume that he went through all these steps.

Q. What steps do you think he went through? A. I assumed that he carefully prepared with his expert witnesses on the value of this property; I assumed——

Q. Let us take, first, something we do know: You appeared as his opponent in the Chancery matter before Vice-Chancellor Bentley, didn't you? A. Yes, sir.

20 Q. And in that you succeeded in getting for your client some \$16,000? A. Yes; that included an amount that had been deposited with Mr. Sinisi; I think it was about \$1500. The amount of the award, I think, was \$15,000, or somewheres around there.

Q. They had offered you \$200, hadn't they? A. I don't remember what they offered. You mean Mr. Sinisi?

30 Q. Yes, or his counsel. A. They offered me a very low figure.

Q. Less than \$500 wasn't it? A. I don't remember.

Q. Don't you know how much they offered you? A. I remember that it was a low amount and I didn't consider it.

Q. So low that you didn't even talk to your client about it? A. I did; I always talk to my clients about it.

Q. And he wouldn't accept it? A. No.

40 Q. He said it was ridiculous? A. I wouldn't

Thomas J. Brogan—For Defendant—Cross

say that he said it was ridiculous; he refused it.

Q. How long did it take you to try that case?

A. I tried it in a couple of days.

Q. I think the record shows one day. A. Is that so; well, then, the record is right. I thought it ran over.

10

Q. Maybe it did. It started on Wednesday the 9th of December. A. December the 9th, 1925. I don't see any break here. Maybe that's right, Mr. Dixon, and maybe it isn't.

The Court: I think that is what it was, one day.

A. We sat late. However, let it go at that.

Q. Now, in making up your \$20,000 figure how much do you think would be a reasonable compensation for the work that you did in the trial of that case, so far as you know, Mr. Brogan? A. Which case, the leasehold?

20

Q. This case. A. The case in Chancery and the Court of Errors and Appeals—

Q. No, no, the case in Chancery; never mind the Court of Errors and Appeals. A. I think he ought to get \$2500.

Q. I am asking you. A. My client willingly paid \$2500.

30

Q. And was glad to do that? A. He cheerfully paid that sum.

Q. And you had the laboring oar in that case, didn't you? A. Well, in that kind of case I think both sides have the laboring oar.

Q. Well, you did probably as much work as Mr. Milton, didn't you? A. I think I did, yes. But I think I lost. I will be quite frank with you, since you have opened up the question as to my

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Thomas J. Brogan—For Defendant—Cross

10 compensation: I fixed a fee of \$2500 and my client cheerfully paid it, because my client had rather a good notion of the amount of work that I had done. I don't know that this will agree with what the Honorable Court may think who was the present Court, but I thought I had made my case as clear as I could and I felt that I was right, but the Court of Appeals didn't agree with me although I put all the punch I had into it.

Q. You read Mr. Milton's brief and you agreed with him? A. We agreed on the theory on which the damage was to be computed.

Q. There is nothing in that brief except on page 3 in regard to the law? A. No, I didn't think so.

20 Q. And you didn't think much of that? A. Well—

Q. And yet you said you agreed with him? A. Yes, sure; we agreed in the Court of Chancery.

Q. That is all the law there was before the Vice-Chancellor? A. I don't know what he put in.

Q. Which cases are you referring to? A. These condemnation cases.

Q. Your experience has been on the other side, hasn't it? A. No, I have been on both sides.

30 Q. Well, assume you had a case where a man's property was worth \$140,000 and you succeeded in getting from the commissioners only \$117,000 although a verdict from a jury indicated it was worth \$140,000, would you consider \$11,000 would be a fair compensation for your work? A. Well, I don't know; that question is rather indefinite and it contains a lot of assumptions.

Q. No, only very few compared with the other one. Say it took one or two days for the trial. A. I don't follow that question.

40 Q. Well, let me see if I can make it a little

Thomas J. Brogan—For Defendant—Cross

plainer: Suppose you had tried a case before the condemnation commissioners and had presented the evidence, and they had made an award to your client of \$117,000, and that you assumed that that was twenty or thirty thousand dollars less than the value of the property, and your client insisted that he get the value of the property by an appeal and you took an appeal for him and filed notice of appeal, and you tried the case for a day or a day and half before a jury and succeeded in getting a verdict of \$140,000, thereby raising the award of the commissioners \$23,000 to what he thought he ought to have in the first place; would you consider that the services that you had rendered for that trial in getting the money that was due him would be worth about 11 or 12 thousand dollars? 10

Mr. Hamill: I object to that question. There is an assumption there that isn't borne out by the testimony, his client insisting that he should get 20 or 30 thousand dollars more. That isn't in the hypothetical question. 20

The Court: I will allow it. 30

A. Why, I think that I would charge him a little more money; I think I would charge him about \$15,000 for those two trials—

Q. I want you to get out of your mind the first trial; I want you to get away from the trial before the commissioners. A. In your question, then, may I ask whether he has been paid for his first work? 40

Thomas J. Brogan—For Defendant—Cross

Q. Yes. A. Then I would think that \$11,500 was a fair fee.

Q. A good fair fee? A. Yes.

10 Q. So that for property that is worth about \$140,000 or \$150,000 you think a lawyer who defends in a condemnation matter and gets what it is worth ought to charge from twenty to twenty-five thousand dollars? A. I don't say that. I don't see how any lawyer, no matter how good, can get more than the property is worth.

20 Q. Then have you taken into consideration also the fact that the property-owner only had less than two-thirds of the equity and that the encumbrances were around sixty or seventy thousand dollars? A. I don't think a lawyer should be concerned with that.

Q. What do you base your theory of the value of the lawyers' services, on the hours he spends with his client or the results obtained? A. I think a man's ability counts for something. A man unconsciously fixes a higher value on his services if he has had years of experience behind him and a lot of skill as a trial lawyer; the result accomplished is an advantageous factor, and the amount involved is also a large factor.

30 Q. Assuming that you are correct, what part of the increase in the award should a lawyer charge? A. Well, I don't know in that case. Apparently, there was an express bargain made. I don't know.

Q. Do you form your opinion on that? A. No, no; not at all.

40 Q. You wouldn't take into consideration the number of hours he had to spend on the matter? A. Not necessarily, because even myself, with the experience that I have had, which I don't think is

Thomas J. Brogan—For Defendant—Cross

as much as the defendant's here, I believe that I could prepare a case faster with what experience I have had than a man that has never had one, or a man who has only had one or two. Now, I shouldn't be penalized because I do it faster, nor should the other man be rewarded because he doesn't know anything about it and starts from the foot and works his way up.

10

Q. Then you base it on the result of the amount involved? A. Yes, and the man's ability.

Q. You are corporation counsel now of Jersey City? A. Yes, sir.

Q. And before you became corporation counsel you were assistant? A. Yes, I was Mr. Milton's first assistant.

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(The further hearing is laid over to February 5, 1929, at 10 o'clock in the forenoon.)

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James O'Neill—For Complainants—Direct

IN CHANCERY OF NEW JERSEY

10 Between
 DOMINIC SINISI and LENA SINISI,
Complainants,
 and
 JOHN MILTON,
Defendant.

Before: HON. JOHN BENTLEY, V. C.

20 Jersey City, N. J., February 5, 1929.

Appearances:

For the Complainants—WARREN DIXON, Esq.

For the Defendant—JAMES A. HAMILL, Esq.

(Case continued pursuant to adjournment.)

30 JAMES O'NEILL, sworn as a witness for the
 Complainants, testified as follows:

Direct Examination by Mr. Dixon:

Q. Mr. O'Neill, you have produced the Hudson
 County Trial Record book for the year 1925? A.
 Yes, sir.

40 Q. Showing the trial record of cases in that
 court? A. Yes, sir.

James O'Neill—For Complainants—Direct

Q. In May, 1925? A. Yes, sir.

Q. And I refer you to page 98, clerk's docket number 33722. A. Yes, sir, that is the file number of the Circuit Court papers.

Q. In the case of Dominic Sinisi against the Board of Freeholders? A. Yes, sir.

10

Q. Which is the trial of the case of Sinisi for condemnation? A. Yes, sir.

Q. And that began when, according to the record? A. May 13, 1925.

Q. And continued on May 14th? A. Yes, sir.

Q. Now I refer you to page 99. That is clerk's file record— A. That is number 33722 also.

Q. And that is the case of what?

Mr. Hamill: Mr. Dixon, may I ask if this has anything to do with this case—the Goldberg case? I object to the record being put in in the other cases that were tried.

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Mr. Dixon: I want to show the dates they were all tried and the judgments.

Mr. Hamill: And for what reason?

Mr. Dixon: Mr. Milton testified as to what he charged some of these clients. I want to show how long he took in each one of them.

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Mr. Hamill: He didn't go into the details of those services to those clients on which his fees were based, and that could not be any aid to the court, I submit, because he said he charged Jones so and so,

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James O'Neill—For Complainants—Direct

unless he had set out in full detail just what he did for John Jones or John Smith to help in fixing the fee for Sinisi.

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The Court: I am going to allow the proof to be put in and deal with it when I come to decide the case.

Q. On page 99, the case of Goldberg—Joseph M. Goldberg, William Goldberg, Morris Wahl, against the Board of Freeholders—that was a condemnation case? A. Yes, sir.

Q. And the verdict in that case was what? A. The amount?

Q. Yes. A. \$131,300.

20

Q. And the counsel in the case? A. John Milton represented the Goldbergs.

Q. The owners? A. Yes.

Q. And that case was started on what date? A. May 14th.

Q. And finished when? A. Continued to May 15th.

30

Mr. Hamill: At this time, if Mr. Dixon does not object, I would like to put in by consent of counsel that the court directs the jury to find in favor of appellants in the sum of \$131,300 and that there was a judgment by consent.

Mr. Dixon: That is right. I was going to put that in.

Q. I now turn to page 100 in the case of Frederick R. Pierce against the Board of Freeholders. That is a condemnation case? A. Yes, sir.

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James O'Neill—For Complainants—Direct

Q. And what was the verdict in that? A. The award was \$87,500.

Q. And who appeared for the property owner? A. John Milton.

Q. And that is also a consent judgment? A. Yes, by consent of counsel the jury is directed to find in favor of the appellant in the sum of \$87,500. 10

Q. I now call your attention to page 101. That is the case of Daniel Mahoney versus the Board of Freeholders. When was that case tried? A. Jury sworn May 14th.

Q. Jury sworn on May 14th and the trial took place— A. May 18th, 1925.

Q. And that was a consent? A. By consent, yes. 20

Q. And how much? A. In the sum of \$125,000.

Q. Were judgments entered on these? A. Referring to page 485 of book 70—book 70 Circuit Court minutes—here is the judgment record.

Q. Turn to judgment record at page 485, judgment record number 35. A. No, page 434 is the Sinisi one.

Q. And that judgment was entered when? A. Actually it was entered the 25th of May, 1925.

Q. Now the next. A. Actually entered May 25, 1925. 30

Q. And the rule for judgment was entered when? A. Rule granted May 14, 1925, actually entered May 25, 1925.

Q. Now the next case is what? A. Pierce—Frederick M. Pierce.

Q. And when was that judgment entered? A. Entered May 25, 1925.

Q. And the rule for judgment? A. Actually 40

James O'Neill—For Complainants—Cross

entered May 25, 1925; rule granted May 15, 1925.

Q. When was the next? A. The next one is Goldberg—Joseph M. Goldberg and William Goldberg—

10 Q. When was that judgment entered? A. Actually entered May 25, 1925.

Q. And the rule for judgment? A. Rule granted May 15, 1925.

Q. And the next one? A. The next one is Daniel Mahoney, judgment entered 25th of May, 1925, rule granted May 12, 1925—I believe this one is May 18, 1925.

Q. And the rule when? A. Same date, May 25, 1925, judgment entered, and rule granted May 18th.

20 *CROSS EXAMINATION by Mr. Hamill:*

Q. Mr. O'Neill, will you turn, please, to the trial book and show me the page that records the trial of Sinisi? A. Page 98.

30 Q. That book shows that there was a trial, where the case was tried on both sides, or rather evidence was given on both sides and the matter submitted to the jury under the charge of the court, and that four witnesses appeared for the appellant, Mr. Sinisi, among whom were Michael Connolly and Thomas M. Ryer, is that correct? A. Yes, sir.

Q. And the jury returned a verdict of \$140,000? A. Yes, sir.

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James O'Neill—For Complainants—Redirect
Thomas A. Ryer—For Defendant—Direct

RE-DIRECT EXAMINATION by Mr. Dixon:

Q. Are you sure that is what it shows, Mr. O'Neill? A. Yes, sir.

Q. It shows the evidence and it shows 1, 2, 3, 4 on one side? A. Yes, sir. 10

Q. And those names are what? A. Percy A. Gaddis, the second one is Michael Connolly, the third James F. Gannon and the fourth is Thomas A. Ryer.

Q. What is opposite those two witnesses? You don't think those are for the Board of Freeholders do you, or you don't know? A. No, sir.

Q. Well, who are the witnesses? A. Dominic Sinisi, the first one; the second one was Joseph P. McLean. 20

Mr. Dixon: He is undoubtedly listed on the wrong side. That is all.

(Witness excused.)

(Complainants rest.)

30

THOMAS A. RYER, sworn as a witness for the Defendant.

Direct Examination by Mr. Hamill:

Q. Mr. Ryer, where do you live? A. 107 Kensington Avenue, Jersey City.

Q. What is your business? A. Real estate.

40

Thomas A. Ryer—For Defendant—Direct

Q. And how long have you been in that business? A. Past 28 years.

Q. And I assume you have had experience in appraising property and testifying in condemnation cases? A. A great deal.

10 Q. And what has been your experience in that?

Mr. Dixon: We admit his qualifications as an expert on real estate. We called him.

Q. Did you render any services to Mr. Sinisi or to the complainants in this case in connection with the condemnation of property? A. I did.

Q. At the Boulevard Plaza in Jersey City? A. I did.

20 Q. That is the property regarding which this proceeding is about? A. Yes.

Q. When did you render those services? A. In 1924 and 1925.

Q. Will you tell us what you did? A. In 1924 I was engaged by Mr. Milton to appraise the property of the Sinisis and appeared before the condemnation commissioners and testified to its value; in 1925 I appeared in the court and testified again to its value; in 1925 I prepared a schedule of the beneficial value of the lease of the
30 Eldorado Restaurant Company and appeared before this court and testified.

Q. Tell us what you did in 1924? A. I made up schedules of properties, numerous times discussed the sales with Mr. Milton.

Q. Yes. A. Discussed my appraisal with Mr. Milton, and as the witnesses for the other side appeared I checked up sales and information that they had submitted to the condemnation commis-
40 sioners and submitted that to Mr. Milton and went

Thomas A. Ryer—For Defendant—Direct

over it with him for the purpose of cross examination.

Q. Do you know about how many conferences you had with him? A. Oh I should say in the first case before the condemnation commissioners I may have conferred with him maybe seven or eight times. 10

Q. Where did those conferences take place? A. Usually at his office. He would call me up and ask me if I could come to his office at half past four and I would be down there at half past four and we would be there until half past five and sometimes six and sometimes perhaps later.

Q. On this Sinisi property? A. On this Sinisi property, yes.

Q. Then I understand you appeared before the condemnation commission? A. I did. 20

Q. And gave—— A. Testimony.

Q. Gave testimony as to the value of the property? A. I did.

Q. After the Commission had rendered its award, after it had filed its report, or rather after the hearing before the Condemnation Commission did you do anything with regard to this property? A. Yes, I prepared the information for the purpose of going before the courts at the jury trial, and checked over the sales again and went over the entire case with Mr. Milton on numerous occasions. 30

Q. When you say "numerous" could you say how many? A. I should say probably in that case I had maybe twelve or fifteen conferences with him, in the preparation of the jury trial.

Q. And were they all about the same duration as the other conferences that you talked about? A. I should say so, yes. 40

Thomas A. Ryer—For Defendant—Direct

Q. And what were these conferences for? A. Why Mr. Milton had been reading over the testimony of the experts and from time to time—

10 Mr. Dixon: I object to this gentleman testifying what Mr. Milton did.

A. (Continuing.) I meant I would be reading it over with him. Mr. Milton had been reading over the testimony of the experts and he would call me to his office and we would sit down and read the testimony over and from that testimony Mr. Milton would take out certain things that he would like to have me look up for him. He would give me a memorandum of what he wanted and
20 I would go back to my office and then in a day or so, as soon as that information had been compiled by me, I would call him up and go to his office and go over those particular things he wanted, and then of course we would check up the testimony again to find out whether we were correct on it or not, and in that manner Mr. Milton would inform himself on what these experts were saying so he could prepare for cross examination.

Q. When you say "reading the testimony" you
30 mean reading over the testimony in the Sinisi matter before the Commission? A. No, we read the testimony of all the experts in all of the cases.

Q. Why did you have to do that? A. Because of the fact that the testimony of the experts in the various cases all applied to this general neighborhood and they were different in each case. In other words, we would find that they had submitted one expert who would submit certain sales in one case and in another case he might submit

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Thomas A. Ryer—For Defendant—Direct

some other sales, and we had to check all those sales.

Q. Then about what area or radius were those sales taken from? A. They took in the entire Journal Square area north and south of the bridge.

10

Q. North and south. A. Back as far north as Newark Avenue and down south as far as Tonnele Avenue.

Q. And did they go south any? A. South would be down to Sip Avenue.

Q. Any east? A. The Boulevard. In fact, I think they went down—our investigation went down in some cases as far as Pavonia Avenue. That is on the northerly end.

Q. Do you know the date when the hearing was held before the Condemnation Commission? A. I think that was in July, 1924, as I remember it.

20

Q. If I suggested July 30th would that be the date? A. I think so; I think it was July as I remember it, July, 1924.

Q. And the Commissioners rendered their award when? A. I think in September some time, 1924.

Q. And the trial before the Circuit Court was in— A. In May, 1925.

30

Q. At the trial of the appeal to the Circuit Court from the award of the Commissioners did you appear at that trial? A. I did.

Q. And you were a witness? A. I was.

Q. For the appellant? A. I was.

Q. Well, after that trial was over did you render any other services? A. I then prepared a case on the beneficial lease of the Eldorado Company.

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Thomas A. Ryer—For Defendant—Direct

Q. Yes? A. And in that case Mr. Milton seemed to be very much concerned due to the fact that he had obtained information from the other side that they were going to ask a sum like—

10 Mr. Dixon: I object to that.

Q. Never mind. A. Pardon me.

Q. Do you of your own knowledge know how much was claimed? A. I don't remember the exact figures now.

20 Q. Will you tell us then what you did in regard to the preparation for that hearing? A. I investigated all of the leases around the Journal Square zone and went over them with Mr. Milton from time to time and prepared a schedule of these sales for the purpose of testifying before this court.

Q. Did you have any conferences with Mr. Milton about that? A. Many.

30 Q. How many? A. I should say in that lease case I probably visited him and he visited me at least twenty-five or thirty times. In preparing these leases I wanted to get Mr. Milton in the position where he would understand certain fundamental principles—

Mr. Dixon: I move to strike that out and ask the witness not to volunteer so much.

The Witness: Pardon me.

Q. Tell us, Mr. Ryer, how long these conferences lasted. A. Anywheres from an hour to three hours.

40

Thomas A. Ryer—For Defendant—Direct

Q. Did you ever go to the property? A. Mr. Milton came to my office, and we visited all of these properties that we examined, on several occasions.

Q. Now, that was the hearing before the Vice-Chancellor? A. It was. 10

Q. Did you appear at that hearing? A. I did.

Q. And testified, I understand? A. I did. Mr. Milton and I also read the testimony of the experts in that case.

Q. Now then after that hearing was concluded did you do anything further with regard to this property? A. You mean after the case was finished here?

Q. Yes, after it was finished before the Vice-chancellor. A. Nothing only try and collect my bill. 20

Q. Did you do anything—was there any memorandum to be prepared? A. Yes, after I made some charts for Mr. Milton. Mr. Milton asked me to make some charts on the question of frontage to depth, which he thought was a very important point in the lease case.

Mr. Dixon: I object to that kind of testimony. 30

The Court: What he thought was important may be stricken out.

Q. Did you have any conferences on that, Mr. Ryer? A. I did.

Q. How many? A. I had several conferences on that with Mr. Milton and prepared these charts and explained them to him and also explained to him the Inwood Tables for the purpose of amor- 40

Thomas A. Ryer—For Defendant—Cross

tizing leases. He wanted to work them out on the basis of five and six percent, as I remember it.

Q. How long did those conferences take? A. I should say there were at least three or four on that.

10 Q. What were those conferences? I know the subject matter but do you know for what this information was being collected, for what purpose? A. I think it was for Mr. Milton's argument before the court.

Q. Did you do anything further after that? A. No.

Mr. Hamill: That is all.

20 *CROSS EXAMINATION by Mr. Dixon:*

Q. Mr. Ryer, you were also engaged as an expert in other cases in regard to the condemnation of property in this area? A. I was.

Q. Were you engaged on behalf of Mr. Pierce? A. I was.

Q. And on behalf of the Goldberg's? A. I was.

Q. And on behalf of Mahoney? A. I was.

Q. So that you were working during all this time on all of these cases? A. I was.

30 Q. And the same evidence, so far as the gathering of sales and so forth is concerned, applied to all of them? A. To a large extent, outside of the lease part.

Q. Outside of the lease? A. Yes.

Q. As to the value of the real estate it applied to all of them? A. It did.

Q. How many experts were sworn before the Condemnation Commission on behalf of the Board

40

Thomas A. Ryer—For Defendant—Cross

of Freeholders in the Sinisi case? A. Mr. Makray and Mr. Garrison, as I remember it, and Mr. Robinson I think was the builder, or there was a builder.

Q. And how many were sworn in the trial before the jury on behalf of the Freeholders? A. I don't remember that; I think the same experts. 10

Q. Your memory is quite clear about it, isn't it? A. I have a great many cases; in that case I think it was the same experts.

Q. I am speaking of the Sinisi case. A. Yes, I am talking about the Sinisi case.

Q. How many experts were sworn in the Sinisi case for the Freeholders? A. I think three.

Q. Who were they? A. Mr. Garrison, Mr. Makray and a builder. 20

Q. Now, when you had these conferences with Mr. Milton they involved all of these properties, didn't they? A. No.

Q. Weren't they all being tried at the same time? A. No, they were not.

Q. How long a period intervened between the trial of the Sinisi case and the trial of the Pierce case? A. I don't know.

Q. Well, you testified, didn't you? A. I did, but I haven't a record of the dates here. 30

Q. How long would you say it was? A. I don't know; I couldn't tell you.

Q. Would it be over a week or a month? A. I don't know; I don't know whether it would be a week or a month or how long it would be; I did not look up the Pierce case.

Q. What do you mean by 'looking up'? A. I mean I didn't look up, I didn't know you would ask me the date of the Pierce case. I have them in the office. 40

Thomas A. Ryer—For Defendant—Cross

Q. Do you know how long it was between the trial of the Sinisi case in the Circuit Court and the trial of the Goldberg case? A. I do not.

Q. Was it over a week? A. I don't know.

Q. Well, you were there, weren't you? A. I was.

10 Q. How long a time elapsed between the trial of the Sinisi case and the Mahoney case? A. I don't remember that.

Q. You were there, weren't you? A. I was.

Q. Was it over a week? A. I don't know.

Q. A month? A. I don't know.

Q. And you had prepared yourself with this data to testify in all of these cases, hadn't you? A. Certainly.

20 Q. And when did you confer with Mr. Milton respecting the Sinisi case when that conference did not involve a consideration of any of these other cases that I have mentioned? A. I didn't in any case that I can remember. Never did I discuss two cases at one time with Mr. Milton that I can remember. That was not his policy. His policy was to discuss a single case at a time so we wouldn't get confused on them.

Q. So you wouldn't get confused? A. Yes.

30 Q. Suppose it appears that all of these cases were tried at the same time, then would you still insist that your testimony is correct? A. I would.

Q. Did you make any memorandum of the calls that you made on Mr. Milton? A. I did not.

Q. You are speaking merely from memory? A. I am.

Q. You referred to some kind of records when you came down here to testify in this case to-day?

40 A. As to the dates of trial, when the original condemnation case was heard and when the court

Thomas A. Ryer—For Defendant—Cross

case was heard and when the chancery case was heard.

Q. Is that all that you have records of in your office? A. It is.

Q. Haven't you any notes that you made? A. Oh, many of them. I have an envelope full of notes, sales, schedules and information pertaining to the case. 10

Q. Only in the one case or in each case? A. In each case by itself.

Q. You didn't bring them down with you? A. I did not. I can produce them if you wish. I have them all in separate envelopes.

Q. Well, you weren't requested to bring them down? A. I was not.

Q. Was Mr. McLean an expert for the Board of Freeholders in any of these cases? A. I don't remember whether Mr. McLean was or not; I think he was—no, I don't think he was. 20

Q. Now which do you think, he was or he was not? A. I don't think he was, and yet he may have been.

Q. You were there, weren't you? A. Yes, of course, but I am in a great many cases, Mr. Dixon, and I can't remember all the details as to all of the experts. 30

Q. You can remember just about how many conferences you had with Mr. Milton on this case. A. Of course, that was important.

Q. How many did you have in 1924 with him? A. You mean in all of the cases?

Q. No, I mean on the Sinisi case. You said you had only conferences with him on the Sinisi case. A. I should say eighteen or twenty in 1924—that is on the two cases. 40

Thomas A. Ryer—For Defendant—Cross

Q. Which two cases? A. On the first case with the condemnation and on the court case. The lease case did not come until 1925.

Q. How many conferences did you have with Mr. Milton in 1924 on the Sinisi case? A. I just told you, about twenty.

10 Q. No you didn't. A. I thought I did.

Q. I thought you said you had about twenty on the court case and the condemnation case. Didn't you say that? A. No, I said on the condemnation and court case, that was in 1924.

Q. There wasn't any court case in 1924. A. Well, when the court case came up in 1925 I mean.

Q. I don't know what you mean but only what you say. How many conferences did you have with Mr. Milton about the Sinisi case in 1924? A. Eight or ten.

20

Q. That was before the Condemnation Commissioners heard it? A. Before and after.

Q. You didn't have any conferences about the condemnation case after it was held, did you? A. No, it was on the preparation of the court case afterwards.

Q. How many conferences did you have on the preparation of the condemnation case before the Commissioners? A. I just told you about eight or ten.

30

Q. Eight or ten? A. Yes.

Q. And then between that and the trial of the court case you had about how many? A. About eight or ten more, I should say about twenty in all on the two cases.

Q. Where were they held? A. In Mr. Milton's office and in my office.

Q. Where was Mr. Milton's office? A. Right in this building.

40

Thomas A. Ryer—For Defendant—Cross

Q. Where? A. Downstairs, I think downstairs with Mr. Tracey.

Q. Are you sure about it? A. Yes I am positive about it. In 1924 Mr. Milton was downstairs in Mr. Tracey's office.

Q. How many conferences did you have with Mr. Milton about the court case in 1925? A. You mean on the lease only or on the two cases? 10

Q. What two cases are you talking about? A. I am talking about the condemnation case, the court case and the lease case and the third case before this court, three separate cases.

Q. I am talking about the condemnation case as before the Commissioners and also the Circuit Court case. How many did you have with him in 1925 on the Circuit Court case? A. I don't know. The case ran from 1924 into 1925, and the ten conferences I had with him run from 1924 to 1925 on the Circuit Court case. 20

Q. What did he do, try to modify or re-establish or sustain your figures in these conferences? What were they for? A. Mostly for the purpose of checking up on the evidence of the other experts and obtaining information for Mr. Milton to be used in cross examination.

Q. That had been taken before the Commissioners? A. Yes. 30

Q. Now, you said you had some trouble about collecting your bill. You mean your bill against Mr. Sinisi? A. Yes.

Q. What bill did you put in? A. A bill for one thousand dollars on the last case, on the lease case that was tried before this court.

Q. In the chancery case? A. Yes.

Q. A thousand dollars for that? A. Yes. 40

Thomas A. Ryer—For Defendant—Cross

Q. How much was your bill for the case before the Condemnation Commissioners and the Circuit Court? A. \$550.

Q. That was paid? A. Yes, sir.

10 Q. And what was the matter with the other one? A. Mr. Sinisi came into my office—or rather I sent the bill to Mr. Milton and for a long time I heard nothing and one day Mr. Sinisi came into my office and asked me if I would reduce the bill.

Q. Did you reduce it? A. I did not.

Q. Who paid it? A. Mr. Milton, upon my telephoning to him that Mr. Sinisi was satisfied with the bill after that conference.

Q. You telephoned to Milton that Sinisi was satisfied with it? A. I did.

20 Q. Was he satisfied with it? A. He was apparently in my office; he told me he was.

Q. Then Mr. Milton sent you his check? A. Right. After that, upon my telephoning to him, he sent me the check for \$1000.

Q. There was a good deal more work involved then in estimating the value of this leasehold than there was in estimating the value of the property? A. Yes.

30 Q. As far as your work was concerned? A. As far as my work was concerned a great deal more.

Q. Have you an envelope on that? A. Yes.

Q. With your working papers? A. Yes.

Q. You haven't produced that? A. No, I wasn't asked to produce any papers.

Q. I suppose you made a charge against Mr. Pierce for the work you did for him in the condemnation? A. I did.

Q. How much did you charge him?

Thomas A. Ryer—For Defendant—Cross

Mr. Hamill: Objected to. I object to what he charged another man. It can't possibly mean anything in this case.

The Court: I think I see what the purpose of it is. I will overrule the objection.

10

A. I think I charged Mr. Pierce \$250 for the original case.

Q. Don't you know? You said you thought you charged him \$250. Do you know what you charged him? A. Yes, I charged him \$250.

Q. And you charged Sinisi \$550? A. No, that was for two cases and Pierce was for one.

Q. Let me get this right. I understand you to say you charged Sinisi \$550 for the condemnation and the trial case before the jury. A. Correct.

20

Q. And you charged Pierce \$250? A. For the condemnation case only.

Q. Well, you were before the jury. A. I was not in the Pierce case. If I was I would have charged him more. I don't think I appeared for Pierce in the jury case.

Q. Didn't you appear there? A. Yes, but the case was settled and I only charged him \$250 on the original condemnation case. I had a lot of bills there.

30

Q. Now if you had appeared and testified in the Pierce case then there would have been \$200 more? A. There would, or more.

Q. You made preparation to appear and testify, didn't you? A. In the jury case?

Q. Yes. A. I don't think I did on the Pierce case.

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Thomas A. Ryer—For Defendant—Cross

Q. Now the Goldberg case. Did you make a charge in that? A. I did.

10 Q. How much did you charge in that? A. Well, now, I can't remember. If you want it definite—I can only tell you the best I remember, but I can check up my bills for you if you wish. I think I charged Goldberg \$500.

Q. \$500? A. That is my best recollection.

Q. Did you charge him that for the work that you did to appear before the Commissioners? A. I think that I also went before the jury.

Q. That included your time before the jury? A. I think it included both cases; I can't remember exactly.

20 Q. Well, if you had not appeared in the second case it would have been half that amount? A. Yes.

Q. And Daniel Mahoney, did you make a charge against him? A. I did.

Q. How much did you charge him? A. I remember in the lease case I charged him \$1000, but the other cases I don't remember.

Q. I am talking about the condemnation. A. I don't remember; I presume it was about the same as the others.

30 Q. Can't you do any better than presume? A. No, I cannot. These bills were not all alike; they were different.

Q. Didn't you use exactly the same data and find out the land values of one as of the other. A. Yes, but that didn't follow that that was the time involved in the case, because in some cases I spent more time than on others.

40 Q. But to find the land values of those properties, which are laid together in Journal Square—what is now Veteran's Square—didn't you use

Thomas A. Ryer—For Defendant—Cross

exactly the same data in order to make up your story and testimony? A. Of course—well, that is not the same data for each and all of the cases. Some of them were entirely different. I didn't use the data in Mr. Sinisi's case in all of the other cases nor did I use the same data in the Jersey Journal case that I used in Mr. Sinisi's case. 10

Q. Didn't you take the property in this region we are speaking about? A. Yes.

Q. In order to form the basis of your judgment of the value of all of these properties. A. Of course.

Q. And they involved exactly the same work, didn't they? A. For that particular kind of work, but if Mr. Sinisi's lawyer wanted more work I made a particular charge for it. 20

Q. What more work was there involved in Sinisi's, as far as you are concerned, than was involved in Goldberg's or Mahoney's or Pierce's case? A. I had more conferences with Mr. Milton on Sinisi than I had in any of the other cases.

Q. Were they all of the same character? A. Certainly they were all of the same character as far as the condemnation and court cases were concerned, but entirely different character when we got to the lease. 30

Q. Eliminate the lease. I am not talking about the lease. I am talking about the court cases, the condemnation case, wasn't it exactly the same work that you did upon which you based your opinion in every case, as far as the condemnation was concerned? A. Yes, it was, practically.

Q. Identical? A. Yes.

Q. Do you mean to say that you were paid one thousand dollars by Milton? A. I was. 40

Thomas A. Ryer—For Defendant—Cross

Q. Didn't you get \$750? A. I did not. I got \$1000, but to help Mr. Milton out because Mr. Sinisi said he was not satisfied and for fear I might have gotten him in trouble with Sinisi due to the fact I had telephoned to Mr. Milton and gotten my check by telling him that Mr. Sinisi told me in my office that he, Mr. Sinisi, was perfectly satisfied when he left, that I gave my \$250 check to Mr. Milton.

10

Q. Returned it? A. I did.

Q. Do you want to leave that stand and leave a false impression that you were paid \$1000 for your services? A. No, because I was paid \$1000 for my services. I told Mr. Sinisi, and not only Mr. Sinisi, but his wife, they both came in, and I told them both I would not reduce my bill a five cent piece, and Mr. Sinisi told me the reason he was there was because his wife thought he ought to get something off that bill, but when he went out of my office he told me he was perfectly satisfied to pay my bill of \$1000, and immediately after they left I called up Mr. Milton and told him so. As far as Mr. Sinisi was concerned he paid me not a dollar. Milton paid me \$1000 and I turned back \$250.

20

Q. To whom did you give it, Milton or Sinisi? A. I sent a check to Mr. Milton.

30

Q. Weren't you intending to leave that stand and leave a false impression that you had been paid \$1000 for your services? A. Certainly not.

Mr. Hamill: I object to that. Now that it is all over I will say that I intended to bring that out on re-direct examination.

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(Witness excused.)

Louis J. Messano—For Defendant—Direct

LOUIS J. MESSANO, sworn as a witness for the Defendant.

Direct Examination by Mr. Hamill:

Q. Mr. Messano, where do you live? A. 151 Fairview Avenue, Jersey City. 10

Q. And you are a practicing lawyer in Jersey City? A. I am.

Q. And you have been admitted to the Bar how long? A. Since 1913.

Q. Did you ever render any services to Mr. Sinisi? A. I did.

Q. For how long were you engaged by him? A. Oh I think I first began representing Mr. Sinisi in about 1918 or 1919. He had a restaurant over at the Boulevard where this property— 20

Mr. Dixon: I don't think that is material, and I object to it.

Q. Tell us when your services began. Tell us what services you rendered.

Mr. Dixon: I object to it unless it pertains to this matter. 30

Q. All right, with regard to this particular matter under investigation. A. I had represented Mr. Sinisi, as I say, since about 1918 or 1919, and he came in to see me in about 1922 in connection with this property. He had received a letter, I think from Mr. Fallon, to the effect that the Board of Freeholders were contemplating condemning that property in connection with the widening of the Boulevard, and he came in to con- 40

Louis J. Messano—For Defendant—Direct

10 sult me about it. I think Mr. Fallon wanted to know whether he would fix a price on the property for the County to pay without the necessity of condemnation proceedings, and we discussed that and there was nothing done about that, and then we got two or three other letters in connection with that and Mr. Sinisi on each occasion would come in and see me about it and talk to me about it, as to what ought to be done, and so on; and I remember when the last letter was received from Mr. Fallon at that time the question came up of engaging Mr. Milton in connection with the condemnation case, and it was agreed at that time that we would engage Mr. Milton, and we came down to Mr. Milton's office here in this building and spoke to him in connection with the case.

20 Q. Well, was that before the condemnation? A. That was while these preliminary negotiations were going on with the County for the purpose of acquiring the property without condemnation. They wanted to know whether or not we would fix a price on the property and convey to the County without the necessity of the condemnation.

30 Q. When was the next thing that happened? A. The next thing that happened—I don't remember whether Mr. Sinisi received the petition in condemnation or whether it was served on me, but anyhow we received the petition that was served by the County Counsel, to the effect that the Board of Freeholders were going to condemn this property, and then we came down to Mr. Milton's office again and we conferred with him about that. Of course, the petition set out that they were going to apply for Condemnation Com-

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Louis J. Messano—For Defendant—Direct

missioners, and I think it fixed the date, and so on, and that was the next time that we came down to Mr. Milton's office in connection with that matter.

Q. Then after that did you have any conferences with Mr. Milton or with anybody about it?

A. After that, because of the fact that I was thoroughly familiar with this property, having represented Mr. Sinisi in the purchase of the property and also having represented him in connection with the erection of the building that was located on that property and having represented him in connection with procuring mortgage loans on the property and being thoroughly familiar and knowing what the building cost and just exactly what he had put into it and what he had paid for the lots and so on—in connection with the preparation of this case I was constantly in consultation with Mr. Milton because of my familiarity with all these details, and I would often come down to his office and confer in connection with the case and make preparations for the hearing before the Condemnation Commission. There were some leases on the property at that time and they had quite a bearing on this proposition. The big lease, of course, was the lease of the Eldorado Restaurant, which I think when originally made was made for the period of ten years, and then they had a renewal clause in there for a renewal of perhaps five years; and that had to be taken into consideration. And Dr. Martin had a lease there also. He was a dentist. I don't recall now how long his lease had to run, and I think the Boy Scouts had a lease there, but as I recall it they were tenants month to month. They didn't

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Louis J. Messano—For Defendant—Direct

have any lease at all. They were just tenants month to month.

10 Q. With regard to these mortgages, what were your conferences with Mr. Milton about? A. In connection with these leases we were trying to effect or devise some sort of scheme whereby we might be able to wipe those leases out. We thought that we might foreclose one of the mortgages and in that way cut the leases off, but then, after consultation, we concluded that that wasn't a good scheme.

20 Q. What did you do with regard to the actual condemnation of the property? By that I mean the appearance before the Commissioners? A. I attended with Mr. Milton at the hearing that was held before the Commission. I think the first hearing was held in July, 1924, and then the hearing was adjourned. It wasn't concluded I think until September. I was there on each of those occasions and I assisted Mr. Milton in the preparation of that case before the Condemnation Commissioners.

30 Q. And before your first appearance before the Commissioners, the first meeting of the Condemnation Commission, what did you do with Mr. Milton, if anything, with respect to it? A. I attended at Mr. Milton's offices and assisted him in the preparation of this case. I was there when these experts were there and I furnished the data in connection with this proposition and assisted Mr. Milton generally in the preparation of that case. I remember looking up the law and submitting a brief to him in connection with the lease.

40 Q. All right. Then after the report of the Commissioners was filed and an appeal was taken—

Louis J. Messano—For Defendant—Direct

A. The County took an appeal and Mr. Sinisi took an appeal.

Q. Tell us what you did in regard to that? A. There was an appeal and a counter appeal. Mr. Sinisi came into my office—you see in all these things he had before most of these dealings with me. He would come to me and tell me exactly what his views were in connection with this entire proposition and then I would take it up with Mr. Milton, come down to Mr. Milton's office. At that time Mr. Sinisi lived in Asbury Park, didn't live here in Jersey City at all; and then I would communicate with him as to just exactly what was going on.

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Q. And then— A. And then I attended at the trial of the case at the Hudson County Circuit Court. I think that was in the month of May, 1925.

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Q. Were these conferences with relation to that trial? A. They were, yes. Mr. Sinisi was dissatisfied with the award that had been made by the Condemnation Commission. He came into my office and he thought that he hadn't received what he considered a fair price for his property, and he advised me to that effect and advised me to take the matter up with Mr. Milton for the purpose of taking an appeal, and I was down at Mr. Milton's office and conferred with him about it, and it was agreed that we would take an appeal on the matter.

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Q. Now when this trial before the Circuit Court—did you have any conversation at any time with Mr. Sinisi on the subject of compensation? A. We did.

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Louis J. Messano—For Defendant—Cross

Q. When you say "we" whom do you mean?
A. Well, Mr. Sinisi, myself and Mr. Milton.

10 Q. Tell us the conversation. A. Why we were in the court that morning. We were ready to proceed with this condemnation trial before the jury, and while we were standing there the discussion came up about fees. There had been no talk about fees before that at all. I don't remember now just exactly who brought about the conversation concerning the fees, but the subject was brought up at that particular time, and then it was agreed that whatever might be received in excess of the \$117,000 that had been awarded by the jury that that was to be divided between Mr. Sinisi and Mr. Milton equally.

20 Q. Did Sinisi agree to that? A. He did.

Q. Then after the trial was over there was a proceeding on the lease? A. Yes, we negotiated it.

Q. Did you have anything to do with that? A. I negotiated with Dr. Martin trying to effect a settlement. That was finally settled, that one lease, and then I had a hearing in the Court of Chancery in connection with the Eldorado lease.

30 Q. Did you have any conferences with Mr. Milton? A. Yes, I looked up the law and gave him a brief on the law.

Mr. Hamill: That is all.

CROSS EXAMINATION by Mr. Dixon:

Q. You recommended Mr. Milton to Mr. Sinisi, did you not? A. I did not.

40 Q. Prior to your coming down to see Mr. Mil-

Louis J. Messano—For Defendant—Cross

ton with Mr. Sinisi did Sinisi ask you anything about what Mr. Milton would charge for his services? A. He did not.

Q. Never made any inquiries along that line at all? A. He did not.

Q. There was never anything said by Mr. Sinisi or his wife to you in regard to any charge for services until this conversation on the eve of the trial? A. That is true. 10

Q. And you understood that the conversation then was that if Mr. Milton raised the award of the Commissioners the amount of that raise should be divided between them? A. That is true.

Q. Nothing was said about who was to bear the expenses? Did you understand it was to be the net amount of the increase or the gross amount of the increase that was to be divided between them? A. Whatever was received over \$117,000 was to be divided equally. 20

Q. Even if it cost \$5,000? A. If the award had been \$122,000 Mr. Milton would have gotten \$2500; if the award had been less he would have gotten nothing.

Q. That was your understanding? A. That was my understanding, yes, sir.

Q. Were you paid out of that? What were you going to charge for your services in the matter? A. Didn't have any talk about what I was going to charge at all. 30

Q. But you were trying the case with Mr. Milton? A. That is true. Mr. Milton fixed my fee.

Q. I know, but was there any agreement as to what your fee was to be? A. No agreement at all.

Q. You gave important help to Mr. Milton? A. I did, yes, sir. 40

Louis J. Messano—For Defendant—Cross

Q. And you had no agreement and didn't say anything to Sinisi about what you were going to get? A. No, I didn't say anything at all.

10 Q. Suppose you got no increase at all? Milton, of course, wouldn't have gotten anything, but how about you? A. Well, I would have had to take that up with Sinisi. I knew Sinisi. He and I were pretty good friends and I knew that he and I would be able to get along all right; we wouldn't have any difficulty at all.

Q. Whatever you charged him would be all right. A. And if I didn't charge him anything it would be all right, too.

Q. Now you got \$2,700 for your services. A. That is correct.

20 Q. When did you get that, after the trial or before? A. No, I think I got \$1000 in June, and I think I got \$1700 in February, 1927.,

Q. Did you tell Mr. Sinisi about that? A. Yes.

Q. When did you tell him? A. Oh, I think at the time that last money was paid, when Mr. Milton, I think, deducted the last \$3,500.

Q. Did you talk to Mrs. Sinisi about it too? A. Yes.

30 . Did you talk to her about it too? A. Yes, she was very much put out about the whole thing. She said she was going to come down to Mr. Milton's office, that she didn't think it was the right thing and that she was going to take it up with him. She was—

Q. Mr. Milton didn't consult her? A. I don't know that. I know Mrs. Sinisi was apparently—

Q. Was she there at that time you had the talk about the fees? A. No, sir, she was not.

Louis J. Messano—For Defendant—Cross

Q. She wasn't there at all, at any time? A. No.

Q. As far as you know she knew nothing about any fees? A. I think she knew all about it because she wrote all the—

Q. I didn't ask you what you think. I say, as far as you know she didn't know anything about it? A. Yes she did know about it, and I am going to tell you why she knew about it. 10

Q. At the time it was made? A. Or shortly after it was made, or the trial. She didn't know anything about it the day it was made. It was made the day of the trial and she wasn't there.

Q. And she wasn't there? A. That is right.

Q. Now she came down to see you and made a protest, didn't she? A. She did. 20

Q. And do you know when that was? A. Well, it was right after that last money was paid, I think in February or March; I don't remember now.

Q. What year? A. 1927, I think, Mr. Dixon.

Q. Did you make any docket records of this case? A. I have got the files of the case; I have got no docket record, no, sir.

Q. You didn't bring your files with you? A. No, I can bring them down if you require them. 30

Q. I do not require them. A. I say I didn't bring them down; I didn't know you wanted them.

Q. I didn't bring you here at all. You weren't asked by Mr. Milton to bring them down. A. No, sir, I was not.

Q. You represented several of the mortgagees, didn't you? A. Well, I wouldn't say I represented them, Mr. Dixon. These were all people that Mr. Sinisi and I both knew; they were friends of 40

Louis J. Messano—For Defendant—Cross

ours. There was a Dr. Deciero and a Mr. Belenzi, and I had a mortgage on it.

Q. Yourself? A. Yes.

Q. The property was pretty well plastered up with mortgages? A. It was, yes, sir.

10 Q. And you and Milton both knew that fact?
A. I knew it.

Q. Milton knew it too, didn't he? A. I suppose he did.

Q. Don't you know he did? A. Yes, he knew it.

Q. And you represented them in this matter?

A. Well, I wouldn't say I represented them in connection with these proceedings, because of the fact that I knew all of them, and in order to expedite matters whenever any paper was required to
20 be served on any of them I got the consent of all these fellows to act for them, to acknowledge service for them. I didn't get paid for any of the work.

Q. You didn't charge them for any work you did? A. No.

Q. You charged all to Sinisi? A. I didn't charge anybody.

30 Q. You didn't make any charges? A. I didn't make any charges, no, sir.

Q. This great difficulty about the lease arose from the fact that the Board of Freeholders, through a letter from Mr. Fallon, had notified the Sinisis in 1922 that they were about to condemn this property and in consequence of that letter the tenants began to move out, didn't they? A. No, the tenants moved out before. There had been a rumor that the property was going to be condemned and of course the people in the neighbor-
40 hood who might want to rent these floors, know-

Louis J. Messano—For Defendant—Cross

ing that why Mr. Sinisi had a lot of difficulty in renting the floors. I think the top floor was rented for about eighteen months, or a long period of time.

Q. He couldn't rent it? A. Yes. Just as soon as they found out that they couldn't get a lease on the floor for any length of time they refused to rent it.

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Q. So from the time they wrote this letter until condemnation proceedings were actually begun in 1924 Sinisi went without tenants? A. Well, he had temporary tenants in there, maybe for one or two months or maybe they would move out—but no permanent tenants there at all.

Q. And there was no claim made by either you or Mr. Milton against the Freeholders for the loss sustained through that procedure, was there? A. No.

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Q. What? A. No, because we couldn't connect it up. We couldn't prove that the people who might have sought the place refused to hire it for that reason.

Q. You didn't try to, did you? A. What is that?

Q. You didn't try to, did you? A. Unfortunately we did.

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Q. Is that what you briefed? A. No, I didn't brief that at all. What I briefed was in connection with the market value of the lease that the Eldorado Restaurant held.

Q. You didn't bring up that loss before the Commissioners or before the Circuit Court, did you? A. No, we didn't.

Q. Did you advise Sinisi at all about the effect of the condemnation on the leases that were in

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*Louis J. Messano—For Defendant
Redirect—Recross*

existence at the time the condemnation was begun in 1924? A. I don't remember whether we did or not.

10 Q. Don't you know you didn't? A. I don't know; I don't remember.

Q. Did you or did you not? A. I don't know.

Q. Did you have any conferences with Mr. Ryer about this? A. I did, yes, sir.

Q. How many? A. Maybe eight or nine.

Q. Where? A. Down in Mr. Milton's office.

Q. Covering what period of time? A. From 1924 to 1925.

20 Q. Before the condemnation, before the Commissioners and after the trial? A. Before the condemnation and about two or three after the trial.

Q. You say about eight or nine altogether? A. Eight or nine altogether, yes, sir.

Q. When was the first time you and Mr. Sinisi went to Mr. Milton's—when was that? A. That was in 1922.

Mr. Dixon: That is all.

30 *RE-DIRECT EXAMINATION by Mr. Hamill:*

Q. Were you in the Prosecutor's Office in 1922? A. No, sir, I didn't go into the Prosecutor's Office until March, 1923.

Q. And do you know when Mr. Milton went into the Prosecutor's Office? A. March 27, 1923.

RE-CROSS EXAMINATION by Mr. Dixon:

40 Q. When Mr. Sinisi consulted you with respect

Michael T. Connolly—For Defendant—Direct

to Fallon's letter did he fix a price on that property? A. We fixed a price. I think we received three or four letters from Mr. Fallon.

Q. A price of \$150,000? A. \$150,000.

Q. \$150,000? A. That is correct.

Mr. Dixon: That is all.

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MICHAEL T. CONNOLLY, sworn as a witness for the Defendant.

Direct Examination by Mr. Hamill:

Q. Where do you live, Mr. Connolly? A. 2600 Boulevard.

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Q. What is your business? A. General contractor.

Q. How long have you been in that business? A. About 43 years.

Q. Did you render any services to Mr. Sinisi in connection with the condemnation of his property, the taking over of the property by the County? A. I did.

Q. Tell us what services you rendered? A. I estimated the cost of reproducing that building.

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Q. Begin from the beginning, Mr. Connolly, and tell us when you were first hired and how. A. Well, Mr. Milton rang me up and made an appointment to meet me at the building. He had a key and we went through the building but we found we could not get in the upper part of the building because Mr. Milton, to my recollection, didn't have a key to the upper part of the building, and we went through the lower part and the

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Michael T. Connolly—For Defendant—Direct

cellar and spent quite a little time going around there and showing Mr. Milton the condition of the building. We made another appointment when he got the keys and we went through the upper part, because I had to have access to all parts of the building to make up an estimate. I had to bring different sub-contractors through the building, and this estimate is here if you wish to see it—a copy of my estimate.

10 Q. Now will you tell us what that estimate shows? A. It shows the cost of reproducing that building.

Q. And it contains a statement of the different materials that went into the construction of the building? A. Yes, sir.

20 Q. And the amount at which you estimated them? A. Yes, sir.

Q. Did you estimate these different items personally? A. Personally?

Q. Yes. A. Well, no, not personally because there are a lot of items there that are sub-bids, such as plumbing, steam fitting, steel, terra-cotta,—all that class of work we have got to get them from people in that line or branch of the trade.

30 Q. Did you confer with anybody in those branches? A. Oh yes, we went and had to bring each one of them to the building and show them what we wanted.

Q. Who was with you? A. I had a representative from the different branches of the trade.

40 Q. How many times did you visit the building yourself? A. I couldn't tell you offhand. I visited it a good number of times. Either I or my representative had to deal with each one of those items, such as steel, carpenters, painters, plumbers.

Michael T. Connolly—For Defendant—Cross

Q. How long did it take you, Mr. Connolly, to get up this estimate that you have for the material? A. I wouldn't try to get up an estimate like that short of ten days.

Q. Was this before the condemnation? A. Yes.

Q. Did you appear at the condemnation hearing before the Commissioners? A. I did. 10

Q. Did you testify? A. I did.

Q. Well, after the condemnation hearing did you do anything further? A. I was in Judge Ackerson's Court on the appeal.

Q. At the hearing did you testify there? A. Well, I was put on the stand and Mr. Fallon wanted to know what was the object and did they want to prove the vaule, and Mr. Fallon said they accepted my figures, so that was all I had to say on that. 20

Q. Did you make any preparations in connection with the trial? A. Of course, I couldn't go there without being prepared.

Q. Did you have anything to do on the hearing on the lease? A. I knew nothing about it, only putting a value on reproducing that building.

Mr. Hamill: That is all.

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CROSS EXAMINATION by Mr. Dixon:

Q. Mr. Milton was in the building with you twice, wasn't he? A. I believe he was.

Q. And the first time how long did he spend in there with you? A. Well, we were there quite a while.

Q. Well, how long? Ten minutes? A. I suppose we killed an hour and a half or two hours.

Q. What do you mean, "Killed it?" What 40

Michael T. Connolly—For Defendant—Cross

were you doing? A. Walking around through the building.

Q. And your appraisal of the building was—
A. \$53,000.

10 Q. The total was \$161,000? A. Yes. This is a carbon copy of the estimate.

Mr. Dixon: That is all.

Mr. Hamill: Have you any objection to that going in evidence?

Mr. Dixon: I haven't any objection to it, but I don't know why it should go in. What does it show?

20 Mr. Hamill: All right.

Mr. Dixon: I don't care whether it goes in or not.

Mr. Hamill: All right, I will not offer it.

(Witness excused.)

30 Mr. Hamill: That is the defendant's case.

(Defendant rests.)

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*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

REBUTTAL

DOMINIC SINISI, recalled in rebuttal.

Direct Examination by Mr. Dixon:

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Q. You received a letter from Mr. Fallon, the County Counsel, did you not? A. Yes, I received a letter from the County Counsel at Lakewood, New Jersey, July 19, 1922, I think it was.

Q. And you consulted Mr. Messano? A. I didn't consult Mr. Messano at all that day. When we received the letter we made a statement and wrote direct to Mr. Fallon for \$150,000.

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Mr. Hamill: I object to that.

Q. You put a price on it? A. I put a price on it of \$150,000.

Q. Did you communicate that to Mr. Messano? A. When I came to Jersey City a couple of months later—that was around September or October—a friendly visit—I stopped in Mr. Messano's office and I told him what we wrote and what was going on, but I didn't get any answer from Fallon, so I simply told him I received a letter from Fallon and I answered him \$150,000 and I said, "What is doing, anything new?" and he said, "Nothing doing yet," and so they were talking about in January, 1923, again in the paers, and I stopped in Messano's as a friend and I said, "What is going on?" and he said, "The Freeholders are starting to go to work." And he said, "What are you going to do with your case? Are you going to give it to me or not?" and I said,

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*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

10 “Mr. Messano, you are a good friend of mine, but at the same time you lost a case for me and this is a very important matter and I think we ought to get a man with experience;” and he said all right, and he said, “Who are you going to get?” and I said, “I don’t know;” and he said, “All the property owners they got Mr. Milton.” He mentioned everybody got Mr. Milton. He said, “Why not get Mr. Milton?” And I said to Mr. Messano, “I don’t know Mr. Milton so well;” and I said, “Furthermore, I don’t want to pay a lot of money;” and I said, “I want you as a friend of mine to use your own judgment, introduce me, but I don’t want to pay too much fees, because I
20 am having too much trouble, people moving out.” And so we don’t see Mr. Milton until later on in the spring. We never came down to his office downtown, but he introduced Mr. Milton at the Court House—it must have been in April or May—that must have been the first time I met Mr. Milton in the office.

The Court: April or May of what year?

30 The Witness: 1923.

A. (Continuing.) Eight or nine months after I received the first letter from the Freeholders, and being that I had a vacancy in the floor I went to the Court House to try and find out when they take over the building, because the tenants were moving out and I couldn’t get any new ones, and that is the time I met Mr. Milton; and he said, “I will take care of you in the case,” and we talk-

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*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

in the Prosecutor's Office in the room standing up, didn't even take a seat. That was the first time I met Mr. Milton in my life, the first time I had the man introduced to me.

Q. Were the tenants moving out? A. The tenants were moving out at the time. That is what made me go to the Court House and see Mr. Milton. 10

Q. When did they start to move out? A. A few months later—you see I had yearly leases there and of course the tenants heard this in July and they started to move out in October and November, as soon as the leases expired.

Q. And you couldn't re-rent? A. No.

Q. How long were your premises partly vacant? A. For 1923 and 1924 until really the condemnation started in I had a monthly tenant two or three months at a time, you know—now and then. 20

Q. Do you know, or did you know that Mr. Milton had paid Messano, \$2700? A. I didn't know.

Q. When did you first hear about it? A. When I received the last check.

Q. Who spoke to you about it? A. Mr. Messano. Mr. Milton never spoke to me about it. He said to my wife— 30

Q. Never mind what he said to your wife. When did you first know about the payment to Mr. Messano? A. I know the payment to Mr. Messano—I couldn't see Mr. Milton in the office. Every time I called up he was busy and I was compelled to write him a letter now and then, and in one letter he stated he gave to Mr. Messano, \$1750; I didn't know about the \$1000. 40

*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

Q. When did you first hear about the other thousand? A. I heard that when Mr. Milton was on the stand in this court.

10 Q. Did you speak to Mr. Messano about the \$1750? A. I did after the case was over, yes, after everything was settled.

20 Q. What was said then? A. He said yes he received the \$1750. I said, "What for?" I said, "If there was any transaction of business, you and I, you should give me the bill personally, but," I said, "in this case you had nothing to do and I don't see why you should get the \$1750." I didn't know anything about the thousand dollars. I said, "Anything you do for me you should come direct to me." I said, "Mr. Milton has no right to pay your bill without my knowledge. If I owe you anything you should come direct to me."

Q. When did you have that conversation? A. That was in Mr. Messano's office; that was in 1927 after everything was over and Mr. Milton wouldn't talk to me any more.

Mr. Dixon: That is all.

30 Mr. Hamill: No questions.

(Witness excused.)

*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

MRS. LENA SINISI, sworn as a witness for
the Complainants.

Direct Examination by Mr. Dixon:

Q. Mrs. Sinisi, did you have any knowledge at
any time of Mr. Messano being paid the \$2700? A.
I know the only time that I knew of him having
been paid was at the time of having received the
last check from Mr. Milton through Mr. Messano,
and it was only understood that he had received

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Q. Did you see Mr. Messano at that time? A.
No,—that he received \$1750—I believe that was
the amount, \$1,750.

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Q. Where did you get that knowledge from?
A. That was at the time that I went down—I will
tell you—I made up my mind to go down and
see—

Mr. Hamill: I object to that.

The Court: Not what you made up your
mind to.

A. (Continuing.) All right. Mr. Milton wrote in
one of the letters that he had paid out to Mr.
Messano the \$1,750, so being—

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Q. \$1700, wasn't it? A. No, \$1750.

Q. You're right, \$1750. A. Yes, \$1750. Now
Mr. Milton refused to see my husband—

Q. Never mind about that. You tell us what
you did. A. The reason I went down—I went
down to see Mr. Milton because we were entirely
dissatisfied—because every check—

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*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

Q. Go ahead and tell us what you did. You went down to see Mr. Milton? A. Yes, and I said to Mr. Milton, "I cannot understand what this whole thing is about. Every check that we receive you keep on deducting money. Now," I said, "in
10 the first place you have deducted \$11,500 which we did not agree to pay you;" and then I told him about the—when he received the \$10,000 check that we only got a check for \$6,500—and I said, "That is another deduction and then the last check was supposed to have been \$28,000 and," I said, "we only received I believe it was \$22,000—twenty-two thousand and seven hundred odd dollars"—I just don't remember exactly the amount.
20 So he said—I went down with the intention—

Q. Never mind what your intention was. Tell us what happened. A. I told him, I said, "Mr. Milton," I said, "I want you to give me a check for all the money you have deducted outside of the fee which you were going to charge us," which would have been about two thousand or two thousand five hundred dollars—\$2500, and all the while he was standing up and he said, "I'll tell you, I don't care about the money; I see that you
30 are not satisfied;" and I said, "Of course I am not satisfied and," I said, "I cannot understand what it is all about, and," I said, "furthermore, what do you want to give Mr. Messano that check for \$1,750 for?" "Well," he says, "between you and I, Mrs. Sinisi,"—this was his exact words—"he did not do that much in the matter; I just simply sent him the check." And I said, "Why did you want to do that? That is our money. If you felt you wanted to give him some money, be-

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*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

ing as he introduced my husband to you, why then that would be up to you to pay whatever you wanted out of your own money." And he says, "I see that you are not satisfied," and I said, "Yes, I am thoroughly dissatisfied;" and he did not say a thing about the other thousand dollars.

10

Q. Did Messano ever say anything about it?

A. Pardon me?

Q. Did Messano ever say anything about it to you? A. No, he didn't say anything about it to me. Oh, I have almost forgotten. Mr. Milton said to me—of course, I naturally tried to get as much as I could from Mr. Milton—and he said, "Go down and try to get back as much as you can from Mr. Messano." And I said, "That is a fine thing to say to me, to have me go down to Mr. Messano and try to get the money after you paid it out;" and I didn't know anything about the thousand dollars either; and he said, "I don't care about the money, but," he said, "I see you are not satisfied;" and he seemed to be in a hurry and he said, "All right, I'll send you a check."

20

Q. I show you a letter marked Exhibit D-10 and ask you if you wrote that letter to Mr. Milton?

A. Yes.

30

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

Q. Was your conversation with Mr. Milton that you have just related before or after you wrote that letter? A. May I read this letter?

Q. Yes, read the letter all through. A. I wrote this letter after.

Q. After you had this talk with Mr. Milton?

A. Yes, because you see what I say here.

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*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

Q. What did Mr. Milton say, if anything, in that conversation about the \$11,000? A. About the \$11,500?

10 Q. Yes. A. He refused flatly to answer me. I brought it up a number of times—well, three or four times—about the \$11,500 and all he would say is, “I don’t care about the money but I see you are not satisfied.”

20 Q. That is all he said about it? A. That is what he kept on saying about the \$11,500, and the rest of the money and the money he paid out to Mr. Messano, the \$1,750,—that is all I know about—and he said, “Well, Mrs. Sinisi, between you and I he did not do that much in the matter and,” he said, “I sent the check to him.”

Q. Did he say whether he was charging the \$11,500 for any special purpose or why he was keeping it? Did he say anything about that? A. No, when he mentioned the \$11,500 he tried to—well, in other words he tried to get me away from it. He said, “I don’t care about the money but I see you are not satisfied.”

30 Q. Now who composed this letter? Whose composition is that? A. I did. That is my composition. I composed the letter.

Q. You say in this letter: “Mr. Sinisi has had several interviews with Mr. Messano regarding the \$1,750 which you gave to him, and he cannot see his way clear to return the money to us.” Had you seen Messano about trying to get the money back? A. I’ll tell you—three or four weeks previous to this letter when I was down to Mr. Milton’s office he said to me, “You go down and see Mr. Messano and get the money from him;”

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*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

and I said, "That is a fine thing to say to me, to get the money from him."

Q. You told us that? A. Yes, but I went over to Mr. Messano to verify that, to see that he had gotten that check, because it seemed to be such a complicated affair. He deducted from the first check and the second check and the third, when the fee was understood to be two thousand dollars or three thousand dollars, and my husband didn't agree to pay that extra money, because he kept me in touch with everything that was going on.

10

Q. Now wait a minute. When you went down to see if you could get any of this \$1750 back from Mr. Messano did Mr. Messano say anything about having received the other thousand? A. Not a word.

20

Q. Now you further say in this letter: "In the first place, we cannot understand why you paid the \$1750 to Mr. Messano out of the \$28,000 that was due us, as he did not do a thing on the case. You have done all the work. Furthermore, you passed that remark to me when I was down to see you about three or four weeks ago. If you felt that he was entitled to any commission on account of he having turned the case over to you we feel that you should have taken care of him. At the time you retained the \$3500 no mention was made that a balance was still due." What is that \$3500 you refer to? A. The \$3500 is what he deducted out of the last check.

30

Mr. Hamill: If your Honor please, the letter speaks for itself. I don't want her to explain the letter.

40

*Lena Simisi (Recalled in Rebuttal)—For
Complainants—Direct*

Mr. Dixon: That is what I want her to do. That is the purpose of my examination, to have her explain the letter.

10 The Court: To explain one figure in the letter—she speaks of a sum of \$3500, and it seems to me to be perfectly proper to have her explain that \$3500.

A. (Continuing.) Yes, sir, I see that now: “If you felt that he was entitled to any commission on account of he having turned the case over to you we feel that you should have taken care of him. At the time you retained the \$3500 no mention was made that a balance was still due, it being understood that \$3500 was your fee for the entire case outside of the \$11,500.” You see that \$3500—he—I will tell you what this is about—he agreed to pay the \$2000—\$2000 to \$2,500—and then on the last check when he deducted that \$3500—

20

Mr. Hamill: Your Honor, that isn't an explanation of the \$3500.

30 Mr. Dixon: She is trying to explain it.

A. (Continuing.) Pardon me. May I say a few words? The idea of this, if Mr. Milton had granted my husband interviews these letters would not have been necessary. He flatly refused to see my husband, and these letters here show that I went down three or four weeks before because I felt he kept too much money from the very beginning, and it certainly is a shame because he

40

*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

knows all the money we spent on that building, the mortgages and so forth, and he deliberately kept \$11,500 out of the check.

Q. \$11,500? A. \$11,500.

Q. How did he come to keep that? A. That is just it. I went down myself to see personally, and he refused— 10

Q. What do you mean here when you say, "Outside of the \$11,500?" A. I should have written here "which he was holding, and which was supposed to be returned to us towards the end of the case."

Q. Had he ever given you any statement? A. No. And so he said to me, "Well, I don't care about the money. I see you are not satisfied;" and I said, "Of course I am not satisfied." 20

Q. What I want to inquire is whether, when you wrote this letter, you understood that Mr. Milton was charging you \$11,500 for any services in the case. A. No, no services at all.

Mr. Hamill: I object. That is suggesting to the witness. The letter speaks for itself. It is perfectly plain.

The Court: There is no jury here, I will allow it. I don't know what the purpose of it is. 30

A. (Continuing.) Yes. You see the whole thing is this, when I was down there to see Mr. Milton, and being that my husband could not get an interview with him—in fact, the last check—pardon me—let me explain that last check. We received it and my husband wanted to go down to his office 40

*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

to get the check and he said, "No, I'll mail the check to you." Now then if he had mailed that check we would have received it the next day and instead of that Mr. Messano called my husband up to go down to get the letter, and instead of receiving the full \$28,000 we received twenty-two thousand some odd dollars. And that is the time I made up my mind to go down and see Mr. Milton, as long as he refused to see my husband. In fact, all through the case he refused to see him only for a few minutes. And when he sent us the last check, which my husband was entirely—well, he was justified in seeing Mr. Milton. He sent the check to Mr. Messano instead of him. He said he was going to mail us the check. Then I made up my mind to go see him. These letters were all unnecessary, but because he refused to see my husband—

Q. Mrs. Sinisi, you knew that Mr. Milton had in his hands \$11,500 that he had not turned over to you at the time you wrote that letter? A. Yes, I knew that.

Q. What did you understand that he was holding it for, if you understood it at all? A. Well, he was holding that—as the time I was down at the office, as I say to you, he said, "I don't care about the money but I see you are not satisfied;" and I said, "Why did you keep all that money, the \$11,500 and all the rest of the money;" and as soon as I mentioned the \$11,500 he said, "I see you are not satisfied;" and I said, "I come down to-day to try to settle with you."

Q. Was that before you got the check for \$22,000? A. No, after we got the check. That was

*Lena Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

the only time I met Mr. Milton. I went down myself and I introduced myself. I thought it was my duty, because there was entirely too much money coming to us.

Q. Did you understand at all at any time why he was holding that \$11,500? A. No. 10

Q. Or what his claims were about it? A. No, nothing at all. He was holding that; he was holding the money.

Q. Did he tell you that he was holding it as part of his fee? A. No, not part of his fee, by no means. In fact, he gave me to understand he was—he said, “I see you are not satisfied. I will send you a check.” I tried to get a check then and there from him. He was standing up all the time. 20

Q. Then he did send another check after that? A. After that. He said, “I’ll send you a check;” and I surely thought he would send us a big check but he sent us a small check.

Q. And that letter was written before you got the last check from him? A. Yes.

Q. That check was for how much? A. I believe it was for \$2,000—no, \$1250.

Q. \$1250? A. Yes, \$1250. 30

The Court: \$1250 as I remember it.

Mr. Hamill: Yes, \$1250.

Mr. Dixon: That is all.

Mr. Hamill: No questions.

(Witness excused.) 40

*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

DOMINIC SINISI, recalled.

Direct Examination by Mr. Dixon:

10 Q. Did you know of your wife writing that letter? A. Yes, I was there when she wrote it.

Q. Did you know why Mr. Milton was holding or had been holding that \$11,500? A. Mr. Milton never said to me what for is the \$11,500.

20 Q. Did you ever have any difficulty about seeing Mr. Milton? A. I had a difficulty towards the end, yes. Every time he say he is busy and one day I went to his office and I stayed there from eleven o'clock until one o'clock and I went home without seeing him, and I didn't go back any more.

Q. About how many times did you see him altogether? A. I would judge about seven or eight times altogether in the whole proceedings,—seven or eight times altogether.

Q. Did he ever tell you what he was holding that \$11,500 for? A. Himself he never did say anything.

30 Q. Did anybody say anything about it? A. Mr. Messano told me.

Q. What did he tell you?

Mr. Hamill: I object to what Mr. Messano told him.

The Court: Was this out of the presence of the defendant?

40 Mr. Dixon: No, not in the presence of the defendant.

*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

The Court: Then how is it competent?

Mr. Dixon: Well, these two gentlemen were treating together and Mr. Messano was representing him. According to Mr. Milton's testimony Messano and he were collaborating on this case. That is the only theory upon which I can offer it. 10

Mr. Hamill: Not in the matter of fees. They weren't collaborating on that.

Mr. Dixon: Mr. Milton was fixing the value of the services for Mr. Messano and was paying it without the knowledge of his clients. 20

Mr. Hamill: There is no doubt but what they worked together on the performance of their duties, but Mr. Messano said Mr. Milton paid him. There was no conference between them on the matter of Mr. Milton's fees or on the matter of his part of the fees.

The Court: I don't see that the relationship between those two was such as to cause anything that Mr. Messano may have said the defendant said to be binding upon the defendant. 30

Mr. Dixon: I am trying to avoid it being at all binding upon the complainants. He said he never knew what Milton held it 40

*Dominick Sinisi (Recalled in Rebuttal)—For
Complainants—Direct*

for, doesn't know to-day what he held it
for except what Mr. Messano told him
about it.

10

The Court: I will sustain the objection.

Mr. Dixon: That is all.

Mr. Hamill: That is all.

(Witness excused.)

Mr. Dixon: That is the case, your Honor.

20

(Complainants rest.)

(Decision reserved; ten days in which to
serve briefs.)

30

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Exhibit D-2

234—33rd St.,

Woodcliff, N. J., Jan. 4, 1927.

c/o West New York P. O.

Mr. John Milton,
1 Exchange Pl.,
Jersey City, N. J.

10

Dear Mr. Milton:

As I am short of funds at present, would ask you to kindly try and obtain the six months' interest due on the \$28000, which the Trust Company pays on (January 1st.)

20

Thanking you for giving the above your attention, and awaiting to hear from you, I remain,

Yours very truly,

Dominick Sinisi.

30

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Exhibit D-3

234—33rd St.,

Woodcliff, N. J., Feb. 18th, 1927.

10 Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

Dear Mr. Milton:

Your letter of the 17th inst. received and contents carefully noted.

20 It is needless for me to write that I was disappointed to note that you have deducted another \$3,500.00 stating that this is for balance of services exclusive of any services rendered on appeal, as you had already deducted \$3,500.00 in June, having stated at the time that this amount was for services rendered on the Case, besides the \$11,500.00, which you deducted, being half of the increase. Mr. Milton, I am sure that if you were in my position, you certainly, would not pay such a big fee, as you know very well that after having paid the Appraisers' Bills, etc., I am not getting

30 any of my money back invested.

Will you kindly send me a check for the \$1,500.00 which you kept to cover the bill of Ryer & Hague and M. T. Connolly as I will settle these bills, having settled the other bills myself.

Referring to the check from the Chancery's office, would appreciate you sending same to me at an early date as possible.

40

Exhibit D-3

Please consider the amount of your fee that you have charged me and kindly send me a check for the balance, as you know that I have already paid out a great deal of money, having lost and not making one cent profit on the Building. Please consider this, and I am sure that you will agree with me. 10

Thanking you for giving the above your attention and awaiting to hear from you, I remain,

Yours very truly,

Dominick Sinisi

DS-LS

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Exhibit D-4

234—33rd St.,

Woodcliff, Feb. 23rd, 1927.

10 Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

Dear Mr. Milton:

20 Your letter of the 21st received and in reply would say, that as far as your fee is concerned, you never mentioned that there was still a balance of \$3,500.00 to be paid to you, having deducted \$3,500.00 at the time the \$10,000.00 was paid. And I think that after having deducted the \$11,500.00, making in all \$15,000, that you are charging me enough. You know frankly that you should not have deducted another \$3,500.00, therefore, I wish that you would send me a check for this amount, as I am, certainly, entitled to same, in view of the fact that there was no mention made that there was still a balance to be paid.

30 I have had an interview with Mr. Ryer and he insists on the \$1,000.00 and I am not going to discuss the matter with him further, as you know that \$250.00 will be well paid, having paid out the same amount to the other Real Estate men. And several other Real Estate men have stated that Mr. Ryer's fee of \$1,000.00 is entirely too high and that \$250.00 will be about the right sum to pay.

40 Regarding Mr. Connolly's fee, would say that I cannot understand why I should pay such an

Exhibit D-4

amount, when he appeared only once and you know very well that he was not a good witness. I will not pay him anymore than \$50.00, and I wish that you will send me a check for the balance.

Kindly settle the whole matter, including the balance from the Chancery Court at an early date as possible, and oblige,

Yours very truly,

Dominick Sinisi

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Exhibit D-5

234—33rd St.,

Woodcliff, April 21st, 1926.

10 Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

Dear Mr. Milton:

20 Not having heard from you up to this writing,
and being anxious to hear what the decision will
be in reference to my Case which came up on De-
cember 8th, 1925, would ask you to kindly see
what you can do toward trying to have the above
matter settled.

Thanking you kindly for giving same your at-
tention, I remain,

Yours very truly,

Dominick Sinisi

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Exhibit D-6

234—33rd St.,

Woodcliff, July 19th, 1926.

Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

10

Dear Mr. Milton:

Your letter of recent date received and I was glad to note that you opened an account in The Trust Company of New Jersey (Union Hill Branch) in your name as Trustee by depositing \$28,000 in my matter.

I sincerely trust that you will do all you can towards speeding the Appeal. 20

Thanking you for taking care of the above, I remain,

Yours very truly,

Dominick Sinisi

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Exhibit D-7

234—33rd St.,

Woodcliff, Oct. 20, 1926.

c/o West New York. P. O.

10 Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

Dear Mr. Milton:

I was in to see you the other day, but was told that you were out.

20 As you know that I am anxious to know what is being done in my Case, would appreciate if you will kindly keep in touch with me as to what is being done.

Will you please be so kind as to send me a Copy of the Brief, or if you wish me to call, I will do so.

Thanking you for the interest you are taking in the matter, I remain,

30

Yours very truly,

Dominick Sinisi

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Exhibit D-8

234—33rd St.,

Woodcliff, Jan. 12, 1927.

Mr. John Milton,
1 Exchange Pl.,
Jersey City, N. J.

10

Dear Mr. Milton:

Your letter of recent date with enclosure (check for \$560.00 Interest) received, and wish to thank you for giving same your prompt attention.

Mrs. Sinisi and writer sincerely hope to hear some good news from you real soon.

20

Yours very truly,

Dominick Sinisi

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Exhibit D-9

234—33rd St.,
Woodcliff, March 15th, 1927.

Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

10

Dear Mr. Milton:

Confirming our Telephone conversation of this morning, would say that I trust you had our check signed (Balance of money which we are to receive from Chancery's Office) and that you will send same to us immediately upon receipt.

20

In reference to Mr. Ryer's bill, as well as Mr. Connolly's bill, would say that if they do not accept the amount mentioned in our letter to you under date of February 23rd, Mr. Sinisi prefers settling these bills himself, as he cannot understand why Mr. Ryer should charge more than any other Real Estate man. Mr. Sinisi, as well as the writer appreciate the fact that you have succeeded in having Mr. Ryer reduce his bill \$250.00, but this is not at all satisfactory. Mr. Connolly's bill is entirely too high. You know that he did not do a thing, and the amount we wish to pay him is sufficient. You state, that you are responsible for these bills. The fact remains that we will pay same without fail, after having received check for \$1,500 from you which is still due us, but not the exorbitant amount which they ask for. You know that we are right.

30

Thanking you kindly for giving the above your immediate attention, I remain,

40

Sincerely yours,

LS

Mrs. Dominick Sinisi

4-2-27 Letters must have crossed
 4-6-27 Mrs. Sinisi 'phoned will call Monday

Exhibit D-10

234—33rd St.,

Woodcliff, March 31st, 1927.

10

Mr. John Milton,
 1 Exchange Place,
 Jersey City, N. J.

Dear Mr. Milton:

As we have not heard from you up to this writing regarding bills for Messrs. Ryer & Connolly, would ask you to kindly send us a check for the \$1,500.00 which you are holding, as we feel perfectly justified in paying these bills ourselves.

20

Mr. Sinisi has had several interviews with Mr. Messano regarding the \$1,750.00 which you gave to him and he cannot see his way clear to return the money to us. In the first place, we cannot understand why you paid the \$1,750.00 to Mr. Messano out of the \$28,000.00 which was due us, as he did not do a thing on the Case, you having done all the work. Furthermore, you passed that remark yourself to me when I was down to see you about three or four weeks ago. If you felt that he was entitled to any commission on account of he having turned the Case over to you, we feel that you should have taken care of him, as at the time you retained the \$3,500.00, no mention was made that a balance was still due, it being understood that

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Exhibit D-10

\$3,500.00 was your Fee for the entire Case, outside of the \$11,500.00.

10 You stated that you would like to see us satisfied, therefore, we wish that you would settle the whole matter at once.

Awaiting to hear from you at an early date, I remain,

Sincerely yours,

Mrs. Dominick Sinisi

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Exhibit D-11

234—33rd St.,

Woodcliff, March 3rd, 1927.

Mr. John Milton,
1 Exchange Place,
Jersey City, N. J.

10

Dear Mr. Milton:

Your letter of the second inst. received with enclosure (check for \$1250.—) and wish to thank you for same.

Kindly try and settle Bill with Mr. Ryer and Mr. Connolly at an early date as possible. You know that their Bills are entirely too high, especially Mr. Connolly's, and the amount stated in my previous letter is sufficient.

20

Awaiting to receive the above check as well as check from Chancery Court, and thanking you for interest taken, I remain,

Yours very truly,

Dominick Sinisi

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Exhibit B-11

MEMORANDUM FOR THE RECORD

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MEMORANDUM FOR THE RECORD

Yours very truly,

Dominick Blain

Exhibit C-1

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

June 2, 1926

10

Mr. Dominic Sinisi,
234 - 33rd Street,
Woodcliff,
North Bergen,
N. J.

Dear Mr. Sinisi:

The Chancellor will permit you to withdraw
from the monies in Court the excess over \$46,000,
and will retain the \$46,000 pending the appeal of
the Eldorado Restaurant, Inc. to the Court of Er-
rors and Appeals. If you need \$46,000 or some
part of it, I may be able to get it released upon
your depositing with the Court a surety bond.

20

Yours very truly,

TMcN:KMG

JOHN MILTON

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Exhibit C-2

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

10

August 23, 1926.

Dominick Sinisi, Esq.,
234 - 33rd St.,
Woodcliff, N. J.

Dear Sir:

20 Enclosed is bill from Thomas Ryer for services
as real estate expert in testifying before Vice
Chancellor Bentley. This bill has been pending
some time and Mr. Ryer insists upon its being
paid at once.

Yours truly,

JM/B
Enc

JOHN MILTON
B

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Exhibit C-3

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

January 8, 1927. **10**

Mr. Dominich Sinisi,
234 - 33rd St.,
Woodcliff, N. J.

Dear Sir:

I enclose herewith check for \$560.00 to your order being interest on the Trustee account. **20**

Very truly yours,

JM:IW

JOHN MILTON

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Exhibit C-4

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

10

February 17, 1927.

Mr. Dominic Sinisi,
64 Sip Ave.,
Jersey City, N. J.

Dear Mr. Sinisi:

20

There remains in the Trust Company of New Jersey \$28,000 to be disbursed. From it I have made the following deductions:

30

Amount in Bank.....	\$28,000.00
Deductions:	
To cover bill of Ryer & Hague.....	\$1,000.00
To cover bill of M. T. Connolly.....	500.00
For cost of testimony taken before Vice Chancellor Bentley, printing of testimony and printing of brief on appeal....	274.44
30 For balance of services exclusive of any services rendered on appeal	3,500.00
	5,274.44
	<hr/>
	\$5,274.44
	\$22,725.56

40

Hence I enclose check for \$22,725.56 which is the balance left in my hands after making the above deductions. The checks for Ryer and Hague and M. T. Connolly I will hold until you have had an

Exhibit C-4

opportunity to discuss with them the amount of the charge, as I understand from Mr. Messano that you think the charges are too high.

I make no charge for any services rendered in taking the case up by the Court of Errors and Appeals because of our agreement that it was to be done on a contingent basis. The charge for services is for all of the services up to the time of the taking of the appeal. The reason the full amount was not deducted when you got the other check in June of 1926 is because Mr. Messano thought you might want to use part of the \$10,000 which we got from the court at that time.

10

I will have a complete statement from the Clerk in Chancery's office of all the monies paid out within a few days and will send it to you.

20

Very truly yours,

JOHN MILTON

JM:IW

IW

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Exhibit C-5

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

10

February 21, 1927.

Mr. Dominic Sinisi,
234 - 33rd St.,
Woodcliff, N. J.

Dear Sir:

20

I have your letter of February 18 regarding the amount of my charges and the money for Ryer and Connolly. You understand of course I had to take care of Messano out of the fees I received. Under the circumstances I feel that my charge was fair especially in view of the results. With regard to the Ryer and Connolly money, I am responsible for those bills having hired the two men. Just as soon as you adjust with them, I will pay them and send you check for any difference.

30

Very truly yours,

JOHN MILTON

JM:IW

IW

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Exhibit C-6

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

March 2, 1927. 10

Mr. Dominic Sinisi,
64 Sip Ave.,
Jersey City, N. J.

Dear Sir:

Enclosed herewith is check for \$1250 which I
agreed yesterday to send you.

20

Very truly yours,

JM:IW

JOHN MILTON

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Exhibit C-7

JOHN MILTON

JOHN J. MULVANEY Counsellor at Law

1 Exchange Place, Jersey City, N. J.

10

March 31, 1927.

Mr. D. Sinisi,
234 - 33rd St.,
Woodcliff, N. J.

Dear Sir:

20 I have done the best I could to adjust the Ryer
and Connolly matters securing a reduction by Mr.
Ryer of \$250 from his charge and a reduction by
Mr. Connolly of \$200. I am enclosing herewith
check for \$450. I have made these adjustments
because I regard myself as liable to these two
men for the services they rendered.

Very truly yours,

JOHN MILTON

JM:IW

IW

30

40

67
Feb. 1931

New Jersey Court of Errors & Appeals

In the Last Resort in All Causes

Between

DOMINIC SINISI *et al.*,
Complainants-Appellants,

and

JOHN MILTON,
Defendant-Respondent.

On Bill, etc.

ON APPEAL

BRIEF FOR APPELLANTS

Statement

This bill was filed by complainants to compel the payment to them of moneys received by defendant, as their solicitor and counsel, and not accounted for by him, for property taken by the County of Hudson under condemnation in the sum of \$144,530.69, upon which interest had accumulated in the sum of \$3,131.72, making a total of \$147,662.41, which remained in the hands of the Clerk in Chancery, and was disbursed under orders of the Court of Chancery to various lienors against complainants' property to the amount of \$72,780.74, and the balance thereof, amounting to \$74,881.67, was paid over by the Clerk to the defendant in four payments, to wit: July 28th, 1925—\$32,000.00; June 15th, 1926—\$10,000.00; July 13th, 1926—\$28,000.00; and a subsequent payment of the balance in the Clerk's hands by a check

for \$4,881.67. This last check was endorsed by the defendant to the order of complainants and turned over to them. From the first three items collected by the defendant, there was turned over to the complainants on July 28th, 1925, the sum of \$21,500.00; on July 15th, 1926, the sum of \$6,500.00; and on March 19th, 1927, the sum of \$22,725.56; on the same date last mentioned, the sum of \$1,250.00; on April 19th, 1927, the further sum of \$450.00; making a total of \$52,425.56, exclusive of the Clerk's check of \$4,881.67; or a grand total of \$57,207.23, leaving a balance in defendant's hands of \$17,574.44 unaccounted for, together with such interest as may have accrued on these various balances.

The defendant's answer states that he is ready and willing to account for the moneys received and disbursed by him and to have the Court of Chancery fix the compensation to be paid for the services rendered; and he claims in his testimony that he is entitled to retain all of this money as a fair compensation for the services rendered.

The evidence discloses that defendant was employed by one of the complainants, with the acquiescence of the other, to protect their interest in a condemnation proceeding instituted by the County of Hudson to acquire their property located on the Hudson County Boulevard, Jersey City.

Other owners of property in the same locality also employed the defendant for a similar purpose.

Defendant employed two or three experts to testify on land and building values, with whom, he says, he had several conferences, studied their reports and wrote various letters in connection with the matter. Defendant, however, produced no copies of any letters nor did he keep any record of any of the conferences nor the time consumed (Case, p. 86, l. 14, etc.; Case, p. 98, l. 4, etc.) nor has he furnished any evidence to the Court below to guide that Court in determining how much time defendant had actually spent in the preparation of complainants' case for trial.

The evidence produced on part of the complainants shows, however, that there was not over one day consumed in the trial of the case before the Commissioners (Case, p. 34, l. 25) and not over two days in jury trial before the Circuit Court on appeal (Case, p. 36, l. 35, etc.).

In addition to these services, defendant undertook the protection of complainants' rights in a controversy between them and one of their tenants, instituted in the Court of Chancery. For the preparation of that suit, defendant employed one of the experts, to wit: RYER, to testify as to the value of tenant's lease; and that case consumed one day in its trial (Case, p. 40, l. 10, etc.). According to defendant's testimony, the result of that trial, in the Court of Chancery, was unacceptable to both his clients and the tenant and, while this is denied by the complainants, nevertheless, there was an appeal taken by both parties and the brief was prepared by the defendant on behalf of the complainants for use in the Court of Appeals. The result was affirmance of the decree of the Court of Chancery.

The foregoing is a resume covering the services that defendant claims he rendered as solicitor or counsel, except the procuring of orders to distribute the moneys held in the Court of Chancery and a few conferences.

In the performance of these services, defendant claims that he received the legal assistance of a fellow-member of the bar, Mr. Louis Messano, to whom he paid for the services so rendered the sum of \$2,700.00 of complainants' moneys (Case, p. 71, l. 40; p. 72, l. 1, etc.) without their knowledge or approval (Case, p. 84, l. 35, etc.; p. 175, l. 25; p. 177, l. 10) and subsequently complainants were informed that \$1,700.00 had been paid for those services. These alleged services consisted in Mr. Messano's investigation of the law respecting the tenant's rights on the condemnation proceedings and which he states he briefed and submitted the brief to Mr. Milton. Neither this brief nor any copy of it was produced by either the defendant or Mr. Messano. The upshot of this investigation was, however, that no claim was ever made before the Commissioners nor the Circuit Court, on appeal, respecting the value of these leases or the damage sustained by the property owners through their loss.

It further appears from the testimony that while the defendant was retained either late in the year 1922 or early in the year 1923, on account of a letter received from the Hudson County authorities notifying complainants that condemnation proceedings were anticipated; and while no such proceedings were actually begun until the year 1924, yet, during this interval, complainants were unable to fully rent their property on ac-

count of threatened proceedings and so suffered severe loss, for which no claim was made.

With respect to the actual employment of the defendant, as their attorney, the testimony of the complainants and defendant differs.

Complainant, Mr. Sinisi, states that in the year 1922 he spoke with Mr. Messano, a personal friend and his attorney, and stated that he felt that he would have to take his case from Messano and get someone else to protect his interests and Mr. Messano suggested the employment of Mr. Milton; and at that time he told Mr. Messano that he would not engage Mr. Milton unless Milton would charge him a fair fee; and subsequently he saw Mr. Milton at the Court House, in Jersey City, who told him that he would take the case (Case, p. 32). He did not see the defendant thereafter until 1924 when the condemnation proceedings started. He further says that in the summer of 1924 he went to defendant's office where a meeting of property owners was to be held and there was a meeting of such property owners, among whom was a Mr. Pierce; and at that meeting Mr. Pierce said "How about the fee?" and he told him that he had heard the fee Mr. Milton had set was \$2,500.00 to each one (Case, p. 33; p. 46, l. 26, etc.; p. 49, l. 1, etc.).

He reported his understanding of the charge to be made to his wife, who is a one-half owner in the property, and she was satisfied (Case, p. 47, l. 30, etc.); and, although she had never seen Mr. Milton prior to or during the condemnation proceedings (Case, p. 52, l. 8), Mrs. Sinisi testified that she had been told by her husband that Mr.

Milton's charges for the condemnation proceedings would be from \$2,000.00 to \$2,500.00 (Case, p. 52, l. 18, etc.).

The defendant testified that he first saw Mr. Milton with Mr. Messano in 1922 (Case, p. 57, l. 36, etc.). He also says that he saw Mr. Sinisi in his office in 1922 and that he was retained on behalf of both Sinisi and his wife (Case, p. 58) but does not state how he was retained nor what agreement, if any, was made with regard to his compensation.

With regard to compensation, defendant testified as follows:

"Mr. Sinisi came to see me after the award was made and talked with me about an appeal and an appeal was taken. * * * Some eight or nine months elapsed between the time the case was summed up before the Commission and the trial of the appeal in the Circuit Court, which was not tried until the latter part of May, 1925. * * * When we appeared at the Court House for the trial, Mr. Sinisi, Mr. Messano and myself had been standing in the Courtroom after the jury had been impanelled and before they were sent out to view the property. This we thought would consume one day but it consumed two days. As we were standing there, as a result of a discussion among us there, Sinisi asked me if I would try the appeal on a contingent basis. I said 'What do you mean?' He said, 'Half of what you get over \$117,000.00.' * * * He said 'half of what you get over \$117,000.00.' I talked for a few minutes with Mr. Messano and said 'Mr. Sinisi, all right, you are on.' And the case was tried and

it took two days and the jury brought in a verdict of \$143,000., \$23,000 more than the condemnation commissioners awarded." (Case, pp. 62 and 63.)

Both Mrs. Sinisi (Case, p. 78, etc.) and Mr. Sinisi (Case, p. 186, etc.) testified that they did not know why Mr. Milton had been holding out the \$11,500.00. Mr. Sinisi stated that Mr. Messano had told him something about it, but what Mr. Messano said about it was excluded on the objection of counsel for the defendant (Case, p. 186, l. 25, etc.).

It will be observed that no such agreement, as suggested by the defendant, is set up in his Answer. (Case, p. 10, etc.)

No final account of the moneys received by defendant was ever furnished to complainants (Case, p. 44, l. 27, etc.) and the only statement received by them was a letter (Exhibit "C-4," Case, p. 206) in which defendant states that he would receive a complete statement from the Clerk in Chancery within a few days and would forward the same to complainants.

Defendant retained, out of complainants' equity in the property amounting to \$74,881.67, the sum of \$17,574.44 as reasonable compensation for his services before the condemnation commission, the Hudson County Circuit Court on appeal from the commission's award, and the trial of the Chancery suit involving a lease—all of which trials consumed not more than five days.

In addition Sinisi paid \$930.50 for expenses (Case, p. 10, etc.), making a total cost to him of \$18,504.94.

POINT I.

As between attorney and client, it is the settled law of this State that the Court of Chancery has power to scrutinize and review the fairness and reasonableness, the adequacy and propriety of compensation charged by an attorney to his client.

Grimm v. Franklin, 140 Atlantic, 236;
Brown v. Bulkley, 14 N. J. Eq. 451;
Porter v. Bergen, 54 N. J. Eq. 405;
 34 Atlantic 1067;
Kelley v. Schwinghammer, 78 N. J. Eq., 437; 79 Atlantic, 260;
Raimondi v. Bianchi, 140 Atlantic, 584.

The complainants called upon the defendant to account for the moneys retained by him and asked the Court below to fix a sum which would be fair compensation for his services; and in this request, the defendant united; nevertheless, the Court dismissed the bill.

POINT II.

The burden rests upon the attorney to show that the bargain was a fair one for the client.

Condit v. Blackwell, 22 N. J. Eq. 481;
Dunn v. Dunn, 42 N. J. Eq., 431.

In the latter case, the Court said:

“The contract must be characterized by the utmost good faith * * * and the burden of establishing that perfect fairness of the contract is on the agent.”

This burden defendant failed to carry.

POINT III.

Complainant, Sinisi, had no authority to bind complainant, his wife, to pay one-half of her share of the increase obtained on the appeal.

POINT IV.

The amount retained by defendant for the services performed was exorbitant and unconscionable.

POINT V.

The decree advised by the Vice-Chancellor is erroneous and should be reversed.

Respectfully submitted,

WARREN DIXON,
Of Counsel with Appellants.

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POINT III

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POINT IV

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POINT V

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Feb. 1930

New Jersey Court of Errors and Appeals

IN THE LAST RESORT IN ALL CAUSES.

Between

DOMINIC SINISI, *et al.*,
Complainants-Appellants,

and

JOHN MILTON,
Defendant-Appellee.

On Bill, &c.

On Appeal.

BRIEF FOR DEFENDANT-APPELLEE.

The bill of complaint herein alleges that the defendant has in his hands the sum of \$17,574.44 claimed by him for legal services rendered complainants and disbursements incurred on their behalf; that it was agreed that his fees were to be about \$2,500.00; and prays that the Court ascertain and fix the fair and reasonable compensation of the defendant and that the defendant pay over the balance. The defendant in his answer says that the sum of \$17,574.44 represents not only defendant's compensation for services but as well disbursements made for the account of complainants; denies the alleged \$2,500.00 agreement and submits the fairness and reasonableness of his charges to the determination of the Court.

The Court below held the charges to be reasonable and dismissed the bill. The opinion is found at page 14.

Complainants were owners of a parcel of improved land proposed to be taken by the County of Hudson along with other properties for the

widening of the Hudson County Boulevard at Journal Square. In 1922 complainants employed the defendant to represent them in the projected condemnation proceedings (p. 57). Defendant testified that he undertook the employment, made an examination of the law with respect to the rights of tenants, and endeavored to work out a settlement with one of them (p. 58); attended in court at the time of the appointment of Commissioners and arranged with the County Counsel for the taking of testimony, engaged real estate experts, Ryer, Gaddis and a building expert, Connolly, with whom he conferred (p. 60); secured the plans and on two occasions made an examination of the building with the builder Connolly; attended a number of sessions of the Condemnation Commission where properties other than Sinisi's were involved so as to familiarize himself with the theories of the County's experts and to prepare himself to cross-examine them, and for this purpose also borrowed a copy of the testimony (pp. 60, 61); that the complainants' case was heard in July, 1924, resulting in taking 150 pages of testimony and was carried over until September when further testimony was offered and both sides summed up the case; that the County experts valued the property, one at \$90,000.00 and the other \$100,000.00; the owners' experts, \$140,000.00; the Commission made an award of \$117,000.00 (p. 61); that the complainants were dissatisfied with the award and instructed the defendant to appeal; defendant perfected the appeal, served and filed a notice, settled the issue and struck the jury, and in preparation for the trial reviewed approximately 1600 pages of testimony taken before the Commission and spent a number of days reading and studying it and in conferring with his experts with respect to it; when the case came on for trial in May, 1925, and while waiting in the court room

the complainant, Dominic Sinisi, in the presence of Louis Messano, proposed that the defendant accept as his compensation for the work done by him before the Condemnation Commission, as well as for his services on the appeal, 50% of any amount awarded by the jury in excess of the Commissioner's award; in the event that the award was not increased the defendant to receive nothing; to this defendant agreed (pp. 62, 162, 163); defendant spent two days in the trial of the case and the jury returned a verdict for \$140,000.00—\$23,000.00 more than the award of the Condemnation Commission; that he examined the law with respect to interest on the award, conferred with the County Counsel and with his clients and prepared an affidavit setting forth a statement of the net rents and succeeded in securing an additional \$4,500.00 for his clients (pp. 63, 64); that he caused a rule for judgment to be entered and thereupon the County filed its petition in the Court of Chancery alleging that it could not safely pay the amount of the judgment to the owners because of mortgages, tax liens and rights of persons in possession and an order was made directing the payment of money into that court on notice to all persons who appeared to have any interest in the lands (p. 64); that at the time of the filing of the petition the property was encumbered by taxes in the sum of about \$5,000.00, mortgages of Colonial Life Insurance Co. \$24,000.00, Bellezza, \$10,000.00, Messano \$4,000.00, DeSevo \$5,000.00 and Muro \$4,000.00; that there were two tenants in the building, Eldorado Restaurant, Inc., and Dr. George H. Martin (pp. 67, 68); other persons were joined in the proceeding; that the procedure to be adopted in the ascertaining of the rights of the various persons who had, or appeared to have, an interest in the fund was unsettled; that he conferred with the Chancellor and worked out the

procedure to be followed; application was made to the Court by petition for payment to the owners of the fund in court, less mortgages and taxes, and an order was made thereon calling upon the persons named in the County's petition to assert their claims or be barred; he also attended to the preparation and filing of the following: order for the payment of moneys in settlement of claim of Jersey City for taxes, Colonial Life Insurance Co. Mortgage, as well as the other mortgages, and to complainants \$32,000.00, the excess over all claims; order of reference; waiver from Corubia; proof of service of notice; order authorizing Clerk to pay Dr. Martin \$1,000.00 in settlement; petition of owners for leave to withdraw balance of \$28,000.00 in excess of \$17,000.00 allowed to remain in court to cover claim of Eldorado Restaurant, upon complainants giving bond; order carrying petition into effect; securing bond, having same approved and filed; securing money from Clerk and opening trust account in The Trust Company of New Jersey; order of designation; final decree; settlement of final decree; notice of appeal to the Court of Errors and Appeals; and in addition defendant was obliged to examine and pass upon the accuracy of the voluminous petition of the county for leave to pay the money into court and the order made thereon; to examine and investigate the claim of Jersey City for taxes and interest as well as the amounts of the mortgages, and to make a study of the leases; the tenant Eldorado Restaurant claimed the sum of \$50,851.66 as the value of its leasehold, the tenant Martin claimed the value of his leasehold and damages (pp. 65-68); that this latter claim was settled advantageously to the complainants; after the hearing began the restaurant company limited its claim to \$43,000.00 (p. 69); the hearing consumed a full day; to prepare for the hearing with the expert Ryer he visited the scene and examined and

analyzed approximately forty leases covering properties in the neighborhood and spent a number of days checking up on the rentals, terms of leases, etc. (p. 68); after the hearing he submitted a memorandum to the Court analyzing the leases relied upon by the tenant and comparing them with the leases testified to by the witness Ryer (p. 67); that the Court fixed the value of the leasehold at \$15,000.00 (pp. 45, 51, 69); that thereafter Sinisi asked the defendant to take an appeal to the Court of Errors and Appeals on a contingent basis, that is, defendant to be paid one-half of any reduction and if unsuccessful not to make any charge; defendant agreed, if he would pay for printing the record (pp. 69, 70); this Sinisi agreed to do and defendant took the appeal, prepared the record and had it printed, filed the original and reply brief, argued the appeal orally; that the result was affirmance of the decree below; that defendant made no charge for the work on appeal (C-4, p. 206); that pending appeal the Eldorado Restaurant sought to hold the sum of \$46,000.00 in court (p. 68); defendant resisted this application and secured an order permitting complainant to withdraw the sum of \$28,000.00 on giving a surety bond and placed this sum in a trust account so as to give complainants the benefit of the additional interest (pp. 43, 66); after the decision of the Appellate Court he prepared a remittitur and final decree after affirmance (p. 88) and secured an order to disburse the moneys in accordance therewith (p. 92); in addition defendant wrote about 150 letters (p. 70).

The moneys which came to the defendant are as follows:

July 28th, 1925.....	\$32,000.00
June 15th, 1926.....	10,000.00
July 13th, 1926.....	28,000.00
	4,881.67
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	\$74,881.67

Clerk's check for the last amount, \$4,881.67, was endorsed by defendant to complainants and its receipt is acknowledged by them.

Out of the first check of \$32,000.00, defendant deducted the sum of \$11,500.00, being one-half of the excess of the jury's verdict over the commissioners' award and remitted the balance to complainants in accordance with their agreement.

Out of the check of \$10,000.00 defendant deducted the sum of \$3,500.00 on account of services rendered to complainants after the trial of the appeal before the Hudson County Circuit Court. Of this amount the defendant paid to Louis J. Messano, a member of the bar, who was retained by complainants, the sum of \$1,000.00.

The item of \$28,000.00 was paid to defendant as trustee and the moneys deposited in an interest bearing account in The Trust Company of New Jersey. The interest was regularly forwarded to complainants. When that sum was realized and paid to the defendant he retained in his hands the sum of \$5,274.44, \$3,500.00 representing the balance of his charge for services rendered to complainants, out of which he paid Mr. Messano the further sum of \$1,750.00, \$274.44 representing disbursements for stenographic transcript, printing state of case and briefs, \$1,000.00 to cover Ryer's bill for services rendered to complainants as a real estate expert, \$500.00 to cover the bill of M. T. Connolly for his services as an expert builder. Defendant informed complainants that he felt personally liable to the experts for their bills and that he was holding the sum of \$1,500.00 with which to pay them. The complainants were dissatisfied with the amount of the experts' bills.

Defendant wrote complainants a letter dated February 17th, 1927, enclosing check for \$22,725.56 and explaining each of the items deducted

from the \$28,000.00. Complainant Dominic Sinisi replied to this letter under date of February 18th, 1927 (Exhibit D-3) acknowledging its receipt and stating that he was "disappointed" at the further charge of \$3,500.00 for the balance of services rendered, exclusive of any services rendered on the appeal, and requesting a check for \$1,500.00 held by defendant to cover the bills of the experts, stating that he would settle them himself and also requesting the defendant to please consider the amount of his fee. Defendant replied under date of February 21st, 1927, and received another letter in reply (Exhibit D-4) dated February 23rd, 1927, from the complainant Dominic Sinisi. Again in this letter he makes no complaint whatsoever about the charge of \$15,000.00 previously made although he refers to it again, his complaint being directed wholly to the last charge of \$3,500.00.

In an effort to satisfy the complainants the defendant returned to them the sum of \$1,250.00, making his final charge \$2,250.00, out of which he paid Messano \$1,750.00.

Under date of March 3rd, 1927 (Exhibit D-11), complainant wrote the defendant acknowledging receipt of the check for \$1,250.00 and requesting the defendant to try and settle the bills of Ryer and Connolly at as early a date as possible. Under date of March 15th, 1927, defendant received another letter (Exhibit D-9) from complainant Mrs. Sinisi, referring only to the bills of the experts.

Under date of March 31st, 1927, defendant received another letter (Exhibit D-10) from the complainant Mrs. Sinisi in which she again speaks of the bills of Ryer and Connolly and refers to the last charge of \$3,500.00; \$1,250.00 of which had been returned to complainants.

In a further effort to satisfy complainant defendant secured a reduction of \$250.00 from the bill of Ryer and \$200.00 from the bill of Connolly and sent complainants his check for \$450.00.

Complainant Mrs. Sinisi was recalled on the second day of the hearing and testified, in response to her counsel's question as to whether when she wrote the letter (Exhibit D-10), she understood that defendant was charging her and her husband \$11,500.00 for any services in the case, that she should have said in her letter, after the words "outside of the \$11,500.00" the following: "which he was holding and which was supposed to be returned to us towards the end of the case". She further testified that she did not understand at all why he was holding the \$11,500.00 and that he never told her that he kept it as part of his fee, that during the conversation which she had with him before she wrote the letter (Exhibit D-10), he told her that he thought she was dissatisfied and that he would send her a check; that she surely thought he would send them a big check but he sent a small check; and again she said "Of course I naturally tried to get as much as I could from Mr. Milton".

Complainant Dominic Sinisi was recalled and under examination of his counsel denied that he had any knowledge of why Mr. Milton retained the sum of \$11,500.00.

ARGUMENT.

I.

Complainants agreed that defendant's compensation for work performed in the condemnation hearing and the Circuit Court should be one-half of the excess, if any, of the jury's verdict over the amount of the Commission's award.

There may be said to be a conflict of testimony with respect to the making of the contingent agreement under which the defendant retained the sum of \$11,500.00 as his compensation for work performed on behalf of the complainants in the condemnation hearing and on the subsequent appeal from the Commission's award to the Circuit Court, being one-half of the excess of the jury's verdict (\$140,000.00) over the award of the Commission (\$117,000.00). The defendant's testimony with respect to the agreement (p. 62) is corroborated by the testimony of the witness Mesano (pp. 162, 163). Despite the fact that the complainant Dominic Sinisi was recalled twice after the defendant testified, it is important to note that nowhere in his testimony does he expressly deny the making of the contingent agreement. His replies to his counsel's questions concerning his knowledge of why the defendant was holding the \$11,500.00 were that "Mr. Milton never said to me what for is the \$11,500.00" and again "himself he never did say anything" (p. 186). The complainant wife swore that she did not understand at all at any time why the defendant was holding the \$11,500.00. It is, of course, admitted that she was not present when the contingent agreement was made and from this the complainant contends that the agreement was

made without her knowledge or acquiescence and that therefore it is not binding upon her. That both of the complainants were not telling the truth is evidenced by their correspondence with the defendant, which fully corroborates the testimony of the defendant.

Exhibits D-2 (p. 189), D-5 (p. 194), D-6 (p. 195), D-8 (p. 197) and D-11 (p. 201) are all in the handwriting of the complainant, Mrs. Lena Sinisi (p. 50). Exhibit D-3 (p. 190), dated February 18th, 1927, is in typewriting and at the end of the letter appears the initials "DS-LS", indicating that the letter was typewritten by the complainant Lena Sinisi. The letter is signed by the complainant Dominic Sinisi (p. 50). We quote from that letter:

"It is needless for me to write that I was disappointed to note that you have deducted another \$3,500.00 stating that this is for balance of services exclusive of any services rendered on appeal, as you had already deducted \$3,500.00 in June, having stated at the time that this amount was for services rendered on the Case, besides the \$11,500.00, which you deducted, being half of the increase. Mr. Milton, I am sure that if you were in my position, you certainly, would not pay such a big fee, as you know very well that after having paid the Appraisers' Bills, etc., I am not getting any of my money back invested."

Exhibit D-4 (p. 192) is typewritten and is dated February 23rd, 1927. We quote from that letter:

"Your letter of the 21st received and in reply would say, that as far as your fee is concerned, you never mentioned that there was still a balance of \$3,500.00 to be paid to you, having deducted \$3,500.00 at the time the \$10,000.00 was paid. *And I think that after having deducted the \$11,500.00, making*

in all \$15,000, that you are charging me enough. You know frankly that you should not have deducted another \$3,500.00, therefore, I wish that you would send me a check for this amount, as I am, certainly, entitled to same, in view of the fact that there was no mention made that there was still a balance to be paid."

Exhibit D-9 (p. 198) is typewritten, dated March 15th, 1927, and is signed by the complainant Lena Sinisi. We quote from that letter:

"In reference to Mr. Ryer's bill, as well as Mr. Connolly's bill, would say that if they do not accept that amount mentioned in our letter to you under date of February 23rd, Mr. Sinisi prefers settling these bills himself."

It will be observed that while Exhibit D-4, the letter of February 23rd, 1927, was signed by Dominic Sinisi, that the complainant Lena Sinisi had full knowledge of it (p. 55).

Exhibit D-10 (p. 199), dated March 31st, 1927, is signed by the complainant Mrs. Sinisi (p. 179) and composed by her (p. 180). In that letter she says:

"If you felt that he (Messano) was entitled to any commission on account of he having turned the Case over to you, we feel that you should have taken care of him, as at the time you retained the \$3,500.00, no mention was made that a balance was still due, it being understood that \$3,500.00 was your Fee for the entire Case, outside of the \$11,500.00."

The final hearing in this case was commenced on January 21st, 1929 (Case, p. 25), and on that day the letters were put in evidence. The hearing was continued over until February 5th (Case, pp. 133, 134). The force of the language just quoted

from the Exhibit D-10 must have become apparent to the complainant during the interim so that upon the resumption of the hearing on the adjourned date she took the stand and testified as follows:

“Q. What do you mean here when you say ‘Outside of the \$11,500.00’? A. I should have written here ‘which he was holding and which was supposed to be returned to us towards the end of the case’ ” (p. 183).

She further testified that before she wrote the letter Exhibit D-10 he told her that he thought she was dissatisfied and that he would send her a check; that she surely thought he would send them a big check but he sent a small check (p. 185), and again, “Of course I naturally tried to get as much as I could from Mr. Milton” (p. 179).

The complainants swore that they understood that the defendant’s charge was to be \$2,000.00 or \$2,500.00 for the entire case. This claim was never urged in any of the correspondence and it must be plain to any fair minded man that no such agreement ever existed.

The complainant Mrs. Sinisi visited the defendant and expressed her dissatisfaction, not with the charge of \$11,500.00 or the subsequent charge of \$3,500.00, but with the last charge of \$3,500.00, and in an effort to satisfy the complainants, defendant sent them a check for \$1,250.00, accompanied by the letter (Exhibit C-6) dated March 2nd, 1927, and acknowledged by them March 3rd, 1927 (Exhibit D-11). It will be observed that that letter, which is in the handwriting of the complainant Mrs. Sinisi, expresses no dissatisfaction with the balance of the charges.

II.

The contingent agreement was eminently fair and reasonable to the complainants.

It requires no large amount of reflection to appreciate that the complainant Sinisi was making a shrewd bargain on behalf of himself and his wife when he made the contingent agreement with the defendant. Complainants were already obligated to pay the defendant for the services which he rendered to them before the Condemnation Commission. Against the possibility of a reduction by the jury he offset that obligation and the obligation to pay the defendant for his services on the appeal. If the jury on appeal made an award of \$117,000.00 or less, then, under the agreement, complainants would have owed the defendant nothing, either for the services rendered before the Condemnation Commission or for his work on appeal to the Circuit Court. Sinisi knew that the county's experts had fixed the value of his property, one at \$90,000.00 and the other at \$100,000.00 and he knew that his own experts had testified to a value of \$140,000.00 and that they would testify to the same value before the Circuit Court.

The proceedings for which the defendant was paid the sum of \$11,500.00 extended over a period ranging from about the Spring of 1923 until the conclusion of the trial of the appeal in the Circuit Court, which began May 13th, 1925, and was concluded on May 14th, 1925. Within that period the defendant took upon himself the entire preparation, both for the hearing before the Condemnation Commission and the trial in the Circuit Court. He employed experts both on the value of the freehold and the reproduction cost of the

improvement. The sales of property in the vicinity were numerous and covered a wide area; values were changing rapidly; conditions were complicated and unusual; each sale had to be investigated and analyzed to determine, among other things, the terms of sale, the income, whether the buyers were willing but not compelled to buy and sell respectively, whether the property was comparable to the Sinisi property. with respect to location, accessibility, size of plot, frontage, utility, etc., whether there were any conditions which affected the price and what factors determined or influenced it. All of the sales had to be classified and compared with the Sinisi property, the theories of the adverse experts had to be studied and analyzed, the fallacies exposed and the whole had to be simplified so as to make it understandable to the lay mind. It is hardly necessary to suggest that no undertaking of an attorney calls for greater skill than the cross-examination of expert witnesses. That the interests of the complainants were carefully and skillfully protected by the defendant is plain from the results obtained by him. The thorough and intensive preparation of the defendant and his skill and ability in the cross-examination of the county's experts demonstrated to the jury the unsoundness of their theories and enabled the complainants to realize upon their property the value placed upon it by their own experts.

In view of the contingency the charge of \$11,500.00 was eminently fair to the complainants. This amounts to slightly more than 8% of the jury's verdict.

The sum of \$11,500.00 was a moderate charge for the services rendered by defendant irrespective of the agreement. The witness Mr. Edward P. Stout, called on behalf of the defendant, placed

the value of these services at the sum of \$15,000.00 (Case, p. 121).

In *Grimm vs. Franklin*, 140 Atl. 236, a bill was filed on behalf of Grimm to restrain the prosecution by the defendant Franklin of four suits at law against the complainant for the recovery of attorney's fees based upon a contingent agreement. The Court said:

“While it is proper for this court to fix the reasonable fees to be paid an attorney by his client where charges of fraudulent or unfair conduct are preferred, when the parties themselves have come to an agreement touching such fees, and it appears that the agreement was arrived at after complete disclosure and full consideration, and that there was no fraudulent or unfair conduct on the part of the attorney, and that, as to the client, the agreement is fair, that agreement ought not to be disturbed by the court, but the parties should be left where they have placed themselves.”

III.

Defendant's charge for the other services rendered complainants is fair and reasonable.

After the jury returned a verdict of \$140,000.00, defendant made an examination of the authorities with respect to the allowance of interest on the verdict and had several conferences with regard to it, prepared a statement and affidavit with respect to the net rents, conferred with the county counsel and succeeded in securing a further sum of \$4,544.45 (pp. 6, 64). After the judgment was entered the County of Hudson, feeling that it could not safely pay the amount of the judgment to the owners, filed its petition in the Court of Chancery, pursuant to the statute, and secured an or-

der to pay the moneys into that court upon notice to all persons who claimed or appeared to have any interest in the land, and in compliance with that order, paid into the Court of Chancery the sum of \$144,713.08. The county's petition set forth the claims of The Mayor and Aldermen of Jersey City for taxes, five mortgagees, two tenants and several former tenants. It devolved upon the defendant to satisfy and discharge the liens and to clear the way for the controversy between the owners and the tenants with respect to the value of their leasehold estates. The practice to be followed by the owner was unsettled. The defendant worked out a procedure, secured an audience with the Chancellor and conferred with him with respect to it and secured his approval of it. Thereupon defendant filed a petition on behalf of the owners, praying that the fund be paid to them and the Court made an order thereon directing all persons who claimed an interest in the fund to file their claims within a certain time or be barred and providing for service of the order upon the lienors as well as upon all other persons named in the county's petition. Service was made and thereafter the claims filed. Defendant checked the various claims filed and secured an order for the withdrawal of the clear excess, \$32,000.00, between the amount paid into the Court and the total amount of the various claims. He examined and verified the city's claim for taxes and the amounts due on the respective mortgages, with interest, and secured orders disbursing those moneys and secured an order barring those who had not filed claims and referring the tenants' controversies to Vice-Chancellor John Bentley.

The Eldorado Restaurant, Inc., originally claimed the sum of \$50,851.66. It had a ten year lease with an option for a further term of five

years (p. 38). Dr. George Martin, a dentist, had a lease, made in January, 1922, for five years, with renewal privileges from year to year thereafter, not exceeding ten years in all.

The defendant engaged the witness Ryer, real estate expert, to testify on behalf of the owners as to the value of the unexpired terms of the leases of the Eldorado Restaurant, Inc., and of the tenant Martin. The issue in these proceedings was not the same as that before the Condemnation Commission or the Circuit Court but the substantially different question of the value of the leasehold estates. After the hearing began the Eldorado Restaurant, Inc., reduced its claim to the sum of \$43,000.00. The tenant Martin did not specify the amount claimed by him. He was a dentist and claimed damages for the installation of his dental apparatus, plumbing, etc., and also the value of the unexpired term of his lease and the renewals thereof and for all losses arising from his forced removal from the premises by reason of the condemnation proceedings. On the morning of the hearing before the Vice-Chancellor this latter claim was settled advantageously to complainants for the sum of \$1,000.00. The hearing consumed a full day. The tenant Eldorado Restaurant, Inc., through its expert Makray, offered twenty-six leases in evidence and the defendant, through the witness Ryer, offered about twelve others. The preparation of the defendant for the hearing included a visit to the vicinity of the property and the study of conditions there with the witness Ryer, together with an examination and analysis of the leases involved in this proceeding as well as some forty other leases of properties in the neighborhood. Defendant testified that he had many conferences with the witness Ryer in preparing for this hearing and Ryer, who testified for the defense, stated

that these conferences numbered twenty-five or thirty. After the hearing defendant prepared a memorandum for the Vice-Chancellor, analyzing the various leases which had been put in evidence and the Court fixed the value of the unexpired term of the Eldorado Restaurant, Inc., at the sum of \$15,000.00. The owners' expert Ryer had placed a value on this leasehold of approximately \$8,700.00. Thereupon the defendant prepared an order to carry out the settlement of Martin's claim and prepared and served a notice to settle the form of the final decree and enter the decree. Complainant Sinisi came to see the defendant and said:

“There ought to be an appeal. The last time we gambled you got an allowance on account of the increase, now I think you ought to gamble again and give me a chance”,

and stated that defendant should take the appeal and if he succeeded in reducing the Eldorado's claim he was to receive half of the reduction, otherwise to receive nothing. Defendant agreed if complainants would pay the cost of printing the record. Sinisi agreed to do this (pp. 69 and 70, 45), and the defendant prepared and served notice of appeal and the Eldorado Restaurant, Inc., filed a cross-appeal. Thereupon the Eldorado Restaurant, Inc., applied to the Court of Chancery to retain in court, pending the appeal, the sum of \$46,000.00 to cover the full amount claimed by it. The defendant resisted this application and secured an order permitting the withdrawal from the Court of Chancery of the excess of \$28,000.00 over the amount decreed to be due to the tenant Eldorado Restaurant, Inc., by depositing a surety bond for that sum and placing the moneys withdrawn in a trust account paying interest at the rate of 4% pending the determination of the appeal. This was done so that the

complainants could have the benefit of the larger rate of interest. It is admitted that the interest on these moneys was promptly paid to the complainants as it accrued. The defendant prepared the State of Case on appeal and filed an original and reply brief and argued the case orally before the Court. The Court of Errors and Appeals affirmed the decree below and defendant prepared the remittitur and entered a final decree in the Court of Chancery after affirmance and secured an order to carry the decree into effect and directing the Clerk of the Court to disburse the moneys in his hands. No charge was made to the complainants for the services rendered to them by the defendant on the appeal, the defendant retaining the sum of \$274.44 representing his disbursements for stenographic transcript, printing State of Case and briefs. For all of the foregoing services, exclusive of the services rendered on appeal, defendant retained as his compensation the sum of \$7,000.00 in two amounts of \$3,500.00 each. No complaint was made with respect to the first charge of \$3,500.00 (Exhibits D-3, p. 190, D-4, p. 192, D-10, p. 199). After the defendant retained the second sum of \$3,500.00 the complainant, Mrs. Sinisi, came to see the defendant and expressed her dissatisfaction with the last charge of \$3,500.00, and in an effort to satisfy them defendant returned the sum of \$1,250.00 with which they were apparently satisfied (Exhibit D-11, p. 201).

They also complained about the amounts of the experts' bills, Ryer, \$1,000.00, Connolly, \$500.00, to cover which the defendant retained in his hands \$1,500.00, because, having engaged the men he felt personally liable to them. He succeeded in securing a reduction of \$250.00 on the Ryer bill and \$200.00 on the Connolly bill and returned to them the sum of \$450.00 (Exhibit C-7, p. 210).

The net charge to complainants for all of the work above outlined was the sum of \$5,750.00, which we submit was entirely fair and reasonable in view of the importance and scope of the work and the able, intelligent manner in which the interests of the complainants were protected and the results obtained. The formal work involved the preparation and filing of at least twenty papers.

IV.

The whole of the services rendered by defendant to complainants is reasonably worth at least \$18,000.00.

In determining what is a reasonable attorney's fee for services rendered, the nature and importance of the business, the professional standing and attainments of the attorney, the professional skill and experience called for, the importance of the matter, including the amount at stake, the results secured, the benefits accruing to the client from the services, the contingency or certainty of the compensation, and the responsibility to be assumed and carried, are all proper elements to be considered. A lawyer's services are not based upon, nor are they restricted to mere time service.

The defendant has practiced in the courts of this State and of the United States for upwards of twenty-five years and is one of the outstanding members of the bar of this State, occupied three official positions, City Attorney of Jersey City, Corporation Counsel and Prosecutor of Hudson County, has represented many important interests and had considerable experience in condemnation cases, both on behalf of the condemnor and property owners. The defendant represented the

complainants in a statutory tribunal and three courts of this State, which required over three and a half years to terminate, with the exercise of the greatest diligence and involved almost \$150,000.00. The results obtained were extremely beneficial to the owners. These are the important factors which enter into the value of a lawyer's services.

No expert testimony was offered by complainants in support of their claim that the charges are excessive but on the other hand, the defendant called two lawyers of high standing and of wide experience, Mr. Edward P. Stout and Mr. Thomas J. Brogan, both of whom have had experience in condemnation matters and their testimony was that the services of the defendant were reasonably worth at least \$20,000.00.

In view of the skill and ability of counsel, the extent of the work and the results obtained, the sum of \$17,250.00 retained by the defendant as his compensation is a moderate charge. Out of this \$17,250.00 defendant paid to Louis Messano who was employed by complainants with the defendant to represent them in this litigation, the sum of \$2,750.00, leaving the net compensation to defendant \$14,500.00.

As bearing upon the importance of the services of the defendant, we desire to refer to the case of *Ringwood Co. vs. North Jersey District Water Supply Commission*, 143 Atl. Rep. 369. In that case the Condemnation Commissioners made an award of \$1,809,418.67. From this award both sides appealed to the Passaic County Circuit Court. The jury on appeal returned a verdict for the land owner of \$711,267.25, a reduction of \$1,098,151.22. The judgment on the jury's verdict was affirmed in the Court of Errors and Appeals.

In *The Creditors Holding Co., Inc. vs. Perkins*, 98 Equity, 11, the respondent received the sum

of \$7,011.00 under a decree of the Court as counsel fee and in addition retained the further sum of \$7,030.60 out of \$24,000.00 belonging to his clients under the terms of the decree for his personal compensation, disbursements and taxed costs. The Court sustained the charges.

In *Grimm vs. Franklin*, 140 Atl. 236, 239, the Court said:

“ * * * it may be said that this court’s conscience may as easily be shocked by an attempt to avoid the payment of an honest obligation as by the procuring of an unfair contract.”

It may well be questioned whether the burden in every case rests upon the attorney to show that an agreement for compensation is a fair one for the client.

Brown vs. Bulkley, 14 N. J. Eq., 451, defines and limits the classes of contracts which are influenced by the relation of attorney and client, but we regard this as immaterial, as in the instant case the defendant has amply demonstrated the fairness and reasonableness of his charges to the complainants.

It is urged on behalf of the complainant Mrs. Sinisi that the agreement made by her husband was made without her knowledge and without her authority. We believe that it is established by the correspondence that she had full knowledge of the agreement and acquiesced in it and that her husband was acting for her in the making of the agreement, but even if this were not so a court of equity would compel the complainant Dominic Sinisi to pay the full value of his services and would decree accordingly. We might point out in this connection that all of the checks sent by defendant to complainants were endorsed by them to complainant Dominic Sinisi and deposited in his account.

V.

**The decree of the Court of Chancery should
be affirmed.**

JAMES A. HAMILL,
Solicitor of Appellee.

EDWARD A. MARKLEY,
Of Counsel.





