

INDEX.

	PAGE.
Notice of Appeal and Reasons	1
Declaration	3
Plea	8
Notice of Defense under the Plea	8
Judgment	9
Motion for Non-suit	80
Charge	117

TESTIMONY.

FOR PLAINTIFF:

AGOSTINO TROIANO:

Direct	10
Cross	28
Re-Direct	51

Recalled in Rebuttal:

Direct	113
--------------	-----

FRANK ZADRENA:

Direct	56
Cross	61

Recalled:

Direct	72
Cross	72

Recalled in Rebuttal:

Direct	115
--------------	-----

WILLIAM JOHN WOOD:

Direct	66
Cross	67

S. X. GRINALDI:

Direct	68
--------------	----

VICTOR EGILIDIO:

Direct	69
--------------	----

WILLIAM WARD:

Direct	70
Cross	71

II.

	PAGE.
THEODORE MONTENEGRO :	
Direct	78
FOR DEFENDANT :	
WILLIAM BAKER :	
Direct	84
Cross	90
<i>Recalled in Surrebuttal :</i>	
Direct	116
Cross	116
FRED L. HARTIGAN :	
Direct	93
Cross	97
JAY LAHEY :	
Direct	101
Cross	103
Re-Direct	107
Re-Cross	108
WILLIAM S. ANDERSON :	
Direct	109
Cross	111

EXHIBITS.

P-1	125
P-2	125
P-3, P-4, P-5 and P-6	125
P-7	125
P-7½	126
P-8	131
P-8½	131
P-9	131
P-9	131
P-10	131
P-10a	132
P-11	132
P-12	133
P-13	134
P-14	135
D-1	135

Notice of Appeal and Reasons.

New Jersey Supreme Court.

AGOSTINO TROIANO,

Plaintiff,

vs.

WILLIAM BAKER,

Defendant.

10

To the
Court of
Errors and
Appeals.

To Frank G. Turner, Attorney of Plaintiff.

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause except an item of \$27 as below stated, and on the following grounds:

20

Because the contract alleged in the declaration was not capable of performance in one year from the time it was made; that it was not the intention of the parties that the said contract should be performed in one year from the time it was made; that said contract was not to be performed in one year from the time it was made, and it was not in writing, nor was there any memorandum or note of it in writing signed by the defendant or some other person by him thereunto lawfully authorized as required by the Statute of this State entitled "An Act for the Prevention of Frauds and Perjuries"; that said contract was not enforceable because of the provisions of the said Statute; that said contract was for the per-

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Notice of Appeal and Reasons.

formance of an act or acts for a greater period than a year from the time the contract was made; that it was a parol contract not capable of performance and not to be performed within one year from the time the contract was made; that said contract required more than a year from the time it was made for its performance.

- 10 That on the facts established at the trial the trial court should have directed the Jury to find against the plaintiff and in favor of the defendant on the ground that the contract alleged in the declaration was not to be performed and was not capable of performance in one year from the time it was made, and that as the said contract was not in writing, nor was there any memorandum or note of it in writing, signed by the defendant or some other person by him thereunto lawfully
- 20 authorized, the said contract was unenforceable because of the provisions of the Statute of this State entitled "An Act for the Prevention of Frauds and Perjuries"; that the verdict of the jury and the judgment thereon were and are illegal and contrary to the said Statute.

- 30 The above reasons relate to all of the verdict and judgment, except that part thereof amounting to no more than \$27, being the value of a certain desk which the plaintiff claimed had been left on the premises of the defendant, and with the value of which he charged the defendant by implied contract; and as the judgment herein is for \$400, this appeal is from the whole of the said judgment less the value of the said desk, namely \$373.

MARSHALL VAN WINKLE,
Attorney of Defendant.

Declaration.

HUDSON COUNTY, SS.

L.S.)

New Jersey Supreme Court of the
Twentieth day of June, One Thou-
sand Nine Hundred and Twelve.

WILLIAM BAKER the defendant in this action was summoned to answer unto Agostino Troiano in an action on contract and thereupon the said plaintiff by Frank G. Turner his attorney complains: 10

For that whereas heretofore to wit, on the first day of September, One thousand nine hundred and ten, the said plaintiff and the said defendant entered into a contract wherein and whereby it was agreed by and between the said plaintiff and the said defendant that the said plaintiff should erect a certain building or buildings upon lands under the control and direction of the defendant and that the said plaintiff should furnish board and lodging to employes and laborers of the said defendant, who were then and there engaged and who were to be thereafter engaged in certain work in and upon a certain highway or road known as the Plank Road in the County of Hudson aforesaid; and in consideration therefor, the said defendant then and there agreed to and with the said plaintiff to have all his laborers board with the said plaintiff at a certain price to be fixed by the plaintiff and to deduct the amount of such board so fixed, from the wages of the employes of the defendant and pay the same to the said plaintiff. 20 30

And in pursuance of the said agreement it became and was necessary for the said plaintiff to expend large sums of money in and about erecting the said buildings and in and about equipping the 40

Declaration.

same for the accommodation of the employes of the defendant wherein and whereby the said plaintiff expended large sums of money, to wit, the sum of three thousand dollars (\$3,000) and the said defendant thereafter, to wit, on or about the first day of November, One thousand nine hundred and eleven neglected and refused to carry out his said contract and neglected and refused to send his
10 employes or laborers to the plaintiff to board and neglected and refused to collect board from his laborers and employes which said board was owing to the plaintiff for the board, lodging care and attention given by the plaintiff to the said employes of the defendant and the said defendant neglected and refused to carry out said contract from thence up to the present time and still neglects and refuses to carry out the same and has
20 neglected and refused to collect board owing by the employes of the defendant to the plaintiff in a large sum of money, to wit the sum of One thousand dollars (\$1,000) and the said plaintiff has been unable to collect the same and the said defendant then and there on the date last aforesaid neglected and refused and still does neglect and refuse to send his laborers or employes to the plaintiff to board whereby the said plaintiff has been deprived of and is still being deprived
30 of and in the future will be deprived of certain profits which he otherwise would have made under his said contract for board of said laborers or employes in a large sum of money, to wit, the sum of Nineteen Hundred dollars (\$1,900).

And in pursuance of the said agreement and contract made between the plaintiff and the defendant as aforesaid it became and was necessary for the said plaintiff to expend large sums of
40 money in and about furnishing and supplying the buildings erected by the plaintiff for the board

Declaration.

of the employes of the defendant and the said plaintiff in carrying out the said contract made with the defendant was obliged to and did expend a large sum of money, to wit, the sum of five hundred dollars in and about the furnishing and fitting up the said buildings for the board and lodging of the employes of the defendant in accordance with the contract so made between the plaintiff and the defendant as aforesaid and the said plaintiff says that the said defendant neglected and refused to carry out the terms of his said contract with the plaintiff as aforesaid and still does neglect and refuse to carry out the same. 10

And thereby through the wrongful acts, neglect and default of the said defendant the said plaintiff has been induced by the said defendant to lay out and expend large sums of money and has been deprived of large profits which he otherwise would have made and received except for the refusal of the said defendant to carry out the said contract aforesaid wherefore the said plaintiff says he is injured and has sustained damages in sum of \$6,000 and thereupon he brings his suit, etc. 20

For that whereas the said defendant heretofore to wit, on the first day of March, One thousand nine hundred and twelve, at Jersey City in the County of Hudson was indebted to the plaintiff in the sum of six thousand dollars (\$6,000) for the price and value of goods sold and delivered by the plaintiff to the defendant at his request; and in the like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendant at his request; and in the like sum of money for the price and value of work done, and materials for the same provided by the plaintiff for the defendant at his request; and in the like sum of money for money lent by the plaintiff to 30 40

Declaration.

the defendant at his request; and in the like sum of money for money received by the defendant for the use of the plaintiff; and in the like sum of money for money paid by the plaintiff for the use of the defendant at his request; and in the like sum of money for interest due from the defendant to the plaintiff at the defendant's request, for a long time then elapsed; and in the like sum of
 10 money for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and the defendant afterwards (to wit) on the day and year last aforesaid, in the county aforesaid, in consideration of the premises, respectively promised to pay the said several last mentioned moneys respectively to the plaintiff on request; yet the defendant disregarded his promises, and has not paid any of the
 20 said moneys or any part thereof; to the plaintiff's damage six thousand dollars (\$6,000), and thereupon he brings his suit, etc.

FRANK G. TURNER,
 Attorney of Plaintiff.

The following is a schedule of moneys expended by Agostino Troiano and a list of the expenses for the carrying out of contract with William Baker and a schedule of losses incurred by Agostino Troiano because of the failure of the said
 30 William Baker to carry out his agreement.

Money expended for labor in erecting building,	\$1026.00
Sept. 1910—Lumber, etc. from Dodge & Bliss Co.,	377.26
Oct. 1910—Lumber etc., from Dodge & Bliss Co.,	209.04
May 1911—60 Beds from L. Barrison	180.00
3 Stoves from L. Barrison,	15.00
40 Pipe, from L. Barrison,	10.00
60 Blankets, from L. Barrison,	48.00
Sept. 1911—Painting, etc., by Perkel & Son,	27.80

Declaration.

May, 1910—Moulding, by Perkel & Son,	1.75	
Sept. 1911—Metropolitan Labor Bureau, amount paid,	1.75	
Sept. 1911—Amount paid International Labor Agency,	2.00	
June, 1911—Amount paid Acme Ready Roofing Mfg. Co. for roof, etc.	3.23	
Sept. 1910—Amt. paid Acme Ready Rfg. Mfg. Co., for roofing,	26.25	10
Sept. 1910—Amt. paid Acme Ready Rfg. Mfg. Co., for roofing,	5.25	
Oct. 1910—Amt. paid Acme Ready Rfg. Mfg. Co., for roofing,	66.00	
Sept. 1910—Sash from Goldberg Wreck- ing Co.,	3.90	
Sept. 16, 1910—Sash and doors from Van Keuren & Son,	7.60	
June, 1911—4 Sledges and four bars 1 maul,	14.46	
July 14, 1911—Three fire extinguishers,	24.00	
Sept. 9, 1910—Nails, etc., Stone Brothers, Stoves, dishes, etc., (Sparich)	7.65	20
Nails, etc., from Stone Bros.,	10.00	
Hardware—John S. Menagh,	5.35	
	2.05	

Board furnished by Agostino Troiano for men employed by William Baker for which payment is due and owing from William Baker to Agostino Troiano:

Nov. 1911,	\$ 270.00	
Dec. 1912,	45.00	
Jan. 1912,	13.50	30
Feb. 1912,	10.00	
March, 1912,	15.00	
April, 1912,	101.00	
May, 1912,	108.90	
June, 1911—One Desk,	25.00	
	\$2662.74	

Plea.

And the said defendant by Mark A. Sullivan his Attorney, comes and defends the wrong and injury when etc., and as to all the said several counts in the said declaration contained says: That he did not promise in manner and form as the plaintiff hath above thereof complained against him, and of this he puts himself upon the country, etc.

MARK A. SULLIVAN,
Attorney of Defendant.

Notice of defence under the Plea.

To Agostino Troiano or Frank G. Turner, Esq.,
his attorney:

Take notice that the defendant herein will offer in evidence at the trial of the within action the following special matter.

First: That no such contract or agreement as set forth in the first count of the plaintiff's declaration was entered into by the plaintiff and defendant.

Second: That defendant fully performed the contract or agreement set out in the first count of plaintiff's declaration.

Third: That defendant paid to plaintiff any and all moneys that became due to plaintiff from defendant under the contract or agreement set out in the first count of plaintiff's declaration.

Fourth: That defendant paid to plaintiff any and all moneys that became due to plaintiff from defendant by reason of any matter or thing contained in the plaintiff's declaration.

Fifth: That the contract or agreement mentioned in the first count of plaintiff's declaration

was not to be performed within one year from the making thereof, and neither said contract or agreement nor any memorandum or note thereof was or is in writing and signed by the defendant or by some other person thereunto by him lawfully authorized.

MARK A. SULLIVAN,
Attorney of Defendant.

Judgment.

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This action was tried before Honorable William H. Speer, Judge of the Circuit Court to whom the trial was duly referred by an order of Francis J. Swayze, a justice of the Supreme Court, with a jury, at the Hudson Circuit, on November 12, 1913. This cause having been heard and submitted to the jury, they return their verdict as follows, that they find against the defendant in favor of the plaintiff for four hundred dollars (\$400). Whereupon it is ordered that the plaintiff recover of the defendant the sum of \$400 and his costs, which costs are taxed at the sum of \$47.79, making in the whole the sum of four hundred and forty seven dollars and seventy nine cents.

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Judgment entered, November 15, 1913.

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Testimony.**New Jersey Supreme Court.**

AGOSTINO TROIANO,

vs.

WILLIAM BAKER,

10

Tried Tuesday, November 11, 1913, before Speer,
J. and a jury.

Frank G. Turner for the plaintiff.

Marshall Van Winkle for the Defendant.

AGOSTINO TROIANO, SWORN.

20

DIRECT EXAMINATION BY MR. TURNER:

Q. Where do you live? A. 626 Summit Avenue,
Jersey City.

Q. How long have you lived in Jersey City?
A. I have lived about seven or eight years in Jer-
sey City, but I have been living in Hudson County
about—since '93.

Q. Do you know William Baker, the defend-
ant? A. Yes, sir.

30

Q. Did you have any relations with Mr. Baker
relative to work at the plank road? A. What is
that?

(Question repeated). A. Yes, I was—Mr. Bak-
er when he got that job in plank road he called
me and wanted me to build a shanty. I didn't
see it was very well for me and I didn't want to;
I didn't have the money to build the place, to
build the shanty; so Mr. Baker said, "Well, you
go ahead and build the shanty and," he said, "I

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Agostino Troiano—Direct.

will give you a thousand dollars and build the shanty." So I went and built the shanty, and then I asked Mr. Baker for the money. So he lent me \$400 and I signed a note. Then he was to start the work in the same year after I finished the shanties, built them, and they did not have the surveyors, didn't have the right of way, I don't know what the trouble was, and he couldn't start it, so I asked Mr. Baker, "Mr. Baker," I said, "I put the shanties ready", I say; "what do you do now?" "Well," he say, "Gus, I can't help it; I haven't the things to go." 10

Q. Will you talk toward the jury more? A. I tell Mr. Baker, I say, "I owe some money to the lumber yard." He says, "They will wait for you." So when the lumber yard come, I tell them how was things. I said "As soon as things open I will start to pay you. I will start to pay just the way I make my agreement." 20

Q. I show you a paper and ask you what that paper is.

MR. VAN WINKLE: I object to the question in that form. We are entitled to a question which produces the paper and then an examination of the paper so we can determine whether to object or not.

THE COURT: I will sustain the objection. 30

Q. I show you a paper; did you ever see this paper before? A. Well, I signed it.

Q. Is that your signature? A. Sure; I signed it right on the Five Corners. Mr. William Baker he fetch it to me and he says, "Gus, you get the \$200, but you have to sign this." He gave me \$200, and \$200 another time.

MR. TURNER: I offer in evidence a note for \$400 at three months, to the order of William Baker, signed by Gus Troiano. 40

Marked Exhibit P-1.

Agostino Troiano—Direct.

Q. Did you pay back to Mr. Baker that amount?

A. Certainly. Mr. Harrigan (Hartigan) kept it back off me on a payment.

Q. That was kept back? A. Yes, sir.

Q. I show you another paper and ask you if you have ever seen that paper before? A. Yes, sir.

10 Q. Where did you get that paper from? A. I got it off the superintendent, Mr. Harrigan, when he kept the \$100, and I say I want a receipt.

Offered in evidence and marked P-2.

Q. How many shanties did you build? A. I built two big shanties and two small.

MR. TURNER: I have some photographs here.

MR. VAN WINKLE: There is no objection.

20 Q. Are these pictures of the buildings which you erected? A. Yes, sir; yes, sir; those are the pictures, yes, sir.

Q. This first picture, what view of the building is shown in that picture? A. This one is fifty feet, twenty and six inches long; this is commissary. The biggest one is where they were sleeping, where all the beds stayed, and of course part of this building (indicating) was occupied by a fellow that was here and they kept a boarding house there,—cooking for the laboring men.

30 Q. This picture here, what was that building? A. For the laboring men.

Q. What did they use it for? A. To sleep in, to live.

Q. This small building, what was that? A. This building I put it over there to put it so they could cook the men; then after Mr. Baker's brother-in-law came and asked me and said they didn't have no place to cook or anything, and I let it out.

40

Agostino Troiano—Direct.

MR. VAN WINKLE: I object on the ground that no relation between Mr. Baker and his brother has been shown.

Q. Did Mr. Baker's brother have anything to do with this work? A. Brother-in-law—no, I don't think he had. He only worked for Mr. Baker.

Q. What did he do for Mr. Baker? A. Why, 10
he was the foreman—watchman on the night.

Q. At whose request, if anyone's request, did you erect that building? A. Huh. They all know it; they all know it. He told me, Mr. Baker say pay you so much a month, and then he had to get a stove; they didn't have no stove.

Q. Did Mr. Baker—A. I wasn't there when Mr. Baker came and told him that; only the man came and told me that.

Q. Did Mr. Baker ever see that small square 20
building? A. Yes; he saw that just as well as you see it here.

Q. How often was he around there? A. Sometimes every day; sometimes didn't. Sometimes I didn't see him around to the shanty; I only heard once or two times.

MR. VAN WINKLE: We will admit Mr. Baker saw the buildings when they were erected and from that time forward. 30

Photographs offered in evidence and marked P-3, P-4, P-5 and P-6.

Q. Did you ever have any talk with Mr. Baker after the first conversation that you have mentioned? A. Well, yes, I had several times talking with Mr. Baker. Mr. Baker was a good friend of mine and anything I was needed I was going to Mr. Baker. If I was needing money I go to Mr. Baker. If anything was wanted, you know, I go 40
to Mr. Baker. Certainly I did see Mr. Baker all

Agostino Troiano—Direct.

the time. Mr. Baker was one of the best friends I had.

Q. Did you know a Mr. Hartigan? A. Harrigan?

THE COURT: Hartigan.

A. Harrigan, yes, he was the super.

Q. Who was he? A. He is right in back of
10 Mr. Baker (indicating).

Q. I show you a paper and ask you if you have ever seen that before? A. My storekeeper gave it to me and show me because the time they didn't want to collect the bill board, then I tell Frank, this bookkeeper of mine—the storekeeper—I tell him not to give them anything if they didn't have no orders, so they got this order; and still we didn't get the money.

20 MR. TURNER: We offer the paper.

MR. VAN WINKLE: No objection.
Paper marked P-7.

MR. TURNER: Perhaps I had better read it into the record: "4/13/1912. Frank: Take care of this man. (Signed). Hartigan."

A JUROR: Who is it addressed to; in whose handwriting is it?

30 Q. Who is Frank? A. He is right there (indicating).

Q. Who is he? A. He is my storekeeper.

BY A JUROR:

Q. Who is writing this note? A. Mr. Hartigan.

THE COURT: Hartigan is the superintendent for Mr. Baker?

40 A. Harrigan, yes, sir.

Agostino Troiano—Direct.

BY MR. TURNER:

Q. I show you this paper and ask you if you ever saw that before? A. It was the same man and he showed it to me, and signed by the timekeeper the same thing.

Q. Whose timekeeper? A. Right there (indicating), Mr. Jay.

MR. VAN WINKLE: That is the handwriting of Mr. Lahey, who was timekeeper and one of the engineers for Mr. Baker at the time. 10

Paper offered in evidence and marked P-8.

MR. TURNER: It reads: "Frank: This man is O. K. at shanty. (Signed) Jay."

Q. I show you another paper and ask you if you have ever seen that before? A. Yes, sir; I saw that before. 20

Q. Where did you get that? A. Frank, the same bookkeeper, showed it to me. I say get all you can get them as long as they don't hold the bill board.

MR. TURNER: I offer this paper in evidence.

Marked P-9.

MR. TURNER: (Reading:) "Friday, Mch. 29. Frank: This man is to receive board at shanty. (Signed) Jay." 30

Q. I show you some envelopes and ask you if you have ever seen those before? A. Well, this I lost.

Q. What is that? A. I lost money on that.

Q. Where did you get that? A. I got it off the man. They was getting the money—come in and say, "Well, that's all the money I got."

Q. Where did you get the next one? A. The same; the same. 40

Agostino Troiano—Direct.

Q. What is that writing down there (indicating), "Gus, seven dollars"? Do you know what that means? A. Yes; that means they owe seven for the board bill.

Q. Who wrote that on there, do you know? A. Well, the timekeeper, Jay, or—

Q. Whose timekeeper? A. Jay.

Q. You mean Mr. Baker's timekeeper? A. Certainly, Mr. Baker's timekeeper, not my timekeeper.

Q. This envelope here, what is that? A. Frank got that.

Q. Where did you get that? A. Frank got that.

Q. The amount mentioned there, \$299.96, what became of that? A. That was the board bill, what he been collected.

Q. Well, who got that money? A. I got that money. Mr. Harrigan give that money to me; that is the envelope for me, the amount what he was collected for me.

Q. Now what does this mean (indicating)? A. This means thirty hours at fifteen cents an hour is four dollars and a half, is four-fifty I got.

Q. You got \$4.50 out of that envelope? A. Yes, sir.

Q. Who gave you the \$4.50? A. They were getting the money and when it was not enough money they gave me the envelope to show that they was, you know, they was back on the payment.

Q. Did your \$4.50 come in that envelope? A. I get that and there was more money coming and he could not collect it because he did not have no time.

Q. Did your four and a half come in that envelope? A. It did come in the envelope.

Q. Who gave you the four and a half? A. Mr. Harrigan.

Q. Mr. Hartigan? A. Sure; he gave me that.

Agostino Troiano—Direct.

Q. Whose envelope is this? A. Well, it is the laborer's. Let me see; number 38, now I don't know whose envelope is this; it was number 38.

MR. VAN WINKLE: We admit these are the pay envelopes of William Baker, the defendant, and the handwriting on them is either that of the timekeeper or one of his assistants.

10

MR. TURNER: Do you admit that the amount where it says "Gus" and an amount opposite it, was kept out by Mr. Baker?

MR. VAN WINKLE: I cannot admit that yet; I do not know the circumstances.

Q. Now this envelope was obtained from the workingman, was it? A. Yes, the workingman.

Q. What about that \$4.50; did the workman give that to you? A. No, sir; Mr. Harrigan did collect that \$4.50 and put in account to my money what he give me, and then he show me because this man was owe me more than \$4.50 and he did not have enough money coming to him, so he gave me that \$4.50 and charged "Gus, \$4.50."

20

Q. Then was your \$4.50 in that envelope? A. No; it wasn't in this envelope. They give it in the envelope what I got, the two hundred.

THE COURT: He got all that was coming to this man and it was not enough to meet his claim against the man, so he says.

30

Q. What is this next one? A. This is all right; this one is all right. This one collected. That only shows to collect the money, collect \$5.50 for me and put it in that envelope.

Q. Did your \$5.50 mentioned on there come in this envelope? A. Yes; there is on there, see?—"Gus."

Q. Did your \$5.50 come in this envelope? A. I couldn't get that; I had that.

40

Agostino Troiano—Direct.

Q. Then it wasn't in this envelope, was it? A. He been took it off the envelope and put it on my original bill what was coming, if it was \$200 or \$300. Now this (indicating) is the same; I got \$11.50 what it was.

10 Q. Now is it true on all the envelopes where the word "Gus" appears and an amount opposite it, that you received that amount? A. This is the envelope what Mr. Harrigan give me—collect the money and give me that.

Q. This envelope you have in your hand, what is that? A. That is my bill for the two weeks, \$299.79; I got that.

Q. Who did you get \$299.79 from? A. I got it off Mr. Harrigan. He was paying. He was the super. I got it off him. He was pay me.

20 Q. It came in this envelope, did it? A. Yes. Two fifty-nine I got from Mr. Harrigan (witness indicates another envelope).

Q. Then you got \$259 on September 31, 1911? A. Yes. Listen. In back of that envelope is something I want to see.

Q. What is that (handing witness envelope)? A. There was \$232.35 I got and it was short \$26.75.

30 Q. What does that mean? A. They couldn't collect the bill because they didn't have the time,—the men.

Q. What is the next one? A. \$203.60.

Q. That means that on July 31, you received \$203.60? A. Yes.

Q. Whom did you receive it from? A. Mr. Harrigan.

Q. Hartigan you mean? A. Yes; Mr. Harrigan.

Q. What is the next one? A. \$270.30.

40 Q. What does that mean? A. That means that my board was and he paid me.

Q. On August 15, 1911, you received \$270.30? A. Yes, sir, from Mr. Harrigan.

Agostino Troiano—Direct.

Q. From Mr. Hartigan? A. Yes, Mr. Harrigan.

Q. He was the superintendent for Mr. Baker?
A. Yes, sir.

Q. And this envelope here; what does that mean? A. That is the board bill too; that is \$311.92,—“Gus, \$284.92; lost \$27.”

Q. What does that mean? A. I lost \$27; they didn't have the time. 10

MR. TURNER: I offer these envelopes
(twelve) in evidence.

Marked P-8 1/2.

RECESS.

Q. Before you erected these buildings did you have any agreement with Mr. Baker as to the number of men he would have board with you? 20

A. I didn't have no agreement; I didn't have no agreement, but verbal between me and him, and he says 100 to 125 men would be go there and work and should be board with me.

Q. Did you have a verbal agreement with him?
A. Yes, sir.

Q. —as to how you would receive your money for these men? A. Every two weeks they would collect the money for those men and give it to me when pay day was coming. 30

Q. Who would collect the money from the men?
A. Well, Mr. Baker or his men who was working for Mr. Baker,—Mr. Harrigan, the timekeeper—I don't know.

Q. How much did you spend for the erection of the buildings? A. I spent \$1600.

Q. And how much did you spend for fitting up the buildings for this purpose, for furnishing 40

Agostino Troiano—Direct.

them? A. About \$250, between beds and mattresses and stoves, and blankets.

Q. And these bills that I show you, did they have any connection with the material you used in that building? A. Why, certainly. That was to Mr. Stone—I paid that, and I pay the extinguishers, you call them, a lot of stuff I have bought, the fire-proof you know, what they call it, the syringes in case there is a fire. I could not insure it.

THE COURT: You mean fire extinguishers?

THE WITNESS: Fire extinguishers, yes.

Q. Do these bills all relate to the buildings which are the subject of this suit? A. Yes, sir, every one.

20 Q. Do they cover all of the money you spent for that purpose? A. No, I didn't recover any.

Q. No; I say do these bills cover all the money you spent for that purpose? A. Oh, yes.

Q. Did you spend any money outside of these bills? A. I spent money to go around and get labor, to get a lot of things. I owe Dodge and Bliss for the lumber.

Q. How long a time did these men board with you? A. Six months they been boarded.

30

MR. TURNER: I offer those bills in evidence.

A. We start the 25th—

Q. Just a moment.

MR. VAN WINKLE: I assume that is a list of the bills in accordance with the items annexed to the declaration.

MR. TURNER: I presume so. There may be some missing, but there are none outside of that.

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Agostino Troiano—Direct.

Bills designated P-7 1/2.

MR. VAN WINKLE: Have you the bill for the cost of erection of the building itself?

MR. TURNER: Yes; that is the big item, the lumber bill.

Q. Is this (indicating) your lumber bill? A. Yes, sir.

Q. Did you spend anything for lumber outside of that bill? A. No, but I spent the roofing, the roof tar paper. 10

Q. What did that cost in addition? A. That cost me over \$100.

MR. VAN WINKLE: Has he any bill for the first item on the list, the large item?

Q. Have you the bill there for the labor in erecting the building? A. No; I did not have that. I can get that. 20

Q. How did you pay that labor? A. I paid—because they won't go there to build, I have had to pay the carpenter \$4.50 a day.

Q. Did you pay that in cash? A. Cash, certainly.

Q. Did you get a bill from them? A. No, I didn't had no bill. Mr. Baker gave me the money and I paid. I paid it cash, and then I had some more money and I paid that, all cash, the labor what been working there. 30

Q. Your labor cost \$1,026, did it not? A. What?

Q. Your labor for erecting the building was \$1026? A. Well, it was pretty nearly that.

Q. Where did you get that money? A. I had some money and that money and five hundred—four hundred dollars, Mr. Baker gave it to me, so I didn't want to go every time and ask him for money when I brought some money outside too to pay it. 40

Agostino Troiano—Direct.

Q. When did these men commence to board with you? A. On the—if I don't make a mistake, I think it was on the 25th day of May, 1911.

Q. When did they stop boarding with you? A. On November, I don't recollect it, I was sick with rheumatism and I didn't was over there, but it was in November, 1911.

10 Q. During that period did Mr. Baker collect from the men and pay you all the money that was owing for board and for goods purchased? A. Yes, sir, paid me that, yes, sir; paid me for that, whatever had been collected by him, he been collect the bill, he paid me for that.

Q. Did they collect all the money the men owed you? A. Sometimes they didn't have enough time to pay me, and of course they couldn't get it. They let it off; I had to charge them the next
20 pay day to come they would be worked there.

Q. Is there any money owing to you now from Mr. Baker which he failed to collect from the men? A. Why, yes. Why, he didn't collect the bill from November—I was sick in bed and my man come and told me there was five hundred dollars there was—

MR. VAN WINKLE: I object.

THE COURT: Objection sustained.

30 Q. Don't tell what your man told you. What money do you know of that he did not collect? A. Well, he did not collect about between twelve and thirteen hundred he didn't collect.

Q. Is your man here who had charge of that for you? A. Yes, sir; the man is here.

Q. Do those moneys that he did not collect show in this book (indicating)? A. Yes, it is right in that book.

40 Q. Is any of the handwriting in this book yours? A. No; I ain't got my writing. All the

Agostino Troiano—Direct.

storekeeper's writing. I haven't got no writing in that.

Q. Did you ever have a talk with Mr. Baker after the men stopped boarding with you? A. Well, I did—he asked me one time right on the Five Corner, and I tell him Mr. Harrigan don't like me there. He says, "Yes, he do like you." He says, "Don't be afraid." That ended it and I didn't see no more of him. 10

Q. Did you ever have any talk with him as to why the men did not board with you any more? A. No; I didn't have any talk after that.

Q. Did you have any talk with Mr. Hartigan about that? A. Yes, sir; I did.

Q. What was it? A. Well, I see they couldn't—I ask him why he didn't collect them, the bill. Well, he says, Mr. Baker found fault that I had the shanty too close to the bar and Mr. Baker thought I was giving beer to his laborers. 20

Q. Did you have a license there? A. Yes, sir.

Q. Is this (indicating) the license you had? A. Yes, sir.

MR. TURNER: I will offer that.

MR. VAN WINKLE: It is a Federal license. No objection.

Marked P-9 1/2.

Q. Is that the only talk you had with Mr. Hartigan? A. Oh yes, I had another time. I went and meet Mr. Harrigan one morning; he was coming up to the house. I was lame, with a cane in my hands, and I ask him what was the trouble, and he told me, he says, Well, he says, the trouble is about what I mentioned a little while ago, about the beer; "but," he says, "we are going to start in the first of April and I will give you to fill your shanty," he says, "and we pay \$1.60 and \$1.75 and \$2.00 a day." The first of 30 40

Agostino Troiano—Direct.

April of course I was waiting for that, and I had some men engaged, but they never took any of my men; they hired their own men wherever they please; so then I went to Mr. Harrigan on the sewer; they were building the sewer, and I went to him and I ask him, "Well," he says, "Mr. Baker don't want them." I say "All right." Then I come; I meant to go to Mr. Baker's office, but I
10 didn't reach there, and I saw Mr. Baker with the automobile in front of the court house, so I told him about, and he says, "Well," he says, "Harrigan don't want." "Well," I says, "that is something come," I says, "to go between you and Mr. Harrigan, because he told me that you don't want this thing and you told me that he don't want it and he told me you don't want it." I said, "I don't know." Well, Mr. Baker said,
20 "I'll go there tomorrow, Gus, to see him and I fix it."

Q. When was that conversation? A. That was in April, pretty near to the first of May, 1911-1912.

Q. You had not had any boarders since the November before that, had you? A. The boarders was go there by themselves, but I never could get the money, never could get the money what they was eating; then they would go and get the
30 money and go away. There was no stopping about.

Q. How much did you charge these men? A. I charged for beds and the coal and everything, the rooms, \$2.00 a month; and then whatever they was spending. If they was spending \$3.00 they paid \$3.00; if they was spending \$5.00 they paid \$5.00; whatever was paid.

Q. You gave them credit? A. Certainly.

Q. What did you sell to them on credit? A.
40 Sell bread and grocery, boots, rubber boots, shoes, overalls,—all them things.

Agostino Troiano—Direct.

Q. How did Mr. Baker know how much was owing to you from each man? A. Mr. Baker knows it; he is long enough in business, he knows it.

Q. No, no; how did he know how much each man owed you for board and clothes and things? A. Well, I was put my bill board in before the time come, before the pay day come.

Q. Who did you give it to? A. Two or three days before. I give it to Mr. Harrigan. 10

Q. Was that done every two weeks? A. Every two weeks, yes.

Q. Do you know what Mr. Hartigan did after he got that bill from you? A. What is that?

Q. Do you know what Mr. Hartigan did after he got that bill from you? A. Know what Mr. Harrigan did? I didn't understood that right.

Q. Did Mr. Hartigan then pay you after he got your bill? A. He paid me every time he collect my bill, yes,—the time he been collected it. The time he been collected it, Mr. Harrigan paid me all the time. 20

Q. But you say there is a considerable sum of money owing you now from Mr. Baker? A. Well, since May it stopped and I lost money.

Q. Was that money that Mr. Hartigan or Mr. Baker did not collect for you? A. Yes, that is the money. 30

Q. How long did Mr. Baker continue on that contract out there after November, 1911? A. Well, till last week. He finished up last week, or this week some time; he continued right along.

Q. You mean he has continued until the present time? A. Yes, sir.

Q. Can you tell us what profit you made or would have made each month from these men? A. Well, generally my profit would be about between three and four thousand—three and four 10

Agostino Troiano—Direct.

hundred dollars a month. There would be 125 men there.

Q. These buildings are put on whose land, do you know? A. Mr. Baker told me to build it there. I don't know who the yard belonged to. He told me to go over there and I found his brother and I asked him where I have to put the building, show me where I have to put the building, and I pay no rent or anything.

Q. Are the buildings still there? A. They still are there.

Q. And you do not know who owns the land? A. I don't know, I don't know the Meadows people—the Newark or New York—New Jersey—Meadows.

Q. Are the buildings of any value to you now? A. I do not know it is any value now, because they break all the windows and doors and everything and steal everything what there was inside.

Q. And since November, 1911, has Mr. Baker used any part of those buildings? A. Well, that little building what I told him, the little building, that little shanty.

Q. Has he continued to use it? A. I guess they use it yet. I have not been there. I guess they use it—they used it so far as they been there.

Q. Did Mr. Baker purchase a desk from you? A. No, sir, never. Never got no disposess.

THE COURT: He misunderstands your question.

Q. No; did Mr. Baker buy a desk from you? A. Oh, a desk. I did not buy it from Mr. Baker, I give it to Mr. Harrigan, the desk; I didn't have no room where I could put it, and I told him he could have it.

Q. You gave it to him? A. I did give it to him and then I demanded and I never got it back.

Agostino Troiano—Direct.

Q. Did you make him a present of it? A. No, I didn't make him no present, no. I didn't have no room where I could put it, and I didn't have any, and I give it to hold it until I was ready to get it.

Q. Where did Mr. Hartigan use it? A. He used it in his office.

BY THE COURT:

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Q. Well, did you ask him to give it back to you? A. Well, I asked him but I never got it.

Q. What did he say? A. He says "What do you mean?" one time. I never asked him after, only one time I asked him and I never asked him again.

Q. When he said "what do you mean?" what did you tell him? A. I said I want it; it is mine.

Q. Then what did he say? A. He didn't say; he walked away. 20

Q. Well, he didn't give it to you? A. That is it; he didn't give it to me.

BY MR. TURNER:

Q. What was that desk worth? A. Eighteen—

MR. VAN WINKLE: I object to this method of proving value. He is entitled to ask how old it was and how much it was worth in the first place. 30

THE COURT: That is one way. If he qualifies as an expert he can prove it this way, but he has not done that yet.

Q. How old was the desk? A. The desk was only about three year old when I got it.

Q. (By the Court.) When you got it? A. I got it over here in the Erie cut; it was about three years old, used there, and then I took it off them.

Q. What did you pay for it? A. We paid \$27, 40

Agostino Troiano—Cross.

I think; my partner, he paid it. I am sure of it that that is what he paid.

Q. And what was its condition when Mr. Hartigan took it? A. Oh, good condition; good condition. It was good as new.

Q. What kind of a desk was it? A. One of those opening affair—closing.

Q. Did you tell us how much you spent, if anything, for furnishing the buildings? A. What is that?

Q. For furnishing the buildings? A. For furnishing building?

Q. For furnishing them, fitting them up for use? A. For to use? You mean the inside?

Q. Yes.

THE COURT: The furniture.

A. The bed and all—\$250.

Q. Altogether? A. Yes, sir.

CROSS EXAMINATION BY MR. VAN WINKLE:

Q. How many years have you done business with Mr. Baker? A. Oh, I know Mr. Baker since 1893—'93 or '94, something.

Q. And during that period have you done work in connection with the contracts that he has had? A. Yes, sir, everything. Mr. Baker been best friends I had in my life, at that work.

Q. What kind of work did you do in connection with him—A. He do—

Q. Wait a minute. —on these other contracts? A. He had the Boulevard, and I got the Boulevard, to curb it—curb and brick paving, the gutters and the basin, sewers; I done all that work for him.

Q. Did you ever furnish laborers, Italian laborers—A. Any time he was—

Q. Wait till I finish—Italian laborers for Mr. Baker on other contracts before this Plank road contract?

Agostino Troiano—Cross.

MR. TURNER: I do not think that is material.

A. No.

THE COURT: I suppose the object Mr. Van Winkle has in showing that is to show a course of dealing between the parties and to argue that this was in the same line with that course.

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MR. VAN WINKLE: Exactly so.

A. I didn't furnish no labor any place except to the Boulevard, when he had the Boulevard and they wanted men, he asked me for men and I got the men, but not any other place; but I worked together in Hackensack Plank road, that is where we got acquainted with Mr. Baker.

Q. Have you not been during the past three years what we understand as an Italian padrone, that is a man who brings to contracts and jobs Italian laborers? A. Yes.

20

Q. That has been your business? A. That my business; they call them padrone; that's my business, sir.

Q. Then you also have had liquor stores in connection with that work? A. I didn't had no liquor store; I only give beer to my men.

Q. Give the beer? A. Give the beer to my men whom they were working there; I had that license to protect.

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Q. Not the license to give the beer away, but license to sell it? A. Yes, give it—not sell it. I was charging. I didn't have no cash money; only when they was getting the money. If they didn't have no money to pay for, and they wanted it, I had to give it to them.

Q. How did you find out, Mr. Troiano, that Mr. Baker had a contract for improving the Plank road? A. How I find out? I was working

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Agostino Troiano—Cross.

with him and he come on the Boulevard and he told me he got that contract, Mr. Baker himself.

Q. And did he say anything then about getting Italian laborers? A. Why, yes, yes; then he want so start to fill in, and he want some men, and I took some men over for the Erie cut; I took these over there to work, and they did work on the filling; that was in October, November or December, something like that.

Q. Can you tell us when you had the first conversation with Mr. Baker about this Plank road job? A. Yes.

Q. Give us the date if you can, about. A. If I don't make no mistake, I think it was one day he called me and he said, "Gus, I want you to build shanty on the Plank road."

Q. I did not ask you that; I want the time when. A. The time was in nineteen hundred and ten.

Q. What month? A. Well, it was in about September or August, something like that; in August or September, I don't remember exactly, but that was the time.

Q. 1910, September or August? A. Yes; August or September.

Q. Where did you have that conversation? A. Right over to Mr. Baker's office—over to his office.

Q. In South Street? A. Yes, sir.

Q. How did you come to go there? A. Oh, I was go there and get the money, sometime that I had been—to get the money.

Q. Did you then know that he had a contract? A. I know then he had the contract. I know the first day and I know what percentage he had for the work.

Q. You knew all about that contract, didn't you? A. I know all about it, certainly I did.

Q. You had found out either from Mr. Baker

Agostino Troiano—Cross.

or in some other way because it was a public matter, all the terms of the contract and all those things? A. Yes, but I know it because Mr. Baker told me himself, and I see it on the paper myself that he had the contract.

Q. And you knew where the work was to be done? A. Certainly.

Q. And how much he was to get for it? A. Yes. 10

Q. And about how long it would take to finish the work? A. Yes.

Q. You knew that, did you? A. Yes, sir.

Q. Now tell us this conversation you had in August or September, 1910. A. Well, Mr. Baker—I had the brother-in-law with me, and Mr. Baker didn't like that brother-in-law of mine, so we went there one day, there was some dispute about some estimate we had on the Boulevard and Antone talked about this business, about the Plankroad here—I don't know how it comes—Mr. Baker didn't like that fellow and he don't done right by Mr. Baker, and he told him "I ain't going to give the job to you, but I give it to Gus, that's my man, and he's the man, whenever he can make a dollar I put him to make a dollar"; so then this friend—this brother-in-law of mine, we went out and he said, "I won't have nothing to do, Gus," he say, "with Mr. Baker." I say, "All right; you won't have anything to do, but I don't want to lose my friends." 20 30

Q. Was anything said at that conversation by Mr. Baker with respect to putting up shanties? A. Then after a week or so—

Q. Nothing was said then? A. That day there wasn't anything; he didn't say me anything that day; but after they told me to put up the shanties.

Q. What did he say at the first meeting, this conversation in September or August, 1910? He 40

Agostino Troiano—Cross.

did not speak about shanties; what did he speak about? A. Why, yes, he spoke about the shanties, certainly; he spoke all the time about the shanties; he wanted me to put up the small shanty in 1910. They couldn't keep no labor there.

Q. Well, did you agree to provide labor? A. Why, certainly, I did agree. Mr. Baker told me, he says, "We are going to pay good wages, and I want good men." I said, "All right, Mr. Baker." He says, "I will pay the same wages as any—this fellow that's doing all this pile work; I'll pay \$1.75 to \$2.00 a day, but I want good men."

Q. Mr. Baker told you at this first conversation that he wanted you to get for him good laborers for the Plank road job? A. Good laborers, he certainly did.

Q. And he would pay them those wages you spoke of? A. \$1.75 and \$2.00 a day.

Q. Did he say how many men he wanted? A. He said between 100 or 125; he said they make the calculation, so many men go in the sewer, so many men goes on the filling, so many men go on the wall, and make the calculation about 100 or 125 men.

Q. Quite a big job, he told you, didn't he? A. Why, it was a big job, yes.

Q. And did he tell you, or did you know, how long the job was going to keep up, how long the work would last? A. Well, it didn't—I don't remember he said how long, but of course with any common sense that work it couldn't be finished in less than two years.

Q. So you agreed then to supply him 100 or 125 men for about two years? A. Yes, about that; about that; steady.

Q. Now then, what was said about the shanties? A. Well, the shanties, Mr. Baker,—I went there and he says, "Are you going to put up those shan-

Agostino Troiano—Cross.

ties, Gus?" I said, "I haven't got any money. The money, my partner took it all away from me," I said; "he put it in some other business." Mr. Baker told me, "You go ahead and build the shanty and I will give you a thousand dollars." Well, then, I was looking to have a place on the corner of Passaic Avenue and Plank road, and I told Mr. Baker—I met Mr. Baker down town in Jersey and I asked him— 10

Q. Well, unless you want to tell, I do not want all that. But the shanties were spoke about and he loaned you money to build them? A. Yes, sir, the same day.

Q. How much did he loan you? A. He loaned me \$400 once and \$100 after when we started the work; that was \$500.

Q. He loaned you that because he was a good friend of yours? A. Exactly. 20

Q. And you paid it back? A. Certainly, I paid back.

Q. You say you used some of your own money besides the money you borrowed from him, to put the buildings up? A. Of course, yes.

Q. Are you quite sure that your figure is correct, that the labor in putting up those buildings cost you \$1026? A. You know the lumber, they couldn't go, the team, to take the lumber right on the place where I build the shanty because it was a sandy place, and they couldn't go no team and they had to dump it to the road, and I had to cart it with the laborer; I had ten laborers. 30

Q. The \$1026 is made up by getting a total of the amounts you paid carpenters at \$4.25 a day? A. Yes, sir; that is what I paid.

Q. And you paid \$1026 to carpenters in putting up those buildings? A. Yes, sir, including the roofing part, the roofing part, doors and windows.

Q. There was no boss carpenter there, just jour- 40

Agostino Troiano—Cross.

neyman carpenters? A. No—there was a fellow I had to pay him \$5.00 a day, that carpenter. I couldn't have no carpenter there that time, I had to get any man, I had to get what come, and I had to pay the wages they want.

Q. Did you use new material or second hand material in these buildings? A. All new material, all come from Dodge & Bliss.

10 Q. Any second hand material? A. No, sir.

Q. On any of the buildings? A. On one little building, on that small building, there is some second hand on that, on two small building, not on one building.

Q. So one small building was built of second hand material? A. Yes, sir.

Q. And is that the small building you say Baker is using yet? A. Why, yes, half of it was old and half new of that.

20 Q. Where did you get the second hand material? A. Well, the wind blow there and blow all them fences there on the meadows, and I was—my men they went and got some of that lumber, and a fellow, the superintendent to the Meadows people, come over there and said, "Who gave you the order?" I said, I didn't take it; my men take it." That was the fact. He said, "I want you to take all that lumber back again." So I told my

30 men to take the lumber back again. Then after two or three days he come and said, "You can have that lumber now. We won't let no more signs." I said, "I don't want it." He said, "If you don't want it some one else will get it." I had a witness there, some one named Davis was there, and two men that live in Newark was right there; so I took the lumber back and built it.

Q. So then you built this small building—A. The small building, yes.

40 Q. —with second hand signs that were blown

Agostino Troiano—Cross.

down? A. Half is second hand and half is new.

Q. What do you say Baker is doing with that building now? You say he is using it; in what way is he using it? A. He come and say the driver say he was going there and put the harness there, and they have the stove, he say they didn't have no stove, and I let them have it.

Q. Well, you allowed them to do that, didn't you? A. Because—Mr. Baker, I allowed him to do it, certainly; I heard Mr. Baker and I let him do it. He said he was going to pay me, that is, brother-in-law. 10

Q. Are you making any charge or claiming any amount in this suit for the use of this small building by Baker? A. No; I didn't charge that up.

Q. What is the size of that small building? A. What?

Q. What size, how large is it? A. About 12 to 15 feet long and about 10 feet wide. 20

Q. One story? A. Yes.

Q. Now when you built those buildings there did you know whether Mr. Baker had a right to use any part of that ground at all? A. Mr. Baker told me, he said he had the lease, he had five acres of ground leased there. He said "You go ahead there," and he asked—he said, "Where do you want to put the shanty?" That's all I know.

Q. Didn't he tell you to go and see the Meadows people? A. That was I was to go and put up a business on the corner; he told me to go and see these Meadows people. 30

Q. Why were you going to put up a business on the corner? Did you have so much business to do? A. I thought I could do some business over there.

Q. You knew the whole Plank road was going to be made over, didn't you? A. Yes; I knew the Plank road was going to be a good road. 40

Agostino Troiano—Cross.

Q. And you expected to be able to get the laborers to board with you, who would work on that whole Plank road? A. Yes, sir.

Q. Now what section of the Plank road, what part of the Plank road was Mr. Baker going to do the work on when you put up these buildings?

A. Between Hackensack Bridge and Passaic Bridge.

10 Q. And besides that how many more sections of the road were there to do? A. There is one between Hackensack and West Side, or whatever you call it, on the bank. Mr. Baker had nothing to do with that; that was another contract, and then after they got that done, between Newark and Passaic Bridge.

20 Q. Then did you expect when you put up your buildings there that you would be able to get the Italian laborers who would work on this section nearest to Jersey City when that contract was let out afterwards? A. Yes, sir, I must expect that.

30 Q. And you put up the buildings expecting to use the buildings by boarding Italian laborers on that whole Plank road? A. Whoever was coming to it, no matter if it was Polack or nigger, colored, whatever it was, as long as they coming working there and they didn't have no place to go of course they was to be lodged there.

Q. And you expected to do that no matter what contractor got the rest of the Plank road? A. Well, I would never figure on the other contract; I only figured on what Mr. Baker had.

Q. Did Mr. Baker ever tell you he was apt to get the other section on the Plank road? A. We was expect he would get it. Of course I didn't know who was going to get it.

40 Q. You and Mr. Baker then both expected that he would be able to get the contract for the rest of the Plank road—A. Mr. Baker was—

Agostino Troiano—Cross.

Q. —or one more section of it, didn't you? A. Mr. Baker always said he was going to get some more of that work, certainly he did say.

Q. When you went there and built the buildings he did not have the contract for but the one section, did he? A. Only the one section.

Q. That was all you knew? A. Yes, sir.

Q. And you thought that would be finished in about two years? A. Of course it could not be finished before that. They couldn't do it. 10

Q. How long did you figure it would take to finish the work on the other section he expected to get? A. I didn't have no idea of that.

Q. Two years more? A. Well, about a couple of years more, certainly was that, easy.

Q. How long after you had this conversation with Baker in September or August, 1910, did you begin to build the buildings? A. I went right on to build. 20

Q. How long did it take you to build them? A. I started in September to build, and I been about the 22nd day or 23rd day of October finished all the buildings.

Q. Was the work proceeding on the job? A. What is that? I don't understand.

(Question repeated.) A. Well, they was working there; they was working with teams, they was working. 30

Q. The preliminary, the first work was being done? A. Yes, they had teams there. They had about ten or fifteen men there the time I was building the shanty.

Q. When did you begin to board laborers? A. The year after.

Q. How long after? A. At 1911.

Q. What month? A. On 22nd or 23rd of May.

Q. And how many did you begin to board there? A. I had 82 men. 40

Agostino Troiano—Cross.

Q. And how long did you keep boarding 82 men? A. They keep 82 men for about five or six weeks.

Q. Then did you have more or less after that? A. Well, they lay them all off because they didn't have no more work to give them, didn't have work, laying them off.

10 Q. What happened? Did the work stop? A. It stopped because they didn't no work to go ahead.

Q. You mean the County was not ready? A. It wasn't ready—I don't know how that been; I couldn't tell you how that been.

Q. Didn't you hear the Freeholders were not ready? A. Oh, it wasn't the Freeholders; it was something about the engineers, I think.

20 Q. Well, the engineers for the Freeholders, they were not ready; is that right? A. I don't know what was right.

Q. Didn't you hear that? A. I didnt hear anything of that—what Mr. Baker told me.

Q. Didn't Mr. Baker tell you that? A. He told me they don't was ready for it.

Q. Didn't Mr. Baker tell you that? A. Mr. Baker told me they didn't was ready—I don't know what was the matter.

30 Q. How long did the work stop? A. It didn't stop, but they had about fifteen or sixteen men about July and August; then in August he start to dig the sewer again and they want men.

Q. In August? A. Yes, sir.

Q. How many men did you have then? A. 17 men.

40 Q. Now the men that you boarded during this period or any part of this period, where did those men come from? A. Some were coming themselves there to board; some I took it off—I took it myself; I went and got it in New York, and some in Jersey.

Agostino Troiano—Cross.

Q. Were they all Italians? A. No, sir; there was Polack, there was colored men.

Q. And you got a good part of those men yourself? A. I don't understand.

Q. You got a good part of those men yourself? A. Yes, the majority of those men, the 82 men I had what boarded, nearly myself all.

Q. Didn't Mr. Baker tell you that he wanted men there and asked you to get men there? A. No; he never say that. 10

Q. How did you know then how many men to bring there? A. After they finished the sewer they been—there was two sewer on the Plankroad—they finished one sewer and didn't have no more work to do and they laid them off; that's all I know.

Q. Well, go back then to these 82 men; did you bring any of those men to the job? A. They was at the job, yes. 20

Q. Did you bring them there? A. Yes, sir.

Q. And you hired them somewhere in New York? A. Some in New York and some in Jersey.

Q. And you brought them over and said to Baker "Here are some men"? A. Well, I was putting them in the morning to work. Of course the man was there at work.

Q. Now these men that you brought over that went to work for Baker, you expected to have those men board with you, didn't you? A. Certainly. 30

Q. And they did, didn't they? A. They did that time.

Q. Now these other men that were on the job, were there some men you did not bring to Baker that worked for him, some laborers? A. There was after, that was after I couldn't get no man.

Q. You say there was a time when you could not get any men? A. Yes. 40

Agostino Troiano—Cross.

Q. When was that time? A. They got—I couldn't get no man because they told me to hire the men for \$1.75 and \$2 a day, and they only—when any man was discharged they pay him \$1.50; a man leave the job, pay him \$1.50, and a man was working there, pay him \$1.50.

10 Q. You do not answer my question. I don't want to stop you—but when was the time when you could not get any more men? A. That was the time.

Q. Give us the year and the month as close as you can. A. It was more than a month; it was over a month.

Q. I want the year and the month. A. Well, that was in 1912.

Q. In 1912? A. No; 1911 I mean.

Q. What month? A. That was in September.

20 Q. Then in September, 1911 you could not get any more men to work on the job; is that right? A. No, that ain't right. I had four and five men a day, every day; they want forty or fifty men a day and I couldn't get forty or fifty.

Q. You could not get enough men? A. That was what they claimed. They did not have enough men, but I could not get forty or fifty men a day, because they were very scarce, the laborer, and for that wages I couldn't get it.

30 Q. The labor market you say— A. The laborer wanted \$1.75 or \$2.00 a day.

Q. Wait a minute. The labor market got to be in such condition that you could not get the men Baker wanted in sufficient numbers at the price he was willing to pay, is that right. A. Well, yes. Of course they was paying \$1.50.

Q. That is, the men discharged, you said. A. Well, not Mr. Baker, Mr. Harrigan told me to go
40 hire men for \$1.75 and \$2.00 a day. After they were discharged they had \$1.50, after they wasn't

Agostino Troiano—Cross.

working there, and it came up what they were getting, \$1.50, so then been the time I couldn't get no more men on the market.

Q. Men were scarce, you say? A. Well, men were very scarce and I couldn't get no men because the wages didn't was paid them right.

Q. Before that time, before September, 1911, was Mr. Baker putting some men on the work himself? A. Well, yes, they hired men themselves, yes, sir, certainly. 10

Q. They got men themselves? A. They got men themselves and paid them \$2 and \$1.75, yes.

Q. And did those men board with you? A. Not them that I know of.

Q. What? A. I don't know, there was a few, I think; there was a few men boarded with me, but they never paid me my bills; they was working right along there; they never paid my bills what they was getting. 20

Q. Who didn't pay your bills? A. Well, those men that were working there.

Q. These men you trusted; is that it? A. Well, I had to trust them.

Q. Now Mr. Troiano, you say that Mr. Baker has not paid you an amount of money, from \$1200 to \$1300, you say that is an amount he failed to collect for you; how is that amount made up? A. That amount been made up the money I lose by if they would collect the money I would have that money. They didn't collect it so I lose it. 30

Q. You mean it is profit—A. No; no profit—to pay my bills.

Q. Let me ask the question. You may answer your own way. A. All right, sir. I beg your pardon.

Q. Is the amount made up of profits you expected to make and did not make? A. Yes—that is what I lost and man been there and didn't stay 40

Agostino Troiano—Cross.

there, and then they didn't collect because they went away and then I lose that money; that is what it is.

Q. That is \$1200 or \$1300? A. Yes, \$1200 or \$1300.

Q. Do you know how it is made up? Can you give the names of the men or dates or anything?

10 A. The names, I never could get no names; they was going by number there; they was coming by numbers, and of course they got the stuff and after payday they beated it and go away, and before I get anything they go away.

Q. In these cases of these men that you say did not pay you, did you give notice in each case to Mr. Baker or to his superintendent of how much was due you? A. I don't understand that.

(Question repeated.)

20

A. Certainly. That was right along. I tell the super that there was so many men didn't pay me, didn't get, and he say, "Well, I'll get the money for you."

Q. I want to know whether you gave notice to Mr. Baker— A. I didn't—

Q. Wait a minute.

THE COURT: Just listen to the question.

30

Q. —of the amounts that were due you, telling Mr. Baker the numbers or names of the men, and while those men were still employed by Mr. Baker, or afterwards? A. No, I did not never tell anything to Mr. Baker that, but Mr. Harrigan he knows it.

Q. Listen carefully, please. Did you ever give notice to Mr. Hartigan or anybody in Mr. Baker's employment on that job, of the amount of money that was due you from these different men— A.
40 Yes, Mr. Harrigan.

Agostino Troiano—Cross.

Q. Wait. —during the time these men were working on the job, before they left? A. Yes; Mr. Hartigan knows I told him all the name, he knows all the name and knows everybody.

Q. And did you give them notice by letter or— A. By mail, by black and white.

Q. Now during the time that these men were boarding with you, before they had the trouble, when you could not get any more men and the market was scarce, how much was Mr. Baker paying you for board? A. Well, he paid me what was coming to me, everything. 10

Q. That doesn't tell us anything. A. Two hundred and ninety—

Q. Well, how much for each man? A. How much for each man was paid me —whatever he was getting, whether three or four or five dollars, six dollars, that way; that was paid me,—the clothes, the rent, the lodging, what they were eating. 20

Q. Some of these men when the time came to get their pay and settle up with you, did they have anything left at all? A. Some of them was getting left, yes, sir, some was getting left; some they didn't, they was short.

Q. Well, there was plenty of liquor there, wasn't there, Mr. Troiano? A. Well, yes, there was beer there, yes. 30

Q. And everything these men drank, of course was not paid for in cash but was charged against them? A. Yes, sir.

Q. And when the month came around you had your bill of how much they had consumed and you got paid for that? A. Yes, sir.

Q. How many men did you have boarding with you after the time when you say Mr. Hartigan failed to collect for you? A. Well, I don't know exactly how many, because I didn't—but my store- 40

Agostino Troiano—Cross.

keeper can tell you better. I didn't know if it was 10 or 15 or half of that. The first time they—Mr. Harrigan stopped to collect the bill, what I say before, this friend of mine came and told me the board bill was \$500, and then they didn't collect it, they didn't collect the bill, and they had fought to get some money to recover—I think they recovered \$225.

10 Q. Now before these bills against these men that you say Mr. Baker did not collect for you were due, were you not told by Mr. Hartigan that they would no longer collect money for you because—wait a minute—because they were dissatisfied with the way you were running the saloon— A. Yes.

Q. —and because the men you brought there were not men fit to work on that job, they were inefficient? A. They were efficient; they were good men.

20 Q. Kindly answer the question. Didn't they say that to you? A. Don't say what kind of men they were, but didn't Mr. Hartigan as a fact tell you that at that time? A. Mr. Harrigan—you can't go by Mr. Harrigan—Mr. Harrigan told me many times they didn't want to collect the bill; Mr. Harrigan tell me many times they didn't want to collect the bill for me, but they did collect it.

30 Q. I know it. A. Then after I was sick they didn't collect the bill—so I don't know anything.

Q. Didn't he tell you that at the time I specified in my question—didn't he tell you they would no longer collect? I don't care whether you believe him or not. Didn't he say that? A. He never told me. He told the timekeeper. The timekeeper came told me one morning, "he says he won't collect no more board for you." I said, "who said it?" He said, "Mr. Harrigan." say, "I go and see to it." 40 And one day in the shanty he said, "Yes, I collect everything what you put in."

Agostino Troiano—Cross.

Q. Mr. Hartigan said that? A. Yes, sir.

Q. Now you say sometimes he said differently?

A. Sometimes he said he won't collect it.

Q. How many times did he say he would not collect any longer for you? A. He never told that to me.

Q. Who did he tell it to? A. My storekeeper told me. I was sick. I been sick since November to March. 10

Q. When you were sick was your storekeeper in charge? A. Well, my men was there in charge.

Q. Well, didn't your storekeeper represent you there when you were sick? A. Yes, sir.

Q. And didn't your storekeeper tell you that Mr. Hartigan said that because they were dissatisfied with the kind of men you supplied and because you had the saloon there they would no longer collect for you? A. No. 20

Q. Did he ever say that? A. Never told me that, until the day he didn't collect the bill.

Q. When was that? A. That was in November, I don't know exactly what day; in November it was; that was in November.

Q. Then do you mean to say that one month went by and you found they would not collect for you, and then you went ahead another month expecting them to collect in November? A. That was every two weeks collect; every two weeks was paid. 30

Q. Mr. Troiano, don't you remember that before November and before these amounts that you say Mr. Baker did not collect were due that you were told by Mr. Hartigan that he would not collect any longer for you unless you would cut out the liquor? A. Not was; he never told me anything, but he stand by the timekeeper, the timekeeper told me in the morning before they start work. 40

Agostino Troiano—Cross.

Q. Which timekeeper was that? A. That was Hugh Kelly, he told me.

Q. One of Mr. Baker's timekeepers, he told you that? A. He told me after this won't collect your bill. I say "All right, I'll go and see the boss." That is what I told him. After, Mr. Hartigan came and told me.

10 Q. Didn't he tell you they would not do it unless you would cut out the liquor? A. No, sir; after that Mr. Hartigan told me; that was in 1912.

Q. Now, Mr. Troiano, do you say that Mr. Baker ever, at any time, agreed to collect from these laborers the moneys due you for board and for liquor? Do you say he ever agreed to do that? A. Well, Mr. Baker knows just as well that you never can see shanty if you don't have beer; you can't keep no men.

20

MR. VAN WINKLE: Repeat the question, please.

(Question repeated.)

A. He agreed to collect my bill, yes.

Q. When did he agree to do that? A. That was the time he paid me to build the shanty.

Q. Well now, he did collect for a time, didn't he? A. Yes; he collected for six months.

Q. And then he stopped? A. Then he stopped.

30 Q. And how long did you think he would collect—for the whole period of the work? A. The whole, the finish of the work, certainly.

Q. That is two years? A. Certainly, yes, sir.

Q. Now you have specified an amount of \$1200 or \$1300 which you say Mr. Baker did not collect for you. A. Yes, sir.

40 Q. Now that amount to me seems very large, and I would like to know what period it covered, how many men you had there? As I remember, you said in your direct testimony that you would

Agostino Troiano—Cross.

have made three or four hundred dollars a month if Mr. Baker had collected— A. That—

Q. Wait a minute—from these men— A. That three or four hundred dollars—

Q. Wait a minute—on the basis of 100 or 125 men. Now this would mean a period of three or four months at least, wouldn't it —\$1200 \$1300.

A. No; that was the profit, I said; the two or three hundred dollars a month. 10

Q. The what? A. For the whole month was that.

Q. The drinking part?

(Answer repeated.)

A. What the bill was coming. I had to pay my grocery, everything what I—

MR. VAN WINKLE: Will you repeat that, please? 20

(Answer repeated.)

Q. Listen to this question, because I did not quite get your answer. You said you lost twelve hundred or thirteen hundred dollars because Mr. Baker did not collect for you—now wait a minute—the amounts that you say were due from these men that worked for him and that boarded with you. Now I want to know how many men he did not collect for and what periods making up this \$1200 or \$1300. A. He never—he didn't collect any for no man, he didn't collect a cent in November for any man at all. Who ever was working there they come there, but he never collected. 30

Q. That is one month. A. One month? That was for November, December, January; January it stopped, and then he started in.

Q. Don't you mean when you say Mr. Baker owes you \$1200, don't you mean that is the amount of money you would have made— A. Yes, I would have— 40

Agostino Troiano—Cross.

Q. Wait a minute—if things had continued as they were in the beginning? A. The business I would have had.

Q. You did not claim, did you, that Mr. Baker should have retained \$1200 he did not retain, due you? A. That was mine, certainly, but I spent that for my grocery—I had to pay my bills. Why I wouldn't? I had to pay my baker; I had to pay my grocery I had to pay everything. Where would I get it if I didn't collect it?

Q. These men were paid every two weeks? A. Yes, sir.

Q. Now you say Mr. Baker owes you \$1200, don't you? A. Yes.

Q. How many weeks did that cover? A. How many weeks, you say?

Q. Yes. A. Four—eight—well, about twelve or thirteen weeks, I think, or more.

Q. Well then, why didn't you find out at the end of the first two weeks of that period that he was not retaining the money, why didn't you stop boarding these men? A. I couldn't stop it. How could I stop it when I had my money put all over there, and I owed people money? How could I stop when I had the building there? I couldn't stop. I was trying to collect this bill. I couldn't stop because the building was there and I was loaning money to the people, and where I would get it if I didn't make it there, to pay for it?

Q. Then do you mean to say that the men worked two weeks and then they were paid by Mr. Baker — A. yes, sir.

Q. Wait a minute—and he did not keep back what was due you? A. Yes.

Q. And you knew that? A. Yes.

Q. And still you went on keeping these men altogether for thirteen weeks? A. Yes, but I always told Mr. Harrigan—I make one bill one time, that

Agostino Troiano—Cross.

was in March—April—and I give it to Mr. Har-
 rigan, and he put it on the safe, and then after
 two weeks come—after pay day come he didn't col-
 lect it, and when I wrote him a letter and asked
 him why he don't collect. He say the timekeeper
 make mistake and didn't take the bill out of the
 safe—out of the desk; then he said he was collect
 it afterwards, and he never collect it and never—
 I never get it. 19

Q. How could Mr. Baker tell how much was due
 you unless you told him? Can you tell us? A.
 Told Mr. Baker?

Q. Yes; you had to tell him, didn't you? A. I
 had to tell Mr. Baker—he knows the business.
 Twenty-five—suppose fifty men, I wouldn't make
 so much money with fifty men.

Q. Didn't Mr. Baker have to rely on you for
 the figures? Didn't you tell him every two weeks
 how much the men owed you just before pay day? 20
 A. They got the bill every two weeks, that was
 what they call a board bill was going to them.
 They know what was happen.

Q. Who got the board bill? A. The company,
 Mr. Baker, they got it.

Q. So you made out a board bill against each
 man? A. Yes, sir.

Q. And sent that to Mr. Baker just before pay
 day every two weeks? A. Yes. 30

Q. And he would take the amount shown and
 give it to you? A. Yes, sir.

Q. And the amounts are as shown on these
 pieces of paper Mr. Turner has put in evidence?
 A. Yes, them envelopes, yes, sir.

Q. Can you tell us just when it was that Mr.
 Baker stopped collecting money for you? A.
 That was in November, I tell you, but I don't re-
 member exactly what date in November it was,
 but November it was. 40

Agostino Troiano—Cross.

Q. The books will show you, won't they? A. I guess the books is there, yes, it will show what date it was.

Q. Then you got notice, didn't you, that Mr. Baker would collect no longer? A. Then he afterwards say he won't collect no more.

10 Q. Why didn't you collect yourself from these men? Wouldn't they pay you? A. Those men, they never would pay up. They don't pay, those laborers. They never would. They take what money they can, get the money and skip away; they wouldn't pay the bills.

Q. Didn't many of them claim you had charged too much for liquor? Didn't they? A. No, sir, never. I can produce a hundred men that will never say they was overcharged anything; no, sir. Never. Nobody been kicking for that.

20 Q. Any gambling going on in your place? A. No, sir.

Q. Are you sure of that? A. The reason they don't want to stay there was because they were promised one thing and got another thing.

Q. No games at all? (No answer.)

Q. Didn't you have a game there yourself? A. What?

30 Q. Didn't you have a gambling game there yourself? A. Gamble?

Q. Yes. A. My dear sir, if I would be a gambler I would not be here. I wouldn't be in that business.

Q. I do not mean to say you were the gambler. A. No, sir; no gambling wherever I been; never. I never allow anybody to gamble except they play for a bottle of beer or something like that; that is all there is gambling there, a bottle of beer.

40 Q. When you found Mr. Baker would no longer collect for you, didn't your man Frank— A. My man Frank?

Agostino Troiano—Re-Direct.

Q. Just wait a minute. Didn't he collect from these men with a gun in his hand; didn't he make them pay up at the end of two weeks? A. I don't know; I wasn't there at that time; that was the time that I was sick.

Q. Now didn't he tell you that,—Frank? A. Well, they fight; I don't know if they did or not. I didn't was there.

Q. Didn't Frank with a gun in his hand get that money? A. I didn't see it and I can't say it; I don't know.

Q. Didn't you get the money? A. No; the place of \$500 I got \$225, something like that.

Q. How did he get that? A. He said they wouldn't pay him.

Q. Did he tell you how he got it? A. Well, he got it. Some of those men paid it and some didn't pay it.

Q. He took a gun in his hand, didn't he? A. I don't know if he had a gun or a cannon in his hand. I don't know nothing.

RE-DIRECT EXAMINATION by MR. TURNER:

Q. Did you have any contract with Mr. Baker that you were to supply labor for him? A. I didn't had no contract in writing, as I told you, I only had a verbal contract between him and me.

Q. What did you say to him? A. To furnish the lumber.

Q. Were you to get him any number of men? A. Why, yes, between 100 and 125.

Q. Did you get those men for him? A. No; the highest number went there was 82 men.

Q. And did he agree with you as to how much he would pay these men? A. Why, yes, Mr. Baker said he was going to pay them \$1.75 to \$2.00 a day.

Agostino Troiano—Re-Direct.

Q. And after you got the men did he pay them that? A. No, after—

Q. How much did he pay them? A. After Mr. Baker for the super, the super said the labor could be had for \$1.35, all the labor he want, that was the wages they were paying in the barge canal, and Mr. Baker said to me, "Gus, I don't think we can pay them those wages, but we pay them \$1.50." I said, Mr. Baker, I don't think we can do it," I said, "because it is very bad season; it is late in the season," I said, "so we can't get good men, but I try to do the best I can," I told him, and I got men for \$1.50.

Q. Did you get him some men for \$1.50? A. Yes, sir; I did got him 82 men for \$1.50 a day; yes, sir.

Q. Now when they told you they would not collect for these men any more, you say, I believe, that Mr. Hartigan then said that he would collect for you, did he? A. That is what I say. One morning I was—I had four or five men to put them to work, and I went to put them to work, and this Hugh Kelly who was the timekeeper came to me and told me, he said, "Gus, we don't collect your bill board no more." I said, "Who says it?" He said, "Mr. Harrigan." I say, "I am going to see him;" and it was a rainy day, and Mr. Harrigan came right over to the shanty, on the commissary. I told him, say, "You told the timekeeper you wouldn't collect the bill?" He say, "No, no; I collect every bill you put in there which is against you."

Q. After that time did they ever again tell you they would not collect your bills? A. Never told me anything about it till after April.

Q. Now you say that you expected to board the laborers on this job. What led you to expect that? A. What?

Agostino Troiano—Re-Direct.

Q. What caused you to expect that? A. Well, because I was getting the labor there for them and I built the houses for them.

Q. Did you have any talk with Mr. Baker about that? A. Certainly; Mr. Baker knows all about it, because—

Q. No; did you have any talk with him about it, about boarding these laborers? A. Certainly. 10
Every man had to go to the board; he said every man had to go to the shanty. Mr. Baker said that—every man had to go there.

Q. You said you expected to board these men as long as the contract lasted? A. Yes, sir.

Q. And you commenced to board them in June, was it, 1911, or May? A. 1911.

Q. And you did board them until when? A. November, 1911.

Q. Well, you boarded men after November, 20
didn't you? A. They been board after November, but they didn't collect the bill.

Q. How long did you board them after that when they did not collect the bill? A. Well, that was about six months, seven months.

Q. What month did you stop? A. In May again.

Q. Then you boarded them from June, 1911, to May, 1912? A. Yes.

Q. And when was it that they said they would not send any men there—any more men? A. 30
Well, they didn't have no—send men—they didn't want to send no men there, but they didn't collect the bill; they wouldn't take no men off me. They hired their own men and they wouldn't take no men off me. If I would fetch a man there they would not take him.

Q. When was it they told you they would not take any men from you? A. Well, that was in 40
March,—April.

Agostino Troiano—Re-Direct.

Q. What year? A. In 1912.

Q. Who told you that? A. Mr. Harrigan.

Q. Hartigan. A. Harrigan.

Q. You had no knowledge as to how long the contract would last except what you thought about it? A. What I thought—I didn't have no—

10 Q. Now you said that Mr. Hartigan promised to collect some of this money from the following pay? A. Yes.

Q. Did he do that? A. No, sir; two pay, one after the other—that was in April.

Q. What month was that? A. That was in April.

Q. April, 1912? A. Yes, sir.

Q. Now you sent the bills every two weeks to Mr. Baker? A. No; I give them to Mr. Harrigan.

20 Q. Well, Mr. Hartigan? A. Yes.

Q. When those bills came in after November did they ever refuse to take the bills? A. They never took no more bills; they told my store-keeper they would not collect no more bill board.

Q. When did they tell that? A. That was in November, after they didn't collect the bill—the same night.

Q. You had a conversation with Mr. Hartigan, didn't you, after that? A. Mr. Harrigan.

30 Q. I say, after that conversation when you sent the bills each two weeks, did they accept those papers, those bills, that you sent? A. No, they did not.

Q. What did they do with them? A. Well, say they won't collect them, but in 1912, in April, he accept the bills, but he never collect them.

Q. Who accepted the bills in April, 1912? A. Mr. Harrigan.

40 Q. And did they accept the bills in March, 1912? A. March, April, they accept them.

Agostino Troiano—Re-Direct.

Q. Did they accept the bills in February, 1912?

A. No; there was no work in February, 1912.

Q. No work in February, 1912? A. No, sir.

Q. Did they accept your bills in January, 1912?

A. Didn't work.

Q. In December, 1911? A. After November they didn't accept any more bills till April, 1912.

Q. Did they stop work there? A. No, they 10
done working, but they would not collect the bill.

Q. Did they collect your bills in April, 1912?

A. No, sir.

Q. What made you send your bill there if you
—A. I went and asked them if they would collect it, and they say, "Yes, I'll collect it," but they never done it.

Q. Now this money that you are asking here, is that money that they promised to collect for you? A. Well, that they would collect that 20
money, yes, that was to collect, they had to collect. The contract we had between me and Mr. Baker to collect all of my bill, that would be money what I paid my bills and my profit.

BY MR. VAN WINKLE:

Q. Don't you remember in April when you say they said they would collect this amount for you, Mr. Hartigan said he would collect for you in the future if you would stop selling liquor on the 30
job? A. After that; after that. He got the two bills and then after—what I say before—he told me that.

Q. Do you mean to say that Mr. Hartigan said he would collect the old bill for you when the men had gone? A. No, no—I don't—no, no; men was working there. They was working there, the foreman and everybody; they was working there. They was coming there and owing me 40
money, and he knows all about it.

Frank Zadrena—Direct.

Q. But they were paying the men directly and would not deduct anything for you? A. No.

Q. And didn't Mr. Hartigan tell you in April they would continue deducting for you if you would stop selling liquor on the job? A. After I put two bills on his hand, then he told me about it after.

10

FRANK ZADRENA, SWORN.

DIRECT EXAMINATION BY MR. TURNER:

Q. Where do you live? A. West Orange, Eagle Rock.

Q. And did you work for Mr. Troiano? A. Yes, sir.

Q. What did you do there? A. Was store-
20 keeper, bookkeeper, everything.

Q. How long did you work for him? A. It was Plankroad one years,—Plankroad.

Q. When did you begin to work for him? A. Before that?

Q. No; I mean out here on the Plankroad, when did you begin to work for him? A. I don't understand.

Q. What month? A. Oh, 25, 26—24 or 25—
24th or 25th of May.

30 Q. May, 1911? A. '11, yes.

Q. How long did you work there for him? A. Work one month—one years on the Plankroad.

Q. Did you keep this book (indicating)? A. Yes, sir.

Q. Did you make the entries in there? A. Yes, sir; these (indicating). These are mine; yes, sir.

Q. Tell us how many men, by referring to your book, were in the employ of Mr. Baker and
40 boarded with you in May of 1911. A. When he

Frank Zadrena—Direct.

was the first time there was, I don't know, 80 or 82 men, the first time, when he worked five or six weeks, when he stopped. When he lay off work, five or six weeks, about 72—worked 80 men or 82 men—worked 17 mens, you know, for two or three months, and then he stopped and he work 82 men for six or seven; then he give the sack, you know, to somebody—work 17 or 18 men—I don't know—worked for two months or month and a half, I don't know, and just put more man, you know. 10

MR. TURNER: Does the jury get that?

A JUROR: No.

THE COURT: Let the answer be interpreted.

(Question repeated and question and answer interpreted.)

A. When they start work in May, 1911, they have about 80 or 82 persons. Then they worked about five or six weeks; then they stopped work and remained there about 16 or 17 workingmen, I don't know, but then they stopped for some time, about a month or a month and a half, and then again they had some more men. 20

Q. Doesn't your book show when they stopped and when they began? A. I think so.

Q. Does your book show— A. Yes, sir. 30

Q. Does your book show any unpaid board there? A. Yes, sir.

Q. Tell us what board is shown to be unpaid by the book. A. In November—November 7th, they started with the bill board, the 7th of November.

Q. How much is unpaid for the month of November, 1911? A. That is to say the greatest of bill board we had— (The Interpreter: But he didn't say the amount.) —about \$499 or \$500. 40

Q. Is there any unpaid board for the month of December? A. Yes.

Frank Zadrena—Direct.

Q. How much? A. About \$275—from \$250 to \$275.

Q. For January, 1912, was there any unpaid board? A. Yes, sir; about \$180 or \$170.

Q. For February, 1912, was there any unpaid board? A. About \$150.

Q. For March, 1912? A. About \$225, I don't know, about \$225, \$230.

10 Q. April, 1912? A. About \$295.

Q. Was there any bill in May, 1912? A. Some.

MR. VAN WINKLE: Well, how much is it?

A. (In English.) \$65 or \$70.

THE INTERPRETER: About \$65.

Q. Are you the man who made out the bills for Mr. Baker? A. Yes, sir.

20 Q. How often did you give the bills to Mr. Baker, or Mr. Hartigan? A. Every fifteen days—two days before that—three days.

Q. This bill of November, 1911, for \$499, did you give that to Mr. Hartigan or Mr. Baker in one bill or two bills? A. I brought the bill in the office.

Q. Did you give one bill for all of November or did you give two bills for November? A. No, sir—every fifteen days.

30 Q. Were the men working there in January of 1912? A. Yes, sir.

Q. How many men were there in January, 1912? A. Up to the 16th day of January—who brought from us were about 19 persons, but how many there were I don't know.

Q. Were you boarding any workmen in February, 1912; if so how many? A. Nineteen—nineteen persons.

40 Q. Nineteen what?

THE INTERPRETER: "Persons." I wanted to use his own language.

Frank Zadrena—Direct.

Q. To whom did you deliver the bills every fifteen days? A. To the superintendent, Mr. Hartigan.

Q. Did you ever have any conversation with Mr. Hartigan about Mr. Baker's collecting these bills? A. Yes, sir.

Q. What was that conversation and when was it? A. I brought the bill board—I brought it in the office to Mr. Hartigan, the bill board, and then the last time was in November. Mr. Hartigan told me to stop the bill board—to stop the bill board.— When pay day came. 10

THE INTERPRETER: He added that last to what he was talking.

Q. After November, 1911, did you continue to deliver these board bills every fifteen days up to May, 1912? A. Yes. Wait. Some time my boss, my employer in other word, my padrone—sometimes the boss would come. 20

Q. When you delivered them did Mr. Hartigan ever say that he would not collect them? A. He sent a clerk, he will come on the work, and "you collect the bill board."

Q. Whom did he say that to? A. Mr. Hartigan said that to the clerk and the clerk told me that.

Q. Mr. Hartigan said that to a clerk of Mr. Baker's? A. Yes, sir. 30

Q. Do you know what wages were paid to the men by Mr. Baker? A. Yes, sir.

Q. What wages? A. The first time—the first—the first time they paid \$1.50, \$1.60, and then they told us to procure the men because they would pay as much as \$1.75 or \$2.00, good men, pay \$2.00 and to get good men.

Q. Now as the result of that conversation did you or Mr. Troiano get the men? A. Yes, sir. 40

Frank Zadrena—Direct.

Q. And after you got the men did Mr. Baker employ them? A. Yes, sir; there was some one, some Parsage of Montenegro, and then he furnished men then.

MR. TURNER: (To the Interpreter.) Did he say Mr. Baker employed them?

THE INTERPRETER: He mentioned some
10 Austrian name.

Q. Did Mr. Baker pay these men that you got, \$1.75 or \$2.00 a day? A. At the beginning to whom he ought to pay \$1.75 he would pay only \$1.50, and then he made the payment \$1.75 to some one, and sometimes \$2.00,—very few.

Q. Now, what were these two buildings used for? A. They were shanties for the workmen to sleep in.

20 Q. Did they sleep in both buildings? A. Yes; they sleep in the shanties.

Q. Was there ever any gambling there? A. What—played cards, you mean?

Q. Play cards for money? A. No, sir.

Q. Did you ever have any talk with Mr. Hartigan other than the one you have mentioned about Mr. Hartigan collecting the money? A. No, sir—I don't remember.

30 Q. Were you present in April, 1912, when Mr. Troiano brought a bill to Mr. Hartigan? A. Yes; we were together.

Q. And was that a bill for \$195 or how much was it? A. It was so—

THE INTERPRETER: He didn't let me finish talking. He said, "It was so." He understood the question.

Q. What did Mr. Hartigan say at that time?
40 A. Yes; I will answer you. Wait. Mr. Agostino Troiano, my boss, he said, "Here is the bill board."

Frank Zadrena—Cross.

He says, "Yes, all right." Yes, he said that he would pay.

Q. Did Mr. Hartigan say that? A. Yes, sir, to Mr. Troiano.

Q. And did Mr. Hartigan keep that bill in April, 1912? A. Yes, sir.

Q. How many men were you boarding in April, 1912? A. (Referring to book.) 25.

Q. And how many men were you boarding in March, 1912? A. 11 during the month of March, even 12. 10

THE INTERPRETER: He added one more by looking at his book.

CROSS EXAMINATION BY MR. VAN WINKLE:

Q. How do you know how much Mr. Baker paid these men? A. I—you ask me? Because my employer has sent me to get the men, and then also I went. 20

Q. You do not answer the question.

(Question repeated.)

A. Because he said he wanted the men.

Q. I do not mean how much Mr. Baker promised to pay, but how much did he pay the men? How do you know that? A. Because the men that we employed, that we got to work for him, we want to see what they pay, and we can see on the face of it what was the amount. 30

Q. How much was that? A. Some one would get 18, some would get 10, according to the work they were doing.

Q. The best men got \$1.75 and over, didn't they? A. Even \$2.00, but it was later.

Q. Wasn't it the practice to begin the men with \$1.50? A. They start to pay \$1.50, but then they 40

Frank Zadrena—Cross.

stop the work and only remained there a number of—they only remained there seventeen men.

Q. Didn't Mr. Baker or Mr. Hartigan say they would pay \$1.75 for good men? A. Mr. Hartigan said a dollar and seventy-five, and even two dollars. Montenegro—

10 THE INTERPRETER: He had something else he mentioned. He mentioned Theodore Montenegro, I understand his surname, something that has nothing to do with your question, counsel.

Q. Let us see if we can press the question.

(Question repeated.)

A. Mr. Hartigan told me, the superintendent.

20 Q. Didn't Mr. Hartigan complain of the men that were brought there by Troiano, and didn't he say those were not men as good as they should be and pay those men \$1.50 to begin with? A. I don't remember.

Q. How many men did you have boarding there in February, nineteen? A. (In English.) Nineteen, yes, sir.

Q. Did you have those nineteen men there for the whole month? A. They were there boarding with us always.

30 Q. How much do you say you lost in board for February, on those nineteen men? A. You mean to say the month of February? \$180—not precision.

THE INTERPRETER: He is not precise about it.

40 Q. Can't you over night add up the amounts you say were not paid for board for November, December, January, February, March, April and May, showing each month by itself? A. Not here just now.

Frank Zadrena—Cross.

Q. I don't want it daily.

THE INTERPRETER: I will tell him.

Q. And put in each month the number of men you had boarding with you. A. Yes; if I have time I will do it.

THE INTERPRETER: He is not sure if he could do that over night.

10

Q. Your book is kept in Italian, isn't it or I could do it. A. Yes, sir.

Q. You will have to do it then. I won't. A. I have all the books home that could help me.

Q. I want the books produced here that have the accounts in them. Is this book that you have in your hand sufficient to enable you to testify to these figures accurately?

THE INTERPRETER: Well, he says he has another register home, another book, which has the name of each individual, the number and names.

20

MR. TURNER: Of course, if there is another book we will be only too glad to produce it.

THE COURT: What is the difficulty about this man adding up over night?

MR. TURNER: None at all.

THE COURT: Then why shouldn't that be done? We are wasting a lot of time now. He is merely guessing, approximating the figures.

30

MR. VAN WINKLE: As long as he produces the figures—

THE COURT: If you have any examination of this man outside of the books let's conclude that, and you can wait until morning for the statement.

40

Frank Zadrena—Cross.

Q. Now you take these nineteen men that were there in February, did any one of those men pay any board for that month? A. There were also men there I loaned money to.

(Question repeated.)

A. A little.

10 Q. Now can't you over night get up a table or a summary showing how many men you had each month for the months that I have named and which ones paid you and how many didn't, so we can see how much you have got charged against each man each month? A. I will try to do it.

Q. And put in that table, if you please, or in that summary, what the amounts that you say have not been paid are for, whether for board or for liquor or for clothes or for what? A. Yes, I will.

20 Q. Why did you continue to board these men and trust them and give them credit after you had heard that Mr. Baker wouldn't deduct from these men's pay the amount that your boss claimed to be due? A. Because my boss told me that he had spoken to Mr. Hartigan and he said, "You can give these people credit."

Q. Was that as far back as November, 1911? A. That was in November that he started to lose on this board.

30 Q. Did your boss tell you as far back as November that? A. I brought the bill board to Mr. Hartigan, the superintendent, and then when pay day came then the clerk said, "You come over there and you collect the bill board."

Q. Now was not that before November? A. That was in November.

Q. How about December? A. In December Mr. Troiano—I don't know, he had some words, he

Frank Zadrena—Cross.

spoke with the owner and then he gave me the orders to furnish food to these people.

Q. Mr. Troiano did? A. Yes, sir; my padrone, my owner, or employer.

Q. Did you make any effort to collect board from any of these men that owed it in November or afterwards? A. No—yes, sir.

Q. What effort did you make? A. I went on the job one time. Somebody—I collect only about \$200. Somebody paid some and somebody came to the store. 10

Q. You collected that yourself outside of Mr. Baker, didn't you? A. Myself was the one went on the job.

Q. And was that in November? A. Yes, sir.

Q. So at that time you knew that Mr. Baker would not collect for your boss any longer, didn't you? A. Not that day. I knew that, yes, not that day. 20

Q. Do you say that you sent bills every two weeks for these amounts that your boss claimed to be due, to Mr. Hartigan? That is in November and after? A. Sometimes I would send and sometimes my boss would send,—Mr. Troiano.

Q. Do you say you were present in April, 1912, when your boss had a conversation with Mr. Hartigan? A. We were together. I was with my boss. 30

Q. Do you remember Mr. Hartigan saying that if your boss would cut out the liquor Baker would continue to collect for Mr. Troiano? A. I don't remember; I am not sure; I can't remember that.

MR. VAN WINKLE: That is all, with the exception of the right to produce the figures.

William J. Wood—Direct.

WEDNESDAY, NOVEMBER 12, 1912.

MR. TURNER: The present witness I do not think is quite ready to go on with those figures.

THE COURT: All right; call another witness.

10

WILLIAM JOHN WOOD, sworn.

DIRECT EXAMINATION BY MR. TURNER:

Q. Mr. Wood, what is your business? A. Carpenter, builder.

Q. How long have you been such? A. 25 years.

Q. Did you in December, 1912, examine some buildings for Mr. Troiano? A. I did, sir.

20 Q. Where were those buildings? A. On the Plankroad.

Q. I show you Exhibits P-3, 4, 5, and 6 and ask you if those are pictures of buildings that you examined? A. Yes, sir; these are pictures of the buildings I examined.

Q. For what purpose did you examine those buildings? A. To give an estimated price on the cost of the material and labor.

30 Q. Did you give such an estimate? A. I did, sir.

Q. Is this (indicating) the estimate that you gave? A. Yes, sir.

Q. Will you tell us what you found to be the value of those buildings? A. \$1,575; that is the labor and materials.

MR. TURNER: I offer in evidence the written estimate given by the witness.

40 MR. VAN WINKLE: It is just a summary, I suppose, of his testimony. I do not object to that.

(Paper marked P-10.)

William J. Wood—Cross.

CROSS EXAMINATION BY MR. VAN WINKLE:

Q. Mr. Wood, did you estimate on this material as new material? A. As new material.

Q. And how many buildings did you estimate on? A. I do not recall.

Q. How much labor did you estimate was necessary to erect these buildings? A. I considered that there was eight hundred dollars for—eight hundred and fifty dollars for material, and the remainder was labor. 10

Q. Labor at what rate? A. At \$5.00 a day.

Q. You reckoned \$5.00 a day? A. Yes, sir.

Q. For carpenters? A. Yes, sir; that is taking a rough estimate about it, you know.

Q. Well, these buildings are the plainest kind of shanties, aren't they? A. Well, the footings of those buildings and all that was estimated in it. There is concrete under those footings, and the distance, taking the material there from where they left it on the road where it was possible to get it; it was nothing but marsh land, you know; they had to leave it on the road and they had to carry that material after it was delivered about 200 yards. 20

Q. You have included in your estimate the cost of building a water-closet, haven't you? A. I think I did, if I am not mistaken. There was four buildings. 30

Q. Look at your estimate. The water-closet is included? A. The water-closet is included; everything he pointed out to me.

Q. Everything you found there you estimated on? A. Yes, sir.

S. X. Grinaldi—Direct.

S. X. GRINALDI, sworn, testified through an interpreter.

DIRECT EXAMINATION BY MR. TURNER:

Q. Where do you live? A. No. 334 Division Street, New York City.

Q. Did you have anything to do with the Plank-
10 road job for Mr. Baker? A. I was the boss.

Q. Where did you live when you worked on the job? A. In the same place.

Q. Did you board with Mr. Troiano? A. Yes, sir.

MR. VAN WINKLE: I am informed this witness speaks English very well.

Q. Can you talk English? A. (In English.)
Oh, yes.

20

MR. VAN WINKLE: That sounds all right.

Q. What wages were paid to the men while you were there on the job? A. When I was there the super told me to hire about a gang of a dozen men, and he says hire for two dollars a day. Then I says, "Mr. Troiano is to furnish the men." He says, "Never mind for Mr. Troiano; I don't want them. See? You do that." Then I go and do. I
30 hire the men. Pay day come, and he pay \$1.75 and very few \$1.50, working the water.

Q. When was it he told you he did not want any men from Mr. Troiano? A. I don't know.

Q. What month was it? A. That is August.

Q. What year? A. 1911.

Q. Do you know how Mr. Troiano was paid for the board of the men? A. Why, sure.

Q. How did he get his pay? A. He get the pay, so much for the get eat, you know.

40 Q. Who paid Mr. Troiano? A. They collected the bill at the time.

Victor Egilidio—Direct.

Q. Who collected the bill? A. He collect it for the super.

Q. Mr. Hartigan? A. Sure.

Q. How long did that go on? A. How long, who?

Q. How long did Mr. Hartigan collect the bills for Mr. Troiano? A. I can't tell you. I only work two months myself. Then I go away.

Q. How long did you work there? A. Only **10** two months.

Q. What months did you work? A. I worked June and August and part of July, and he stopped; then he started in August again.

Q. That is 1911? A. Yes, 1911.

NO CROSS EXAMINATION.

VICTOR EGILIDIO, sworn.

20

DIRECT EXAMINATION BY MR. TURNER:

Q. Do you speak English? A. (In English.) No; half.

Q. How long, if at all, did you work for Mr. Baker? A. (Interpreted.) The year before.

Q. When did you commence to work there? A. Washington, New Jersey.

Q. What month did you commence to work for **30** Mr. Baker? A. October.

Q. What year? A. I don't remember.

Q. How long did you work there? A. Two months and a half.

Q. What was your position? A. I was the boss.

Q. And who hired you? A. Mr. Baker.

Q. While you were there did Mr. Baker say anything to you about hiring men? A. Nothing.

Q. Did you hire any men? A. On the Plank-
road, yes. **40**

William Wood—Direct.

Q. How many men did you hire? A. Ten or fifteen. I got the order from the superintendent.

Q. From Mr. Hartigan? A. Yes, sir.

Q. What did you pay the men? A. I didn't pay anything myself. He gave me the order to promise the sum of \$1.75 and \$2.00 and when they got their pay they received \$1.50.

10 Q. Did Mr. Hartigan ever say whether he would take men that Mr. Troiano hired? A. No, sir.

NO CROSS EXAMINATION.

WILLIAM WARD, SWORN.

DIRECT EXAMINATION BY MR. TURNER:

20 Q. Where do you live? A. 53 Jefferson Avenue, Jersey City.

Q. Did you work on this Plankroad job? A. No, sir.

Q. Did you have anything to do with it? A. No, sir.

Q. Did you go with Mr. Troiano to get men? A. Yes, sir.

Q. And were you able to get any? A. Yes, sir.

30 Q. How many men did you get? A. Well, we went to New York; we hired men there; Hoboken and lower Jersey City; and we went to labor bureaus for it, and Mr. Troiano offered two dollars for every man they would supply on the job. That's all I know about it.

Q. Well, did you get the men? A. Well, some men came. I don't know anything about it around on the work.

Q. And did Mr. Baker employ the men that you brought there? A. I don't know.

40 Q. Were you told to offer two dollars a day for every man? A. I heard Mr. Troiano offer two dollars to the labor bureaus in New York

William Wood—Cross.

for men to send them out on the work. He said that Mr. Baker was kicking about their not supplying help—

MR. VAN WINKLE: I object.

THE COURT: Objection sustained.

CROSS EXAMINATION BY MR. VAN WINKLE:

Q. Who were you working for at the time you went to New York and Hoboken to get men? A. I was working with Joseph Murphy. 10

Q. Then you went as a friend of Troiano's, did you? A. Oh, yes, as a personal friend.

Q. There was difficulty in getting them at that time, was there not? A. Well, a little bit, I presume, yes.

Q. Laborers were hard to get at that time, weren't they? A. Well, you pay the wages and you get the men. 20

Q. Why was it necessary for you to go to New York and Hoboken with Troiano to get men? A. I was off on that occasion and I went with him.

Q. You went for the pleasure of the trip? A. No, no; because I was a personal friend.

Q. Did you go because you thought you could help him get men? A. Well, yes.

30

Frank Zadrena—Direct.

FRANK ZADRENA, recalled, testified through an interpreter.

DIRECT EXAMINATION BY MR. TURNER:

10 A JUROR: I would make a suggestion before we go on with the witness. I would respectfully request the interpreter not to interpret anything while they are fighting amongst themselves, because I can't get head or tail out of it. Let them fight it out between themselves and let only one man talk at a time.

THE COURT: All right; I think that had better be done.

BY MR. VAN WINKLE:

20 Q. You promised to get up a statement or table from your books and bring your books and show us how many men you had during those months down to May, 1912; how many men each month and how much you claim the men owe you for those different months; have you done that? A. Yes, sir.

30 Q. Let us see the result of your work. A. Tell to the lawyer these are the statements for the months of November, December, February, March, April and May and tell him—I want you to know that, that I understand very little Italian because I am not an Italian but I am an Albania and I was most of the time in Turkey.

Q. You understand the interpreter, don't you? A. Yes, sir; the only thing, I like that the interpreter put the question to me very slowly.

MR. VAN WINKLE: (To the interpreter.) Will you do that?

THE INTERPRETER: I will.

40 Q. Please let me have the figures. A. You tell

Frank Zadrena—Direct.

the lawyer that these statements here of the different months I mentioned before proves the losses that Mr. Troiano suffered.

Q. As I understand, taking up now the bill for November, the numbers along the left hand side of the bill beginning with 2 and ending with 151 are the numbers of the men that stand for their names? A. Yes, sir.

Q. That is so on all the bills you produce? A. ¹⁰
Yes, sir.

Q. Then the amounts, dollars and cents, that is what you claim Troiano lost on each man? A. Yes, sir.

Q. But these bills do not show how the amounts are made up, do they? A. These were by expenses, they were made and the debts these people incurred with us and money loaned to them.

Q. Take the man number 2 at the top of the ²⁰
November bill, \$11.50. A. Yes, sir.

Q. The \$11.50 represents the debts of this man, contracted during November to Mr. Troiano? A. Yes, sir.

Q. But you cannot say how the \$11.50 is made up? A. Some day he come there and he got a dollar or a dollar's worth of something, and then some time he borrowed money and that represents the amount.

Q. And that is so as to every item on all these ³⁰
bills you produce, is it not? A. Yes, sir.

Q. Are you able to say now how much was due in the month of November from these men shown on November's bill for board and lodging alone? A. These are bills made up for the expenses made during that month.

Q. So some of these expenses are for the liquor the men drank and did not pay for during November? A. The amount is made up not only from ⁴⁰
what they used, but also for money that was

Frank Zadrena—Direct.

loaned to them in different items, even twenty-five and forty cents at a time, and three dollars sometimes.

Q. Take on November's bill, man No. 131, 75 cents; can you show what that is for? A. They come there and they bought things.

10 THE INTERPRETER: You want this special item?

MR. VAN WINKLE: Yes.

A. Don't you know we use checks? Sometimes they get a fifty cent check and sometimes more or less.

Q. Can you answer that question, what the amount is for? A. Yes; he come there every day with that check, and then he would eat and buy tobacco and so forth.

20 Q. Not man 131. He is only charged 75 cents for the whole month. What is that for? A. There were a lot of people who had worked there but they would not buy anything. Probably he come once and that is why he has got only that item there.

Q. Well then, you have in this bill against Mr. Baker some man who came and bought something in the store there, and a man who did not board with you at all? A. No, sir; were those people 30 who worked on this job by Mr. Baker.

Q. You have not answered the question. Did man 131 that you have 75 cents charged against for November board with Troiano during November? A. I told you that I meant to say that this party would come there and have sometimes fifty cents' worth of stuff and sometimes would buy twenty-five cents.

Q. Did this man 131 board with Troiano during November, 1911? A. He worked for Mr. 40 Baker on the work of Mr. Baker, and that money

Frank Zadrena—Direct.

—the money he received he would not spend it all at once.

Q. Won't you please answer my question? Did man 131 shown on the November, 1911, bill, board with Troiano during November? A. They weren't all boarding there, but they were all working for Mr. Baker.

Q. I want you to turn to your books or wherever you got this item that you have produced on this bill, man 131, 75 cents, and tell us if your books show whether that man boarded with Mr. Troiano during November, 1911. A. Shall I look in the book? (Witness refers to book.) 75 cents? He was not boarding in the shanty but he called—he was working for Mr. Baker. There were a lot of people who slept there, but they were working in the work for Mr. Baker, and they would come there and they would buy as much as a dollar's worth sometimes, and also other persons who would work for Mr. Baker would come there to buy, and sometimes they would buy five and six dollars' worth of stuff.

Q. Well, now, take these men whose numbers are shown on November's bill that you have produced; are those same men shown, or any of them, on December's bill that you have produced? A. I don't understand. What did you say? Wait.

Q. What do you want us to wait for? A. I didn't understand, and I want to have the question repeated.

(Question repeated.)

A. Do you mean to say those numbers mean the same man?

Q. Yes. A. These numbers represent the men who bought stuff from us.

Q. Well, now, man No. 3, shown on November's bill, is he the same as man No. 3 shown on De-

Frank Zadrena—Direct.

cember's bill? A. What is buy there that is everything else—represents the amount he bought.

Q. I think you ought to answer the question. The question is, is No. 3 shown on December's bill the same man as No. 3 shown on November's bill?

A. They didn't change the checks.

10 Q. The same man? A. I can't say that; I can't say that, if it is the same man or is not the same man, that I don't know.

Q. Well, that is very lucid? A. It is true that that party came there and bought the stuff.

Q. Yes; that part we understand. Now then, the men were paid every two weeks, weren't they?

A. The men got paid twice per week.

Q. Per month, you mean? A. Twice per month.

20 Q. Why did you trust these men after the first two weeks when you found that Mr. Baker was not going to retain the money? A. I got orders from my boss, Mr. Agostino Troiano, because my boss told me that he had orders to collect the bill board.

Q. That does not answer my question. A. My boss came there, Agostino Troiano, he says, "Give these people to eat. Keep them on board, because the owners, they would collect the bill board.

30 Q. What books do you produce here? A. Lost? I didn't lose any books.

MR. VAN WINKLE: A good answer! I will ask to have these four sheets marked for identification.

MR. TURNER: I will offer them in evidence. I will also offer the books.

(Sheets marked P-10, 11, 12 and 13. Booked marked P-14.)

MR. VAN WINKLE: How many books are there?

40 MR. TURNER: There is one book account and the schedules.

Frank Zadrena—Direct.

Q. Have you made up the schedules P-10, 11, 12 and 13 from this one book? A. Yes, sir.

MR. VAN WINKLE: This book is offered?

MR. TURNER: Yes.

Q. Now this book I see, opening it at random, most of the entries are in Italian, but I find,—Shoes, \$3.50; Shoes, 3.50; that is Nero S. Nero S. in November seems to have bought two pair of shoes all inside of the same week, \$3.50 a pair. Are those items for these shoes for Nero S. in November included in those sheets you have produced? 10

MR. TURNER: I object to the question because counsel is concluding from the entries a certain fact and I think the witness should be asked as to that fact.

THE COURT: What is the fact? 20

MR. TURNER: There is no proof here that Nero S. is the same person.

THE COURT: Prima facie, identity of name is identity of person, and if he calls him Nero S., I should presume that, in the absence of anything to the contrary, would be assumed to be the same man. Nero S. may be the name of the shoes for all that we know of it. 30

(Question repeated.)

A. It is not the same number. This fellow here put down here shoes at \$3.50. He wrote himself with his own hand, and this Nero S. here, No. 55, this Nero here, Nero 70, is always the same person. The other Nero is some other workman. I put it down here myself to find out who is white and who is the black man.

Q. Oh! I find here numerous items in Italian, reading "recinato monetto." Do those items mean 40

Theodore Montenegro—Direct.

that the men received money in the cases where the item is found opposite their names? A. "Received money" means to say that they received money; I gave money to them.

Q. The money was given to them so that they might spend it in the store? A. They would send this money to their families abroad.

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THEODORE MONTENEGRO, SWORN.

DIRECT EXAMINATION BY MR. TURNER:

Q. Did you work for Mr. Baker? A. Yes, sir, I worked there two years ago.

Q. Were you working there for Mr. Baker on the job or were you working for Mr. Troiano? A.
20 Well, I worked, you know; Mr. Troiano have the hotel, you know, that place.

Q. What work did you do? A. I worked for bring people from Newark, every kind people, keeping boarding house there, you know, and bring people from the office from Newark, my people, Greek, every kind of nationality for job, for Mr. Baker's job.

Q. Did you do any cooking or anything of that sort? A. I cook, sure; I got a restaurant; I cook
30 too.

Q. Did you ever have any talk with Mr. Baker about these buildings there that Mr. Troiano used? A. Well, I ask Mr. Baker, you know, before Mr. Troiano got trouble. You might say Mr. Troiano has trouble with me. He chased me, you know, off. I got trouble, you know, and spend money, you know, for stuff and everything there. I say, "I no go away." He says, "Move yourself"—
40 Troiano. Well, after I go to see Mr. Baker at the office, South Street. I see Mr. Baker, I tell Mr. Troiano move me, chase me out. He says—

Theodore Montenegro—Direct.

Mr. Baker—"You no move; that's my shanty, my job. You go bring people, fifty or sixty men, pay \$1.75, \$2.00 men, you bring people; you cook for people, the foreman, you have shanty there. You are cooking for people." All right, all right. Well, I go to Newark, and I see Mr. Superintending of Mr. Baker, he say myself to, "You go bring the people, \$1.75, \$2.00 for good men. Bring people over there, you get. After you no collect your money, have office over there." All right. I go and bring people, 15, 20, 30 men, and bring them there. Three dollars he says he will pay the foreman. After working a couple of week he pay \$1.50. People come to me in trouble. They say, "What's the matter? You say pay \$1.75, and pay \$1.50." People in trouble with me. All go away. After Mr. Troiano give paper, myself I lose \$200. That's all. That's my business no more, nothing. 10 20

Q. Did you say Mr. Baker told you he owned those shanties? A. Mr. Baker told me "That's my shanty. You go over there.

Q. When did Mr. Baker tell you that? A. Well, that's two years ago.

Q. Well, what month was it? A. Well, I don't know that month. That's September—August—I don't know that month. Maybe August, I don't know; I don't know.

Q. Well, was it the fall or was it the summer? 30
A. Summer, summer time; summer.

THE COURT: Did the jury understand what the witness was trying to tell them?

A JUROR: Yes, sir.

NO CROSS EXAMINATION.

PLAINTIFF RESTS.

Motion for a Non-suit.

MR. VAN WINKLE: The defendant moves for a non-suit and bases the motion on the ground that if there is any contract proven in this case it is a contract that is not enforceable because of the statute of frauds.

The contract is a verbal one, and according to Mr. Troiano—and I think he is the only one who testified to what the contract was—it was a contract under which Mr. Baker was to do certain things—I think the things are left rather indefinite—for a period of certainly more than one year. Mr. Troiano said that the work that Mr. Baker was to do on this Plankroad could not be done in less than two years, and he said he knew all the circumstances of the contract, and that he erected these buildings with the intention—and I think the intention governs in cases of this kind to a large extent—with the intention of using the buildings for the boarding of men that Mr. Baker might employ on this and probably on other sections that he might later get contracts to do on the Plankroad. You will recall that the testimony is that this work that Baker had the contract for covered but one section of this Plankroad and that is the section that Mr. Troiano said could not be finished in less than two years. Then he said further there were at least two more sections of this road, one of the other sections being the section nearer to Jersey City, running from Jersey City to the Hackensack River bridge, and as to that he said that both he and Baker hoped that he would get that contract and that Mr. Troiano put up these shacks with the intention, with the plan of boarding men that Baker might em-

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Motion for a Non-suit.

ploy as laborers not only on this two-year contract but on the other section, and possibly on all the sections.

It seems to me under the authorities that the case falls within the class of cases that cannot be enforced as against the protest of the defendant because of the statute of frauds.

THE COURT: (After argument.) I do not think that the statute of frauds applies to this case at all. I think, first of all, that the clause in the statute of frauds, "is not to be performed within a year from the date of the making thereof" points to such affirmative terms in the contract as exclude performance within the year, or, as is indicated in some of the cases, where the subject matter itself is of a character that renders it impossible that it should be performed within the year. The cases are quite uniform on several points, any one of which is destructive of the claim made, it seems to me, by the defendant in this suit.

First of all, the cases are uniform on the proposition that the parts of both parties to the contract must be such as are not to be performed within a year and it must appear from the terms of the contract, or from the nature of the subject matter of the contract, that the parts of both of them are not to be performed within the year. In this case it seems quite clear that the function of one of them under the contract was to be fully performed within the year. I am speaking now of the function of Mr. Troiano. Secondly it appears quite clear that this case is governed by the language

Motion for a Non-suit.

of Justice Garrison in a case which was cited but the language of which was not referred to in this particular by Mr. Turner. I speak of the case of *Okin v. Selidor*, 78 Atl., 778. In the case of *Okin v. Selidor*, Justice Garrison had under consideration a contract which he epitomizes in these words in the syllabus: "A contractor who agreed that a sidewalk laid by him should stay in good condition for five years is liable to an action based upon a breach of such contract occurring within one year from the date; such agreement not being one 'that is not to be performed within one year from the making thereof.'" It appeared in the case that within a year after the contract was made the sidewalk was broken by an upheaval and that the person for whom it was laid had a repair made and presented a bill for \$165 to cover the cost of repair and recovered a judgment for it in the district court, and it was that judgment which Justice Garrison and two other Justices sitting for the Supreme Court affirmed. Now—before I read this language—it is also quite plainly settled in the cases that it is not the intention of the parties or the understanding of the parties as to how long the contract may take that governs. Every case excludes that notion. It is the notion as to the terms of the contract themselves and not the secret intention of the parties or the unexpressed notions of the parties at the time, and in this case all we have to show that this contract might take over a year is the expression of Mr. Troiano that he thought it would take over a year; and he said in explanation of that notion on his

Motion for a Non-suit.

part that that was a mere opinion or notion on his part that it might take longer.

Now in Bishop on Contracts, Sec. 1274, the author lays down the rule that "writing is essential when, under the terms of the agreement, the complete execution of it within a year from the time of making is impossible; when possibly, however improbably, all may transpire within the year, oral words will suffice." 10

Now the language, however, which I refer to in the case of *Okin v. Selidor* in the opinion of Justice Garrison is this:

"The second ground cannot avail the appellant for the reason that, although his agreement covers five years, it was not one that was not to be performed within one year, and within such period its performance was required. The section of the statute of frauds is cast in this negative form; hence it applies wherever by no contingency covered by the contract the promissor can within one year from the making of his agreement be required to perform it. That was not the case here." 20

There the contract by its express terms covered five years, and yet it was such a contract as by the negative terms of the statute of frauds he might be required to perform, and actually in the case under discussion was required to perform, within one year. Now the Judge goes on to say this: 30

"The agreement was not that after the first year the sidewalk should be in good condition for four more years, but that it should be in such condition during the first year as well. As to a breach occurring within the first year, this agreement was, therefore, not one that was not to be performed within one year. The fact that an action for breaches 40

William Baker—Direct.

occurring after the first year would be barred by the statute does not enter into the present case in which the cause of action arose within the year."

10 I might say in addition that there is another ground upon which the motion for non-suit must be denied, and that is that there was some evidence with respect to the desk in the case, and that, of course, the jury are entitled to consider, and I could not grant a non-suit with that evidence there. So you may have an objection in the nature of an exception noted on the record.

DEFENDANT'S TESTIMONY.

20 WILLIAM BAKER, SWORN.

DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. Mr. Baker, you are a little deaf? A. Yes, sir.

Q. Which is the better side to talk on? (Witness indicates).

Q. Towards the Court? A. Yes, sir; I have to keep you at the right end.

30 Q. So that if the Judge speaks you can hear. Now try to talk—you talk loudly anyway—so that the Judge may hear you and the jury may hear you. I will stand back here.

Q. What is your business, Mr. Baker? A. Contractor.

Q. How long have you been in that business? A. 25 years.

Q. Did you have the contract for the building of any section of the Plankroad improvement here? A. Yes, sir.

40 Q. The contract was with the Freeholders of

William Baker—Direct.

Hudson County and the Freeholders of Essex County? A. Yes, sir.

Q. How long have you known Mr. Troiano, the plaintiff? A. Somewheres about 15 years.

Q. And had a good deal of business with him? A. I have done some business with him, yes.

Q. Has he on different occasions hired men for your work? A. I don't quite get that.

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(Question repeated.)

A. Well, this is the first work that he has hired men for me.

Q. Has he done work for you before? A. He done some sub-contracting.

Q. Did you hear Mr. Troiano's testimony? A. Well, some of it.

Q. Did you have any agreement in August or September, I think he said September, first, 1910, with respect to his putting up shacks or shanties in connection with the work on the Plankroad?

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A. I met him at 15 Exchange Place—this job was public property and had been in the papers on and off for two years. They had had three or four sets of specifications on it and knocked them out. Anyhow, at the time the first section was let it was public property, and I met Mr. Troiano at 15 Exchange Place, in the lobby. Well, of course—he asked about the work, if he couldn't supply the men. I had put Mr. Troiano on the Erie cut through the Philadelphia people being friends of mine; they asked me to send them a commissary man. This man I thought was a friend of mine.

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Q. Never mind that. A. Getting back to the point of 15 Exchange Place: he asked me if he couldn't supply the labor for this job, but he was broke. His precedent partners had robbed him. That is what he told me. I told him I had no

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William Baker—Direct.

time to talk there, to come up to the South Street office. So he came up there, and after talking it over I agreed to lend him a little currency to put up a shack. He started in building these big buildings. I said to him, "Why are you building these big buildings for a little job of this kind?" "Well, there are two more sections to be made, and who ever gets the contract they will hire from me." "Well," I said, "it's a good way to look at it, if you can make good, but the bit of money you will get off me won't go far." Anyhow I loaned him four hundred to put up his place. Then he came to me and had nothing to buy victuals for his men, and he got another hundred off me for that. Then there was a gentleman from New York came over and said he was getting money from him. It seemed to be a way of getting money because he had a job. He went and hired men as good as he could. My superintendent, Mr. Hartigan called my attention half a dozen times he was not getting men enough. He got me to go over there on two or three—

Q. Pardon me a minute. Did you have any agreement with Mr. Troiano that you would pay for the buildings yourself? A. That I would what?

Q. Pay for the buildings? A. No, no.

30 Q. Did you have any agreement with him that you would send all your men to board with him and would deduct from their pay as long as you were doing that work the amounts that should be due him for board and for moneys he should advance and for liquor they bought from him and things of that kind,—any such contract? A. No such contract whatever.

40 Q. Now, have you told us as carefully as you can just what your agreement was about getting labor? Tell us that carefully. A. My agreement

William Baker—Direct.

was with him of getting the labor, to get men that was used to the work, not greenhorns.

Q. Italian laborers? A. In our line of business we are liable to get greenhorns; soft hands can't work. Well, they got complaining anyhow after starting that they were not being used right.

Q. Before you come to that, please finish on the one head. Did you have any agreement of any kind— A. There was no agreement whatever. 10

Q. Wait—as to how he was to supply the men? A. My agreement was I was to lend him a little bit of currency to put up these shacks or one of the shacks. That was what it was to be; and he would take a chance of getting contractors and the plants that is around in the meadows. There is some large plants in that meadows. There is the Drexel Lumber Company, there is some oil works in there, and different works with a lot of men 20 employed there, and he was taking a chance of running the business of getting the board from all over there.

Q. Well, did he say so? A. Yes.

Q. And do you know of any reason why he built those shacks there except his expectation— A. That's all.

Q. That he would be able to make something out of it? A. That was all.

Q. Outside of agreeing with you? A. There was 30 no agreement with me on anything outside of me loaning him the money and taking his note for it and not charging him interest, because I knew him well enough, or thought I did, and gave him a chance. That was all the agreement there was with me.

Q. Did he build those buildings on your ground? A. No; he built those buildings on the Newark Meadow Land Company's property. 40

Q. Did he select the place where the buildings

William Baker—Direct.

were erected? A. I don't know whether he did or whether the engineer for the—

Q. Did you? A. No.

Q. Did you order that done at all? A. I have an acre of land leased there and staked out, but he was not on that property.

Q. What was your acre for? A. Why, stables and cement sheds to put my plant on.

10 Q. In connection with the work? A. Yes, sir.

Q. How long was it after August or September, 1910, that the shacks were built, do you know? A. No, I can't say that.

Q. Well, they were built? A. I think we started that job in the latter part of February of 1910. The contract was signed the previous year.

Q. Well now then when you had the conversation that Mr. Troiano testifies about up at South
20 street, of him coming on the work, was anything said about how long the work would take? A. Well, that I cannot recall.

Q. Did he at that time see the contract? A. Not from me.

Q. What was your plan and expectation with respect to how long the work would take on this section you had the contract for? A. Well, the specifications calls for it being completed in 18 months. Something turned up with the right of
30 way, so far as the trolley company was concerned, there was an injunction on it for about probably 12 or 14 months.

Q. How long did the work on this section take? A. Pretty near three years.

Q. Now after Mr. Troiano put up these buildings did you get laborers from him? A. Did I what?

Q. Get laborers from him? A. I don't get that.

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THE COURT: Did he furnish you laborers after he had the buildings put up?

William Baker—Direct.

A. After the buildings were put up some labor.

Q. Well, how much, and what happened? A. Well, I am not well enough versed to answer that. The timekeeper and superintendent could answer that better than I. My contract was to pay the bills.

Q. Do you know whether or not he sent all the labor you wanted there? A. No, I know that he did not. 10

Q. What do you know about that? A. Why, Mr. Hartigan had called my attention, he reported to me over the telephone every morning at 9 o'clock, whether I went out there or not, at my office in South street from his on the Plankroad—

MR. TURNER: I do not think that is competent. It is hearsay evidence.

THE COURT: It is competent for him to say that Mr. Hartigan reported, but what he reported is quite a different proposition. He has not yet testified to that. 20

Q. Did you talk to Mr. Hartigan about the laborers you were getting from Troiano? A. Did I what?

Q. Did you talk with Hartigan about the laborers you were getting from Troiano? A. Yes, sir.

Q. And he made the reports to you? A. He had to report to me every morning. 30

Q. Now then it appears, Mr. Baker, that for a certain period and to a certain extent at least you retained, collected money that was due to Troiano from these men that worked for you each two weeks? A. Yes, sir.

Q. Kindly explain why that was done and how it was done? A. Well, we paid regularly on the 5th and the 20th of every month. That would be up to the last day of the month and up to the 14th 40

William Baker—Cross.

of the month, held four or five days back to make up the payroll, but I always made it a system to be over there myself with the payroll on the 5th and the 20th at 3 o'clock. I would turn it over to Mr. Hartigan and his timekeeper. They made up the board bills or deductions over there. I simply carried the currency over.

10 Q. Had you agreed to do that for Troiano, deduct the money for any length of time? A. No, I had not. I did not do anything of that kind.

Q. Why was it done? A. Why, possibly Mr. Hartigan and himself had arranged that.

Q. And you were then friendly with Troiano and wanted to help him all you could? A. Yes, sir.

BY A JUROR:

20 Q. Mr. Hartigan was your representative, then, Mr. Baker? A. Yes, he was my superintendent on the job in charge of that work.

BY MR. VAN WINKLE:

Q. He was in full charge, wasn't he? A. Full charge.

Q. Anything he did you would stand by? A. Yes, sir.

30 Q. Now, Mr. Montenegro, this man you saw on the stand last, he says that you told him at one time you owned those buildings? A. I never saw that man, only once, and then he came to see how he would get some money Troiano owed him that he had borrowed from him.

Q. Did you ever say that? A. How?

Q. Did you ever say that to him? A. Why?

Q. That you claimed to own the buildings? A. Why, no; no.

40 CROSS EXAMINATION BY MR. TURNER:

Q. Didn't you tell Mr. Montenegro that you would employ all the men he would get for you at \$1.75 and \$2.00 a day? A. No, sir; no, sir.

William Baker—Cross.

Q. You had no conversation with him at all excepting about money that Troiano owed him?

A. Never but the once he came to my office in South street and wanted to know how he could get some money Troiano had borrowed in cash from him.

Q. What did you tell him? A. Told him I didn't know anything about it.

Q. Was that the whole conversation? A. Simply said I was in the same box with Troiano. 10

Q. But you were not, were you? A. I certainly was; he owed me five hundred.

Q. But he paid you back, didn't he? A. After that, in portions.

Q. And you knew that these deductions were being made out of the wages of the men to pay Mr. Troiano? A. I knew of it afterwards, yes.

Q. When did you first know of it? A. Well, I cannot answer that. I have had other contracts besides that, and it has been long-winded. 20

Q. Well, you did not pay much attention to the details on this job, did you? A. Oh, yes; I paid attention to looking after that the bills were being taken care of when they were due and that the estimates were being made up and the work being done.

Q. How many days in the week were you on the job on the average? A. Well, sometimes I would be on twice a day and sometimes I would not be on it for a week. 30

Q. Now didn't you tell Mr. Troiano where he should erect those buildings? A. No.

Q. Did you see him erecting the buildings? A. No.

Q. Didn't you see that work being done at all? A. The construction of the buildings, no.

Q. Where were you at that time? A. Attending to my business. 40

William Baker—Cross.

Q. Didn't you get on the job? A. Once in a while.

Q. And during the whole time Mr. Troiano was putting up those buildings you did not see the work being done? A. They were off the road so that they did not interest me enough to go and look for them.

10 Q. But you knew it was being done? A. I expected so when I loaned him money.

Q. And you knew that it was being done on some of your money, didn't you? A. I thought so.

Q. And you could have seen those buildings if you had looked that way, couldn't you? A. Well, I suppose you could see Newark if you looked across the meadows, and that is about how the buildings would look from the Plankroad.

20 Q. How far are they from the Plankroad? A. Probably a thousand or more feet.

Q. In plain view, weren't they? A. In plain view. Why, you could see there was something going up, yes.

Q. And from the time they were started until they were finished you never saw them? A. Possibly I wasn't over there at that period.

MR. VAN WINKLE: Mr. Turner, I show you the original contract.

30 MR. TURNER: I have no objection to it, except that I think it is not material.

MR. VAN WINKLE: Mr. Troiano said that he knew of the terms of the contract. I offer the contract between the Board of Chosen Freeholders of the County of Hudson and the Board of Chosen Freeholders of the County of Essex in the State of New Jersey, and William Baker, for the completion of the first section of Newark Plankroad, reference being made to Section D.

40 (Marked Exhibit D-1.)

Fred L. Hartigan—Direct.

FRED L. HARTIGAN, SWORN.

DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. Where do you live? A. Short Hills, New Jersey.

Q. Are you connected in business with Mr. Baker, the defendant? A. Employed as superintendent for him.

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Q. How long have you been employed as such superintendent? A. Since the middle of May, 1911.

Q. You are familiar with the contracting work and general methods of the supply of labor to contracting work, are you? A. Yes, sir.

Q. You have been on some large contracts? A. Yes, sir.

Q. What ones? A. The construction of several western railroads, considerable work—dock work, and so forth, in the west and south.

20

Q. When was it that you became superintendent for Mr. Baker? A. On the 15th of May, 1911.

Q. And I assume that was the first time you saw Mr. Troiano, around that time? A. Some few days after I had gone over there, yes, sir.

Q. Will you please tell us, Mr. Hartigan, what you saw there with respect to the method in which labor was supplied by Mr. Troiano to Mr. Baker's contract? What did you see there when you came there first? A. There were no men employed at the time when I took charge. The delay or stopping of the work by injunction, as Mr. Baker referred to in his testimony, was then in effect, and it was not until about the 20th of May that we resumed work, so that there were no men employed at the time.

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Q. Around the 20th where did the labor come from? A. Mr. Baker, I believe, about the 18th or

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Fred L. Hartigan—Direct.

20th of May—I haven't the dates—brought Troiano to me on the Plankroad, saying that Gus could furnish men.

Q. Gus being Troiano? A. Troiano, yes—and that he would like to have me get my men through Gus,—Troiano. He said that he had gone to an expense of building some shanties. So I immediately ordered fifty or sixty men, I don't remember
 10 which Troiano furnished,—of a very inferior quality, I agreeing to pay them \$1.50. In the event that they proved satisfactory and were good workmen they would get \$1.75 or \$2.00. That condition prevailed for four or five months. Troiano started selling liquor. The efficient men that he had furnished became very bad on account of the liquor. All of the men on the work—during pay-
 20 days we would have a perfect riot. Troiano had assumed to assess each man fifty cents a pay for his privilege of shanty, and most of the men lived at home, and of course were not donating fifty cents to Troiano. That condition prevailing, it was injuring Baker and myself, of course, on our work. We were getting inefficient labor and not doing as we should. I complained to Troiano both about the selling of the liquor and refused to collect this fifty cents that he was assessing to
 30 every employee whether living in his shanty or not. Troiano promised, I believe, to discontinue selling liquor. Then we required more men. There was a lull in the work. If I remember, we had some eighty or ninety men, as Mr. Troiano has testified. Then something occurred, I don't remember just what it was, that we cut off our force considerably for about two months, being delayed, I think, by the Public Service. Then getting in the fall of the year it required considerable men,
 40 and I called on Troiano. I have no doubt but what he made every effort he could to get men,

Fred L. Hartigan—Direct.

and he brought me a few. Montenegro, this man that was on the stand, also brought a few waiters and men of that class. Those are the ones that they complain of at \$1.50.

Q Wages? A. Wages, \$1.50 a day. They only worked probably an hour, some of them, and some of them did not work that long.

Q. Then those men working short periods and being found inefficient, were discharged and paid at the rate of \$1.50 a day? A. Yes, sir. I appealed to Troiano for at least two months, and as I say I think he put every effort he could to get men, but he did not succeed, and I had to start after it myself. 10

Q. Did you hire men? A. I hired men.

Q. Now, with respect to the wages paid to the men, Mr. Troiano has testified that the men were promised, or you or Mr. Baker promised you would pay men \$1.75 and \$2.00 and you did not do it. What have you to say as to that? A. Why, we paid all—the promise made to Troiano, or the instruction Troiano had, was to employ the men— 20

THE COURT: He has already testified to that.

MR. VAN WINKLE: Is it covered?

THE COURT: Yes. He said he told Troiano to bring men and he would pay \$1.50 a day and if they proved efficient they would get \$1.75 or \$2.00 as the case might be. That is what he has already said. 30

Q. Did you know, or were you told with respect to the collections being made by Mr. Baker for Mr. Troiano in accordance with bills sent by Troiano to Baker to collect each two weeks? A. Mr. Baker knew nothing about that arrangement.

Q. Why do you do it? A. Well, it formerly had been customary in the western country to do that. 40

Fred L. Hartigan—Direct.

Q. I see; to collect what the storekeeper and lodging house man claimed was due him from the labor, from the pay, so he would surely get paid?

A. Not done in the way that we did. The contractor would generally have an employee in to check the bills in the commissary department so that they could verify the bill.

10 Q. But in this case the Troiano bills against these men were unchecked so far as you were concerned? A. Yes, sir.

Q. You do not know how they were made up or how much represented liquor supplied to the men or how much represented shoes? A. No, sir.

Q. Now then, the men were paid every two weeks? A. Two weeks.

Q. And for about how long a period was it that you, for Baker, deducted money and saw that
20 Troiano got it? A. I am not positive, of course, but I think from the first pay in May until November—until the last of October, rather.

Q. And they why did you discontinue that method? A. I had, as I stated—I had continually been at Troiano to discontinue the sale of liquor, and he refused to do it. I appealed to Mr. Baker to appeal to Troiano because I felt that he was interested in him, but he did not; so that we had to stop that in order to keep an efficient
30 force on the work.

Q. Mr. Troiano's storekeeper—I have forgotten his name—says that he rendered to you, I think he said every two weeks after November 1st, bills showing different amounts that he claimed due to his boss, Troiano; did you ever get such bills? A. No, sir.

Q. Did you get any bill at all in April from Mr. Troiano or from his storekeeper? A. This one
40 bill (indicating.)

Fred L. Hartigan—Cross.

MR. VAN WINKLE: Witness produces a bill.

Q. Is this the only bill you ever received? A. There was a bill handed me by Troiano in the presence of his bookkeeper and in the presence of my timekeeper, which I destroyed in his presence.

Q. This bill is for \$103, April 16, 1912.

(Marked D-2 for identification.)

10

Q. Now there have been produced a number of—I would call them time envelopes, with Mr. Baker's name at the top; can you explain the method by which those envelopes were given out, and in general what the notations on them mean?

A. The envelopes that I have—that I am looking at now—are the envelopes in which the amount of board deducted from the employees in accordance with the bill rendered by Mr. Troiano—

20

Q. During the period before November, 1911?

A. During the period before November, 1911.

Q. And during that period and until you had this trouble about the liquor, did you ever question any of Mr. Troiano's charges against these men, or did you accept them as true? A. I accepted them as true.

Q. Did you after November 1st, 1911, ever promise on behalf of Mr. Baker that you would see that Mr. Troiano was paid any part of this sum that you have heard him claim in court is due to him, —twelve or thirteen hundred dollars? A. The only thing that I promised to pay Mr. Troiano was a deduction that I made in April for him some twenty-eight or twenty-nine dollars, that is all.

30

CROSS EXAMINATION BY MR. TURNER:

Q. Now you accepted this bill of \$103.25 in April, 1912? A. Yes, sir.

40

Fred L. Hartigan—Cross.

Q. And did you ever pay that to Mr. Troiano?

A. Not all—no, we have some credit for it.

Q. Did I understand you to say that Mr. Baker told you that he, Mr. Baker, had spent money for shanties there? A. Mr. Baker didn't tell me that he had spent money for shanties.

10 Q. When he brought Mr. Troiano to you did he refer to Mr. Troiano or himself when he said that he had spent money there for shanties? A. Troiano.

Q. Now Mr. Troiano ran what is ordinarily termed the commissary on a contract of this kind, didn't he? A. Yes, sir.

Q. And it is customary on all big jobs to run a commissary, isn't it? A. Dependent on the location, yes, sir.

20 Q. And it is also customary on all big jobs that the contractor holds out from the wages of the men the money that is due to the commissary department, isn't it? A. I don't know as it is customary, but it is done.

Q. Well, you always did it yourself, didn't you? A. I have done it.

Q. Well, then, when you held out this money, did you do that because Mr. Baker told you to or because it is customary on all jobs to do it? A. Because I had done it before, that is why.

30 Q. And didn't you speak to Mr. Baker about that? A. Mr. Baker knew nothing about it until—

Q. But after you did hold out the money from the wages of the men Mr. Baker knew of it then, didn't he? A. I don't know.

Q. Well, you rendered him an account of it? A. No, sir.

40 Q. Didn't you keep books of account? A. No, sir.

Q. Mr. Baker was over there every pay day? A. Yes, sir.

Fred L. Hartigan—Cross.

Q. And didn't he see these pay envelopes? A. No, sir.

Q. To whom did he deliver the money? A. To me sometimes, sometimes to the timekeeper.

Q. And he did not stay there while the men were being paid? A. I do not remember of him ever being there while they were paid.

Q. Now you told Mr. Troiano that you would pay men \$1.75 or \$2.00 a day, didn't you? A. If they proved efficient. 10

Q. And then when you discharged men you gave them \$1.50, didn't you? A. Some.

Q. And didn't Mr. Troiano tell you that as long as you hired men at \$1.75 and \$2.00 and gave them \$1.50 when you discharged them, that he could not get you good men? A. I did not hire men at \$1.75 and \$2.00.

Q. But that is the instruction you gave to Mr. Troiano though, wasn't it? A. I beg your pardon. 20

Q. Wasn't it? A. No, sir.

Q. What did you say to him? A. We would pay \$1.50. If they proved efficient we would pay \$1.75 and \$2.00. If a man was discharged he certainly was not efficient.

Q. Well, you were the sole judge of his efficiency, weren't you? A. No, sir.

Q. Who was? A. The foreman, timekeeper or myself. 30

Q. And who decided whether the men should be discharged? A. The foreman under which he was working.

Q. Then you had no personal knowledge of the efficiency of the men? A. I was on the work continuously.

Q. Only what the foreman told you? A. I was on the work continuously.

Q. But it was the foreman's judgment that went? A. Generally. 40

Fred L. Hartigan—Cross.

Q. Now did you ever see Mr. Troiano sell any liquor? A. I can't say that I ever saw him sell any; I saw it dispensed there—I have seen it dispensed there.

Q. Did you ever see him hand out any liquor to men? A. Troiano? No, not Troiano.

Q. Did you ever see anybody hand out liquor to men? A. Beer is liquor, is it not?

10 Q. Well, you saw them hand out beer? A. Yes, sir.

Q. Now beer was the only thing you ever saw handed out, wasn't it? A. I believe so, yes, sir.

Q. Now is it possible to run a big job like this without having beer furnished by the commissary? A. I never had it before.

Q. You never had beer furnished to the men? A. Never allowed it before.

20 Q. Have you ever been on eastern jobs before this? A. Yes, sir.

Q. Don't you know that on all eastern jobs they do furnish beer? A. No, sir, I don't.

Q. Unless they are located where the men can go and buy it? A. I don't know that; no, sir.

Q. Isn't beer considered part of the nourishment which the men need to do the work? A. Not on my work, sir.

30 Q. You do not drink beer? A. No, sir.

Q. Now you spoke of Mr. Troiano asking fifty cents a month from the men; do you know what that was for? A. Fifty cents a pay day, wasn't it?

Q. Do you know what that was for? A. Shantying, as he called it.

Q. You knew what it was for, didn't you? A. To help pay for his shanty.

40 Q. Well, the men used his shanty, didn't they? A. No, sir.

Q. Where did the men go when it rained? A. I don't know; most of them went home.

Jay Lahey—Direct.

Q. Didn't the men go and use Mr. Troiano's shanty when it rained? A. Some of the men who boarded there always went there, yes, sir.

Q. And wasn't Mr. Troiano's shanty or the commissary department of this contract, wasn't that the place where the men stayed when they were not actually working? A. Not all of them, no, sir.

Q. Well, most of them went there, didn't they? 10

A. Well, I can't say that.

Q. A great part of them? A. The men who boarded with Troiano were the ones who would go to his shanty.

Q. And other men went there, too, didn't they? I do not know.

Q. That's all.

JAY LAHEY, sworn. 20

DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. For a time you were one of the engineers on his Plankroad job? A. Yes, sir.

Q. Then afterward did you become a timekeeper for Mr. Baker? A. Yes, sir.

Q. When was that, please? A. October 1st, 1911. 30

Q. What can you say with respect to the labor conditions when you came on the job; what did you see? A. The men were as a class—the old men were fair; they were paying when I arrived \$1.75 and \$2 a day, and the new men, furnished by Troiano, were—we started them at a dollar and a half; the foremen were always kicking about the shanty men.

Q. The shanty men? A. They called them—

MR. TURNER: I think that is hearsay. 40

Jay Lahey—Direct.

THE COURT: Yes; that is hearsay, what they said. The fact that they complained about them is admissible.

Q. Did you observe the way in which the shanty men—I take it you mean the men who stayed at Troiano's shanty—the way they worked? Were they efficient? A. They were efficient when they
10 were not under the influence of liquor. After a rainy day, why, we would not have Troiano's men for two days, the majority of them.

Q. Why was that? A. Due to the—they would not even come out after going over after them—

MR. TURNER: I do not think he can tell if they did not go out.

THE COURT: He may have gone in and seen them laid out, you can't tell.

20

Q. Tell us what you saw. A. After going after them they would not come out, owing to the fact that they were in a sort of dazed condition from liquor.

Q. That was when? In October, 1911? A. October, 1911.

Q. Was anything said to you by Troiano in March, 1912, with respect to collecting money from Mr. Baker? A. Yes, sir. In November we
30 refused to collect on account of not giving up—he insisted on selling liquor, beer, and Mr. Hartigan told me to discontinue collecting his board bill. When we started up in March, 1912, Frank, his man, told me that Gus wanted to see me this morning, and it was the 28th of March.

Q. Go on. A. I met Gus around ten o'clock. Gus told me that if I would collect, unknown to Mr. Hartigan or Mr. Baker, and hold out this
40 money, he would fix me up at each pay. I told Gus that I would think it over, and I immediately went and told Mr. Hartigan.

Jay Lahey—Cross.

Q. At that time did you see Mr. Hartigan do anything with one of these bills he had received?

A. Following this, in April, I think, Gus and his man Frank brought a bill, a board bill, to Mr. Hartigan and Mr. Hartigan said "That is absolutely no good here," and tore it up.

Q. Was that after you had told Mr. Hartigan about the attempt to pay your money to make the collection he tore the bill up then? A. Yes, sir. 10

Q. Was there very much work there on the contract, Mr. Lahey, in November, December, January, February, and March?—You have said when you started up in March. What about the meantime from November to March? A. There was very little work during the winter. There was a pretty severe winter, and we started I think in February to put in just the planking; we had to plank the north side of the road, and I think we had maybe twelve or fourteen men working for six weeks. 20

CROSS EXAMINATION BY MR. TURNER:

Q. What bill was it that he tore up? A. I don't know.

Q. Isn't this (indicating) the bill that you saw? A. No; that bill was not the one that was torn up. 30

Q. Then there was another bill in April that you got, was there? A. Yes, sir.

Q. Was Mr. Troiano there when it was torn up? A. Yes, sir.

Q. Was he? A. Yes.

Q. Mr. Troiano there? A. Yes, sir, Mr. Troiano and Frank.

Q. Brought the bill there? A. Yes, sir.

Q. Was that the bill before this? A. No; that was the bill after that. 40

Q. When was it that Mr. Troiano asked you to

Jay Lahey—Cross.

collect money that was due to him? A. March 28, 1912.

Q. Did you ever see Mr. Troiano or any of his men sell any liquor? A. Yes.

Q. When? A. In March, 1911—not March—October, 1911.

Q. That was when you first came there, wasn't it? A. That was when I first came there.

10 Q. What part of October was it? A. The latter part of October.

Q. And what time of the day was it? A. I don't recall.

Q. Did you go there to the shanty? A. Yes, sir.

Q. What did you go there for? A. To find out why the men were not on the work.

Q. Well, you must have gone there in the morning, didn't you? A. I went during the day some
20 time.

Q. You do not know what time it was? A. No.

Q. Who was it that sold anything? A. Frank.

Q. What did he sell? A. Beer.

Q. How much? A. A bottle of beer, as much as they wanted.

Q. One bottle of beer? A. As much as they wanted.

Q. No, no; how much did you see him sell? A.
30 I saw him sell a bottle to a man.

Q. One bottle? A. One bottle.

Q. And that is all you saw? A. That is all I saw.

Q. Then you went out? A. Then I went out.

Q. And that is all that you ever saw sold? A. No; I was in there a number of times.

Q. How much did you see sold then? A. Each time I was in I saw them selling beer.

Q. By the bottle? A. By the bottle.

40 Q. How many bottles did you see sold each time? A. I saw one.

Jay Lahey—Cross.

Q. One bottle sold each time you were in there?

A. Each time I went in.

Q. To the same man or to different men? A. Different men.

Q. Just an ordinary small bottle of beer, wasn't it? A. Ordinarily small bottle of beer.

Q. Now did the man pay for it or did he get it charged? A. Sometimes they paid for it—not the laborers—road gang, the men working for other people, and the water company had men there that would buy beer there; they would pay for it. 10

Q. What I meant to ask you about was whether you had ever seen Mr. Troiano or his men sell beer to any of Mr. Baker's men. I did not mean the other contractors', but tell us about Mr. Baker's men. Did you ever see any sold to them?

A. Yes, to our own men. 20

Q. How many times? A. That I cannot say.

Q. Would you say once or twice? A. Well, it was just at this time that we were going to discontinue collecting and I was sent over to see why the boot men, the two-dollar men, were not on the job. These men were in the shanty, and I stayed there—

Q. I did not ask you that. A. —long enough to see them receive beer.

Q. Oh, then, on two occasions you saw two men, one on each occasion, buy a bottle of beer? A. Well, I won't say how many men I saw, but I saw beer passed out. 30

Q. One bottle you saw passed out? A. To each man.

Q. Now take the first time you went there, how many bottles were sold altogether on that occasion to Mr. Baker's men? A. I don't recollect.

Q. And you did not go there then until October, 1911. Have you been working for Mr. Baker ever since that time? A. Yes, sir. 40

Jay Lahey—Cross.

Q. Still working for him? A. Yes, sir.

Q. You knew that they were collecting the money for Mr. Troiano, didn't you? A. Yes, sir.

Q. And you knew that they were going to collect this money for him in April, 1912, didn't you? A. No, sir.

Q. Didn't you know that? Didn't you see this bill? A. Yes, sir.

10 Q. Did Mr. Hartigan show it to you? A. Yes, sir.

Q. You heard Mr. Hartigan's testimony, didn't you? A. Yes, sir.

Q. Where were you getting your men from after October, 1911? A. Well, we had men that did not live in the shanty, these men were good men, and would bring men from Jersey City and Newark at the request of the foreman.

20 Q. You were getting then your own men? A. Not altogether. We got men from Frank—Frank, Gus' assistant, supplied the men that we needed.

Q. Then you got men from Mr. Troiano? A. Troiano and our own men.

Q. And you continued getting men from Mr. Troiano right along, didn't you? A. Yes.

Q. And these men lived there at the commissary, didn't they? A. Yes, sir.

30 Q. And you collected the amount they owed to the commissary from their wages? A. Up to November, 1911.

Q. And then you stopped, didn't you? A. Yes, sir.

Q. Now when Mr. Troiano asked you to collect this money what was that full conversation that you had with him? A. I met—I went over to the commissary in the morning from the job, being called by his man Frank, that was around 7:15.

40 Frank told me that Gus was going to be out today and would like to see me. At around 10:30

Jay Lahey—Re-Direct.

Gus appeared and asked me if I would come out on the outside, he wanted to talk to me. He told me he was having a hard job getting his money and if I would collect this money and hold it out of their pay, because I at that time was making up the envelopes—if I would hold out his pay—the board bill rather—he would fix me up every two weeks.

Q. You mean "fix you up," he would pay you? A. Yes. 10

Q. You were the man to come to to do it, weren't you? A. No, sir.

Q. You were the fellow who made up the pay-rolls, didn't you? A. No, sir.

Q. Didn't you make out the envelopes? A. I made out with the assistance of Mr. Hartigan.

Q. And fixed the amounts? A. Fixed the amounts. 20

Q. The order would have to come to you to keep this money out if it was kept out, wouldn't it? A. No, sir—it would come to me through Mr. Hartigan.

Q. Either come through him or come direct, wouldn't it? A. No, sir.

Q. You also took orders from Mr. Baker, didn't you? A. No, sir.

Q. Not from Mr. Baker? A. No, sir. 30

RE-DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. This saloon, Mr. Lahey, was that in one of the buildings shown in the pictures here,—have you seen the pictures? A. Yes, sir.

Q. Now did other men besides the men that worked for Baker go to that saloon for liquor? A. Yes, sir.

Q. Did other men besides the men that worked for Baker board with Troiano in the shanty 40

Jay Lahey—Re-Cross.

shown there in the pictures,—men from the steel works? A. Yes, sir.

Q. The pile-driver gang? A. Yes, sir.

Q. Laboring men who did not work for Baker, but who lived there with Troiano—boarded there in the shanty? A. Yes, sir.

10 RE-CROSS EXAMINATION BY MR. TURNER:

Q. What do you mean by "saloon"—where was there any saloon there?

MR. VAN WINKLE: Well, I used that word. Maybe I shouldn't. I meant where the liquor was sold.

Q. There wasn't any saloon there, was there, what you understand by a saloon? A. Well, you could buy beer; you could buy cigars there—
20 cigarettes; it was a commissary.

Q. It was a commissary, the same as all commissaries? A. I don't know; this was the first job I have been on.

Q. Oh, you never were on a job before? A. No, sir.

30

40

William S. Anderson—Direct.

WILLIAM S. ANDERSON, sworn.

DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. What is your business? A. Carpenter and builder.

Q. And been in what business how many years?
A. About forty years.

Q. In Jersey City? A. Thirty years in Jersey City. 10

Q. Where do you live? A. 635 Palisade avenue, Jersey City.

Q. Did you at any time at the request of Mr. Baker, the defendant, examine the shanties or shacks that the plaintiff has testified that he built shown on these pictures produced by the plaintiff?
A. Yes, sir.

Q. When did you see these buildings? A. Well, it must be over a year ago. 20

Q. And did you go and look at the buildings for the purpose of making an estimate as to what the cost of the erecting of those buildings and the material in them would amount to? A. Yes, sir.

Q. Now tell us what you concluded. A. There is one building, the size is 20 feet wide and 46 feet deep; it is 8 feet from the water-table to the eaves, and 11 feet from the water-table to the top point of the roof. There is in the construction of that building 36 chestnut posts for the foundation; there is 200 square feet of 4 by 4 spruce for the sills; there is 700 square feet of 2 by 8 spruce for the floor— 30

Q. I suggest for the sake of expedition—

THE COURT: Let him give the results.

Q. Just state the cost of the building including the labor in erecting—give the amount? A. \$598.-08 is the small building. 40

William S. Anderson—Direct

Q. Now the other buildings, just give the totals?

A. The other building is \$781.74.

Q. And any others? A. I didn't see any other buildings.

Q. What is the total then? A. \$1389.74.

10 MR. VAN WINKLE: Now, if you will consent I will put the memorandum in evidence and then you may cross examine—the same as you did.

MR. TURNER: Yes.

A JUROR: What is counsel trying to bring out by this testimony?

MR. VAN WINKLE: I was trying to show that the cost of the erection of these buildings was not as large as the plaintiff claimed.

20 THE JUROR: Why did Mr. Baker interest himself to send a man down there if he claims he has nothing to do with it?

MR. VAN WINKLE (To the Court): Your Honor will have to answer that question.

30 THE COURT: The reason is that he has to come and defend a suit that is brought against him. In order to defend he must produce his evidence. To get his evidence he must produce a witness. This is that witness.

MR. VAN WINKLE: If I was entirely sure of the jury I would not produce any evidence at all.

THE COURT: It is perfectly proper for a man to do it. A man must defend a suit against him. In order to do that he must bring—

40 MR. VAN WINKLE: I shall ask Your Honor to charge later, in view of the juror's interrogatory that the mere production of this witness is nothing that militates against the defendant.

William S. Anderson—Cross.

THE COURT: It does not militate against him at all.

MR. VAN WINKLE: It concedes nothing.

CROSS EXAMINATION BY MR. TURNER:

Q. You did not estimate on this small building at all, this square one? A. No, sir, I didn't.

Q. Now it would be impossible for you to tell exactly what the expense of labor would be, wouldn't it? A. I do not see why. We generally figure by the thousand. 10

Q. Well, can you look at a building and tell how many days it will take to erect that building and fit it up inside? A. Why, certainly, I can. I can take it from the plan; why can't I take it from the building that is erected? That is much easier.

Q. How many days did you figure that it would take one man to erect these buildings? A. About forty days for each one. 20

Q. It would take then a man eighty days—you do not mean that. One building is larger than the other, isn't it? A. One is 70 feet and the other 46.

Q. It would not take the same length of time for each? A. No; it would not take the same time; it would take more for the big one. 30

Q. Considering the size of the building, how long would it take altogether to erect the two? A. There is 11,500 feet of material in the large building. If you will take \$20 per thousand it is an enormous price.

Q. I did not ask you that; I asked you the cost of erection, the cost of labor. A. I will give you that. The large building is \$230 and the small is \$160.

Q. That is the cost of labor you figure? A. That is the cost of labor at \$20 a thousand. 40

William S. Anderson—Cross.

Q. Oh! You figure labor by so much a thousand? A. That is the only way we can figure it.

Q. And that is guesswork? A. Not guesswork. If we know how many thousand feet there is in a building we know just exactly how to figure labor.

Q. You do not mean to say it always takes the same amount of labor to put up the same amount of material, do you? A. No; some material, for
10 instance, say a girder, you will have one 12 by 12, which is 240 lineal feet in a 20-foot girder, will make \$2.40, at \$10 a thousand. You do that inside of 15 minutes. But this is different, because it was in small timber.

Q. And this would take more time? A. Well, I have allowed \$20 a thousand for it, which is double.

Q. And that is the way you figure? A. That is
20 the way I figure.

Q. You do not know how many days actually were spent in building this? A. I do not know what kind of men he had, but I know what I could do it for.

Q. Oh! You are figuring on your own labor? A. Certainly; I know what I could do it for.

Q. And how much do you get a day? A. Me? All I can make.

Q. Well, how much is that? A. Sometimes
30 ten, fifteen, twenty, thirty, forty. It just depends on how good a contract I have made.

Q. Sometimes you get \$40 a day? A. Sometimes I get nothing.

Q. You are talking about contract work? A. Yes; I don't do any journeyman work.

Q. But you are figuring on your own labor? A. I figure on—

Q. Now take a journeyman carpenter; how long
40 would it take a journeyman carpenter to do this work? A. Just what I am telling you.

Agotino Trolano—Direct.

Q. That is your opinion, is it? A. That is my opinion.

Q. And how much do journeyman carpenters get? A. Four dollars a day.

Q. More than that, some of them? A. Well, I had a foreman that I paid five dollars a day, yes.

Q. Well, some journeyman carpenters get four and a half, don't they? A. Some of them, I believe, but I never paid any of them that. 10

Q. Do you use union men? A. All union men.
BY THE COURT:

Q. Well, what is the union scale of wages then?
A. Four dollars a day.

DEFENDANT RESTS.

REBUTTAL.

20

AGOSTINO TROIANO, recalled.

DIRECT EXAMINATION BY MR. TURNER:

Q. Mr. Troiano, in October, 1911, were any of the men who boarded at your place under the influence of liquor so they could not work? A. Never. The man that was coming there for liquor not to be able to work they was going in saloon to Newark and to Jersey City; they was getting their money and was going in the saloon and buying whisky and buy everything, and then of course that was made for the headquarters to that place and they was coming there and go in the place and sleep when they like and they was there around to the place. 30

Q. They did not buy whisky from you, did they?
A. I never sold any.

Q. Did the men stay at your place all the time when they were not working? A. No; who don't 40

Agotino Trolano—Direct.

was working they couldn't stay there because I wouldn't allow them to stay there not being they didn't come to board.

Q. Were these men you got for Mr. Baker what are known as green men with soft hands so they couldn't work? A. No, sir; all men they had been here four or five years. There might have been
10 one or two been green, you know, of course, how it is. You go and get a bunch of men to put to work, there might be green and might be good men and might be poor men. Of course the poor men all been discharged.

Q. Now what was this fifty cents they said you wanted to assess the men? A. Well, the fifty was to buy—if they didn't was coming in the shanty, make the bargain with this man to pay fifty cents and not to come there to sleep, and buy the store
20 —buy the grocery and take them their home; so I want to make my money what I was spending.

Q. Did Mr. Baker know about that? A. Why, certainly, Mr. Baker knows.

(No cross examination.)

Frank Zadrena—Direct.

FRANK ZADRENA, recalled, testified through an interpreter.

DIRECT EXAMINATION BY MR. TURNER:

Q. Did you sell any other liquor there at the commissary than beer? A. Only beer.

Q. Did you ever sell beer to the men so that they became drunk? A. Drunk? No, sir, I 10
didn't sell so much, only what would come to them.

Q. Were the men ever drunk from beer that they got in your commissary there? A. From us?

Q. Yes. A. I didn't see nobody was drunk from our beer.

Q. Were any of the men that you got for Mr. Baker what are known as green men who had soft hands and could not work? A. They all men 20
who were accustomed to work in tunnels.

William Baker—Direct.

SURREBUTTAL.

WILLIAM BAKER, recalled.

DIRECT EXAMINATION BY MR. VAN WINKLE:

Q. Do you know anything about a desk over there that Mr. Troiano owned at one time? A.

10 Yes, sir.

Q. Will you tell us about that? A. Why, he left a desk in one of the offices and it is there yet.

Q. Did you ever agree to buy it? A. No; it was a cheap ten-dollar desk.

Q. Do you claim to own it now? A. I—no. I never claimed to own it. He left it in one of the offices over there.

20 Q. Any objection to him taking it? A. No. He has been free to take it half a dozen times. The job is completed and it is still lying over there.

CROSS EXAMINATION BY MR. TURNER:

Q. Did you ever tell him to take it half a dozen times? A. I personally, myself, once.

Q. When? A. Possibly a year ago.

30 Q. You do not know what agreement Mr. Hartigan made about it, do you? A. No, I am only speaking for myself, but it was there ahead of Mr. Hartigan's time.

TESTIMONY CLOSED.

Charge.**GENTLEMEN OF THE JURY:**

This suit is brought by Agostino Troiano against William Baker and is to recover damages which the plaintiff alleges accrued to him by reason of the breach of a contract which he says existed between the defendant and himself with respect to furnishing shacks, or shanties as he calls them, and laborers for work on a job which admittedly Mr. Baker had in the construction of the plankroad running from Jersey City to Newark. 10

Now, first of all, the action being upon a contract, the plaintiff is obliged to make out by the greater weight of the evidence that there was a contract between him and the defendant and he must make out by the greater weight of the evidence what the terms of that contract were, and he must make out those terms in no uncertain or conjectural way, but he must make out with reasonable certainty what the real existing terms of the contract were between him and the defendant. 20

Thirdly, he must make out that there was a breach of that contract by the defendant and that he suffered damages therefrom; and then he must make out by the greater weight of the evidence what the amount of those damages was. Now that is the burden that is cast upon him. He contends 30

that a contract existed between him and the defendant whereby the defendant was to take labor to be furnished by him to the extent, as I recall his testimony, of from one hundred to one hundred and fifty or one hundred and thirty-five men on an average, and that these men were to be kept boarding with him in these shacks, and that the defendant was to subtract from their pay the amount of money which the plaintiff should indicate was due to him for board. I think he 40

Charge.

used the word "board;" but whatever the testimony was in that respect you gentlemen will remember.

10 Now the plaintiff contends that the defendant broke that contract in that he did not take the required number of men and in that he did not retain from the pay due to the men who were boarded by the plaintiff the amount of money that was due for the board. Now, as I say, the plaintiff is obliged to make that out by the greater weight of the evidence.

20 The defendant on his side contends that no such contract as that existed between the parties at all and that he made no arrangement whereby the plaintiff was entitled to look to him at a matter of legal right to keep any money out of their pay in any way whatever. Now while we are on that subject I desire to direct the attention of the jury to one piece of evidence in the case which might be, and which apparently, from a question of one of the jurors unless it was cleared up before the jury, would be entirely misleading. That piece of evidence was this: that Mr. Hartigan had arranged with Mr. Troiano after Hartigan came on the job as superintendent that he would see to it that the money was retained. Now one of the 30 jurors asked a question as to whether Hartigan had full authority to make that sort of an arrangement, and the answer was that Hartigan had; but you want to bear in mind that that is not the contract on which Mr. Troiano is suing in this case at all. Mr. Troiano claims and contends that the contract that he made he made with Baker personally, and that the contract that he made with Baker and the promises made by Baker were the things that caused him to erect these shacks or shanties there and go to the expense which he 40

Charge.

says he did go to in respect to that matter. Now if after that time and after the shacks were erected and if after Hartigan came on the job—and he did not come until May, 1911—Hartigan made an arrangement with Troiano whereby Hartigan said, “I will retain the moneys for you,” why of course he could not recover under that arrangement in this case because there would not be any consideration for it at all; it would be a bare, naked promise on Hartigan’s part to do a favor for Mr. Troiano and would not be rested upon what the law calls a legal consideration, and there could be no recovery upon that ground in this case whatever. I want to clear that matter up in your minds because the law upon it admits of absolutely no dispute whatever, and no lawyer would contend for an instant with any show of reason or sense that any claim could be rested upon any such promise as that, made after the shacks had been built and when there was no consideration for it.

Now then, to return to the discussion of the case in the way that I was discussing it when I diverted in this particular. First of all, if there was a contract, established by the greater weight of the evidence in this case, and if the terms of that contract have been established to your satisfaction by the greater weight of the evidence to be of a certain kind so that you can understand distinctly and certainly what those terms were, and if that contract is established by the greater weight of the evidence to have been broken by Mr. Baker, why then in that event, and only in that event, you would be entitled to render a verdict in this case for damages.

Now if you should come to the question of damages, you would assess the damages in accordance with these rules:

Charge.

First of all, the plaintiff would be entitled to be paid, or compensated, for all the loss which naturally and proximately resulted to him from the breach of the contract. Now that loss in this case has been put forward, so far as I will permit the jury to consider it and to render a verdict if they find for the plaintiff and assess damages in this case, under two heads. The first is damages
10 claimed for the erection and construction of buildings, or shanties, or shacks as they have been called. The claim of the plaintiff on that point is that if Mr. Baker had not made the contract that he says Baker did make, he would not have erected any buildings at all; that he relied upon Baker's promise to do what he says Baker promised to do, and that relying upon it he built these shacks and went to expense; and he claims further-
20 more, if I recall the evidence, that the shacks now are standing there with the windows broken and the furniture gone and in, so far as he is concerned, a useless and valueless state. That, as I recall his testimony, is what he claims the situation of them to be, and therefore he contends that he is entitled to recover the value of those shacks by reason of the breach of the contract that he claims was committed by Mr. Baker. Now if he has
30 made out by the greater weight of the evidence what he paid for those shacks, in addition to the other elements which I have said he must make out, and that they are valueless now, why then in this case he would be entitled to recover their value as an element of damage. The reason for such an allowance would be that he would not have built them, assuming his contention to have been correct with respect to the contract alleged to have been made, if it had not been for the con-
40 tract; that he did build them because of the con-

Charge.

tract and that that expense therefore grew out of and rested upon the contract, and that therefore he lost it by reason of the breach of the contract. Now that is his claim in that respect. If he has made out his contract and its breach, and if he has made out the loss to him in the value of these houses, he would be entitled to recover on that count such value as he has made out.

10

The next element which he claims to be entitled to recover for is the element of the money which he would have gotten if it had been retained for him out of the wages of the men who were working for Baker and boarding with him. Now he is obliged to make out, gentlemen, the terms of the contract so that you can ascertain what it means with respect to what it was that he was to retain. It may be a very open question whether in this case anything could be recovered for, for instance, shoes, or whether anything could be recovered for money that was advanced by Troiano, if any was advanced, to these men; and it only can be recovered if it shall have been made out by Troiano by the greater weight of the evidence that Baker agreed to retain those things out of their wages. If Troiano has not made that out of course Baker was under no obligation to retain them, and if he was not under any obligation to retain them it was no legal wrong not to retain them.

20

30

Now then, if you should conclude in the case that it is not made out that Baker was to retain the money that was due for shoes or for liquor or for money advanced, but only for the board and the lodging, why under those circumstances, unless you can find in the evidence submitted in this case what the amount of money was that was obliged to be retained under the contract by

40

Charge.

Baker, of course you could charge nothing on that account. It is only when Troiano has made out by the greater weight of the evidence what it was that he was to retain and its amount that you can allow him anything on that phase of the case.

Now the third thing that he contended for was that he was entitled to recover for loss of profits. I charge you in this case that he was not entitled
 10 to recover for any such thing, because the law has laid down in every case in this state that has dealt with the subject that before loss of profits can be allowed for it must be established what the data were out of which the jury can with reasonable certainty infer what his profits were. There is no such data in this case, and consequently there can be nothing allowed for profits.

Now the only other item of damage for which
 20 claim is made in the case is the item for the value of a desk which the plaintiff claims the defendant through Mr. Hartigan, his superintendent, took and in some way either agreed to pay for or retained, and the law raised a promise to pay for because he kept it. Now if he has made out by the greater weight of the evidence that such transaction took place between Hartigan and himself and either that the arrangement was that Harti-
 30 gan should keep the desk and pay for it or that Hartigan did keep the desk and retains it and does not pay for it and will not return it, why under such circumstances the plaintiff having made that out will be entitled to recover the value of the desk. What the value of the desk was Troiano must make out by the greater weight of the evidence. If he has made out those elements with respect to the desk then he would be entitled to recover for that.

40 Now these are all the things in the case which

Charge.

you are entitled to consider and you may take the case and consider it.

A JUROR: Now, Your Honor, there is no written contract between these two parties.

THE COURT: No; there is no written contract at all.

THE JUROR: Now according to the evidence it appears that Mr. Baker collected for six months certain moneys which these envelopes show. Now what is the law on this proposition? Doesn't this show that he has assumed a contract between them or a liability to collect, and the fact that he did not notify him by writing, doesn't that show that Mr. Baker ought to collect further on, or is responsible for it? On this point I would like instruction. You understand me, Your Honor?

THE COURT: I understand precisely what you mean. All that the piece of evidence which you refer to shows is this: it is a piece of evidence in the case to be considered by the jury as bearing upon the question as to whether or not such a contract was made between Baker and Troiano as Troiano contends for. The piece of evidence which you refer to is equally consistent with the testimony of Mr. Hartigan as it is with the contention of Mr. Troiano, because Hartigan says that it was quite usual where he came from for the contractor to retain the money and pay it over without any arrangement for that purpose, and the only question that the jury have to consider with respect to this evidence is whether or not an arrangement was actually made between Baker and Troiano that Baker would do this thing. Unless such an arrangement was made between the parties expressly, why there can be no recovery on that theory. He must make out that

Charge.

it is his contract. If he does not make it out, the mere fact that they agreed to do it afterwards between Hartigan and Troiano does not at all tend to show any contract between the parties, but on the contrary tends to show there was no such contract. If that is not clear tell me what it is you want to know.

10 THE JUROR: Mr. Hartigan as his representative would not be considered the same as if he would make this agreement with Mr. Baker? For instance, Your Honor—

THE COURT: Let me answer that first. Your statement now is that Mr. Hartigan would be considered as the representative of Mr. Baker to make this contract.

THE JURER: That is my inquiry.

20 THE COURT: Now the evidence in the case is that Hartigan did not come with Baker at all until long after Troiano says the contract was made; consequently Hartigan could not have made any such contract at all, and Troiano does not contend that he did. That is the answer to your question. It is as plain as a pikestaff. Now you may take the case and decide it.

30

40

Exhibit P-1.

\$400.00 Jersey City, N. J., Oct. 15th, 1910

Three months after date I promise to pay to the order of Wm. Baker, Four Hundred dollars. at Jersey City, N. J Due Jan 15th/11 Gus Troiano.

Exhibit P-2.

Jersey City. Sept. 5th, 1911.

10

Received of Gus Troiano one hundred and 00/100 dollars (\$100.) on acct.

Wm. Baker

per F. L. Hartigan.

Exhibits P-3, P-4, P-5 and P-6.

Exhibits P-3, P-4, P-5 and P-6 are pictures of buildings. Not printed.

Exhibit P-7.

20

4/13/1912

Frank.

Take care of this man.

Hartigan.

30

40

Exhibit P-7 1-2.

	Newark Pl'k R'd.	1	256	8 x 8 Spc.	35	.99	8.96
		1	33	1 1/4 x 6 Spc.	30	25.13	
		1005		1 x 8 N. C. nov. Sid'g	25	12.70	
		508		1 x 8 N. C. T. G.	25	1.40	
		28		1 1/4 x U. P. us.	50	1.40	
		20		1 x 3 " "	50	1.00	
		13		1 x 4 " "	50	.65	
		427		2 x 4 N. C.	30	12.81	
	"	3	791	1 x 8 N. Rfg.	25	19.78	
		1105		1 x 4 1/2 N. fig.	32	35.36	
		4		Chest Post 8	24	.96	
		53		4 x 4 Spc.	30	1.59	
	"	7	96	4 x 4 Spruce	30	2.88	
		3		Chest post 8	24	.72	
		295		2 x 4 Hem.	30	8.85	
10		1009		1 x 8 N. C. T. G	25	25.23	
		49		1 1/4 x 6 Spc.	30	1.47	
		48		3 x 6 Spc.	30	1.44	
		204		7/8 1/4 Rd.	.80	1.63	
		42		1/2 Stop	1.20	.50	
		325		1 x 8 N. C. Nov. Sidg.	25	8.13	
	"	11	283	1 x 8 " " "	25.00	9.58	
		260		1 x 8 " T. G.	25	6.50	
		107		2 x 4 N. C.	30	3.21	
		267		2 x 4 N. C.	30	8.01	Bal. 310.82
		400		1 x 8 N. C. T. G.	25	10.	209.04
	St. Pauls Av.	24	16	1 1/2 Door	1.20	.19	
		53		2 x 4 Hem.	30	1.59	
		96		2 x 4 "	30	2.88	519.86
		459		1 x 8 N. C. T. G.	25	11.48	
		13		1 x 10 Pat. Sidg.	45	.59	
		15		1 1/4 and 1" U. P.	50	.75	
						218.00	
						8.96	
20							209.04
	Newark Pep. Rd.	2	1496	1 x 8 N. C. Nov. Sidg	25	37.40	
			200	2 x 6 Spc.	30	6.	
			128	4 x 4 "	30	3.84	
			200	3 x 4 "	30	6.	
			427	2 x 4 226	30	12.81	
	"	7	1915	2 x 8 Spc.	30	57.45	
	"	8	504	1 x 8 N. C. Sidg.	25	12.60	
			4	1 1/4 x 3-15 Spc. 045	15	.60	
			22	1 x 4 Pine Us.	45	.99	
			2007	1 x 4 1/2 N. C. fig.	32	64.22	
	"	12	1024	8 x 8 Spc.	35	35.84	
			16	805 1 1/4-2-3-4- Spc.	30	24.15	
			26	1 1/4 x 3 W. P. us.	55	1.43	
	"	19	1602	1 x 4 W. P. T. G.	25	40.05	
			19	1 x 4 W. P.	55	1.05	
		27		7/8 Leyp 1/4 Rd.	75	33.	
			32	3/2 x 1 1/2 U. P. Stop.	1.	.32	
30		30	1671	2 x 6 x 8 Spc.	30	50.13	
			368	4 x 4 Spc.	32	11.78	
			96	4 x 6 Spc.	30	2.88	
			112	Chest Post 14/8	3 1/2	3.92	
							377.26
							100.00
							277.26
				Oct. 7/10 Paid on acc. \$100 D & B. Co.			
	Mar. 9	2	Bag Potat		\$3.60		
	May 24	1	Bag Potat		4.00		
		1	Bag Onions		2.85		
					.75		
					11.20		
				Please send check			
				G. Troiano. & Co.			
				Received deposit on account amounting to \$25.00 for 25 beds.			
				Mrs. H. Barlison.			
40			15 1/2 lbs. steel		1.40		
			1 Hand hammer		.65		
					2.05		

Exhibit P-7½.

Troiano, Newark Plank road
10 Sash
6 Door
(becker stable)

Received \$50. on % Dodge & Bliss Co., C. Jager	Aug. 8/11	
Half month ending, 8/15 Name, Board No. of Hours Amount enclosed, 270.30		
Name No. 38 No. of hours, 30 at 15 Amount enclosed 4.50 Gus 4.50		10
Half month ending, 8/31 Name Board Amount enclosed \$299.96		
Half month ending 7/31 Name No. 32 No. of hours 90-15 Amount enclosed 13.50 Gus 11.50 2.00		
Half month ending 8/15 Name No. 40 No. of Hours 149-17½ Amount enclosed 26.07 Gus 5.50 20.57		20
Name Gus Half month ending 10/31/11 Amount 299.79 Due \$299.79		
Half month ending 7/15 Name No. 32 No. of hours 45½-15 Amount enclosed 6.82 Gus 7.00		
Half month ending 8/15 Name No. 85 No. of hours 110-20 Amount enclosed \$22.00		
Half month ending, 7/31 Name Board Amount enclosed \$203.60		30
Half month ending 10/15/11 Name Gus Amount enclosed, \$226.87		
Half month ending 9/31/11 Name, Board Amount enclosed \$259.00		
6 Gal. Green paint at \$1.50 2 Brushes 1 qt. Shellac 1 Gal. Turpo 4 Glasses B x 30 Small Brush 5 lb. putty 9 gal. R. mixed 1 glass putty 1 qt. Shellac	Sept. 29, 191 \$9.00 1.00 .75 .85 1.20 .05 .20 13.50 .50 .20 .75 \$27.80	40

Exhibit P-7½.

	Received on account	\$10.00	Oct. 24
	D. Perkel & Son.		
	Moulding		May 6, 1910
	Received		1.75
			1.00
	Bal.		.75
	On account	\$15.	
	D. Perkle		
	Received \$15. fifteen dollars from Guss Troiano		
	Jol. Perkel.		
			9/16/10
10	10 Sash	60	\$4
	6 Doors	60	3.60
	Paid V. K. & Son.		7.60
			June 12, 1911
	1 Roll Smooth On Roofg.		1.75
	1 Roll Asphalt felt		1.25
	1½ w. Nails		.07
	2 " Roofing Tins.		.16
			\$3.23
	Received Payment Jan. 12/11		
	Acme Ready Mfg. Co.		
	Sold to Mr. Troiano		
	Received \$60.00		
	Gussie Barison		
	Balance \$45.25		
	Received \$25.00 on account Beds.		
	G. Barison.		
20	8 Sash as selected Less		\$4.00
			.10
			3.90
	Paid		
	1 Gr. Matches		30
	1-		85
	500 3 Bags		28
	500 x-		33
			1.76
	1 Keg		8-2.60
	1 "		10-2.55
	1 "		20-2.50
	Paid.		7.65
30	2 Rolls 3 Ply. tar		20
	1 Spring		15
	1 keg-8-2.70		
	1 " 10-2.35		
	1 Bbl. Kerosene		
	July 14 3 Fire Extinguishers	\$8.00	\$24.
	Mar. 9 2 Bag Potot	1.80	3.60
	May 24 2 Bag Potot	2.00	4.00
	1 Bag Onions		2.85
	Cqt.		.75
			11.20
40	1		16.00
	2		13.00
	9		12.75
	12		10.00
	79		15.50
			67.25
	1 Marzo		21.00

Exhibit P-7½.

89	8.75	
112	.75	
113	4.75	
119	2.50	
139	.50	
151	10.25	
	69.60	
28 Ft. ½ x 11 P. Stop		
24-½ x 2 B. Band		
1-1 x 12-16 P/ Bod		
2-1 x 12-16		
Bought of L. Barison		
460 Hoboken Ave.,		
60 Beds.	\$180.00	
3 Stoves	15.00	10
pipe	10.00	
60 blankets	48.00	
	\$258.00	
Amount	Cash paid	140.00
	Balance	\$113.00
Mrs. Barison.		
3 Rolls Smooth On asphalt Roofing at	\$1.75	5.25
		9/21/10
Paid Sept. 26/10		
Acme Ready Rfg. Mfg. Co.		
Theoandreas		
15 Rolls 1 ply Smooth		
On asphalt Roofing at	\$1.75	26.25
		20
Paid Sept. 21/10		
Acme Ready Rfg. Mfg. Co.		
July O. K.		2.35
		24.
		26.35
Paid Stone Bros. 11/7/11		
CASH		
1 Bosen	35	
1 Broom	25	
1 Duster	35	
	.95	
1 x 8 N. C. T&G		
14/12 11/14 13% 16		
4 1 x 4-14		
16 ft. 1½ Boor stop		30
8 2 x 4 10 Hem.		
9 2 x 4 16 "		
43 1 x 8 16		
1 1 x 10 15		
2 1-¼ x 3 12		
1 1 x 4 14		
1 " 10		
1 x 8 N. C. Roof us		
7/10 12/12 18/14 45/16		
1 x 4½ N. C. Flooring		
28/8 61/10 37/12 36/14 30/16		
4 Chest Post 8'		
2 4 x 4 20 Spruce		
1 ¼ x 6 Spruce 4/13		
1 x 8 Nov. sidg		
1 x 8 N. C. & T G 6/12 24/14 22/16		
9 1¼ x 3 10		
8 1 x 3 10		
1 x 4		40
2 x 4 N. C. 40/16		

Exhibit P-7½.

25 2 x 4 16 N. C.
 1 x 8 N. C. T & G.
 4/14 34/16

4 4 x 4 18 Spruce
 3 Chest Post 8
 2 x 4 Hem. 25/10 12/16
 1 x 8 N. C. T & G. 5 3/1050/12 8/14 17/16
 1 - 1/14 x 6 spruce 6/13
 3 x 6 spruce 2/16
 20 4 ft. ⅞ N. C. ¼ Rd.
 42 " 1½ Cypress Stop
 1 x 8 N. C. Nov. Sidg.
 1/10 4/12 17/14 12/16

12 8 x 8 16 spruce.

10

1 x 8 N. C. Nov. Sidg.
 4/10 7/12 36/14 101/16
 10 - 2 x 6 20 Spruce
 6 4 x 4 16 Spruce
 10 3 x 4 20 Spruce
 2 x 4 16 N. C.

1 x 8 N. C. Nov. Sidg.
 3/12 8/14 38/16
 4 1-14 x 3 13 Spruce 4 S.
 1 x 4 21/12 3/14
 1 x 4/2 N. C. flg.
 49/8 88/10 64/12 86/14 84/16

1 x 8 N. C. Sidg.
 3/12 3/14 31/16
 1 x 8 N. C. T&G.
 9/10 25/12
 10 2 x 4 16 N. C.

20

400 Ft. ⅞ Cypress ¼ Rd.
 2 - ½ x ½ 16 W. P. Door Stop.

25 2 x 8 20 Spr.
 38 2 x 8-12 "
 16 " 13 "

25 2 x 8-20 Spr.
 38 2 x 8-12 "
 16 " "
 6 2 x 6-20 "
 12 4 x 4-20 "
 3 4 x 4-20 "
 14 Chest Post. 8 Spr.

6-4 x 6-16
 28 2 x 8-12
 5-3 x 4-20
 8-1¼ x 6-13
 1 ¼ x 3 2/10 4/16

30

Exhibit P-8.

Frank

This man is O. K. at Shanty.

Jay.

Exhibit P-8 1-2.

8/15/11

Board

Gus 284.92

Gruk 27.00

\$311.92

10

311.92**Exhibit P-9.**

Friday, Mar. 29.

Frank

This man is to receive Board at Shanty.

Jay.

20

Exhibit P-9.

Exhibit P-9 is a Federal License to sell liquor.
Not printed.

Exhibit P-10.

Dec. 13th.

Mr. Agostino Troiano

Dear Sir:

I have examined and measured building erected on Meadows between Pasica Ave. Jersey City and find one building 20 feet, 3 inches wide 10 feet high 70 feet in length.

2nd building 20 ft. 3" x 10 x 45

Two small offices one 10 x 10 x 9 and one 8 x 8 x 8 Built on Posts also one water closet. I estimate said buildings for Labor & material To cost Fifteen hundred and seventy five Dollars. (\$1575) not including painting.

WILLIAM J. WOOD
Carpenter & Builder 40

Exhibit P-10a.

	2	11.50
	9	10.75
		2.25
	16 Marzo	
	1	24.00
	2	13.50
	9	9.50
	23	1.50
10	79	7.00
	81	1.00
		102.00

Exhibit P-11.

	1	22.00
	9	8.50
	25	6.50
	32	10.50
20	45	2.50
	79	18.00
	81	1.75
	101	7.50
		7.50
	Maggio	
	1	26.25
	9	11.00
	23	4.50
	113	1.00
	157	3.25
30	159	5.00
		51.00

Exhibit P-12.

3	2.	
9	6.50	
15	.50	
8	.75	
33	3.15	
35	12.50	
39	6.23	
40	3.00	
48	10.25	10
73	19.75	
79	18.50	
112	14.50	
113	3.75	
119	3.25	
139	.50	
141	1.00	
151	10.25	
168	8.25	

 124.65
20

(16 December)

8	1.73	
9	6.25	
33	9.25	
35	3.00	
3(	2.75	
40	7.00	
68	.35	
73	2.75	
79	9.00	

30

Exhibit P-13.

	2	11.50
	3	15.75
	6	13.00
	11	12.50
	12	1.73
	15	.75
	27	7.00
	32	.75
10	33	11.00
	33	7.00
	39	3.50
	40	3.00
	43	1.75
	45	1.75
	48	2.25
	49	9.50
	50	6.00
	53	5.00
	53	17.50
	61	13.00
20	62	4.00
	70	1.00
	73	9.00
	79	18.50
	85	3.00
	89	5.00
	90	.50
	93	9.35
	95	1.00
	101	5.75
	108	8.25
30	110	12.50
	112	3.25
	113	14.25
	117	.50
	110	2.00
	120	2.75
	126	9.73
	130	.50
	131	.75
	136	8.50
	143	3.50
40	148	12.00
	151	9.75
		298.50

Exhibit P-14.

Exhibit P-14 is an Account Book. Not printed.

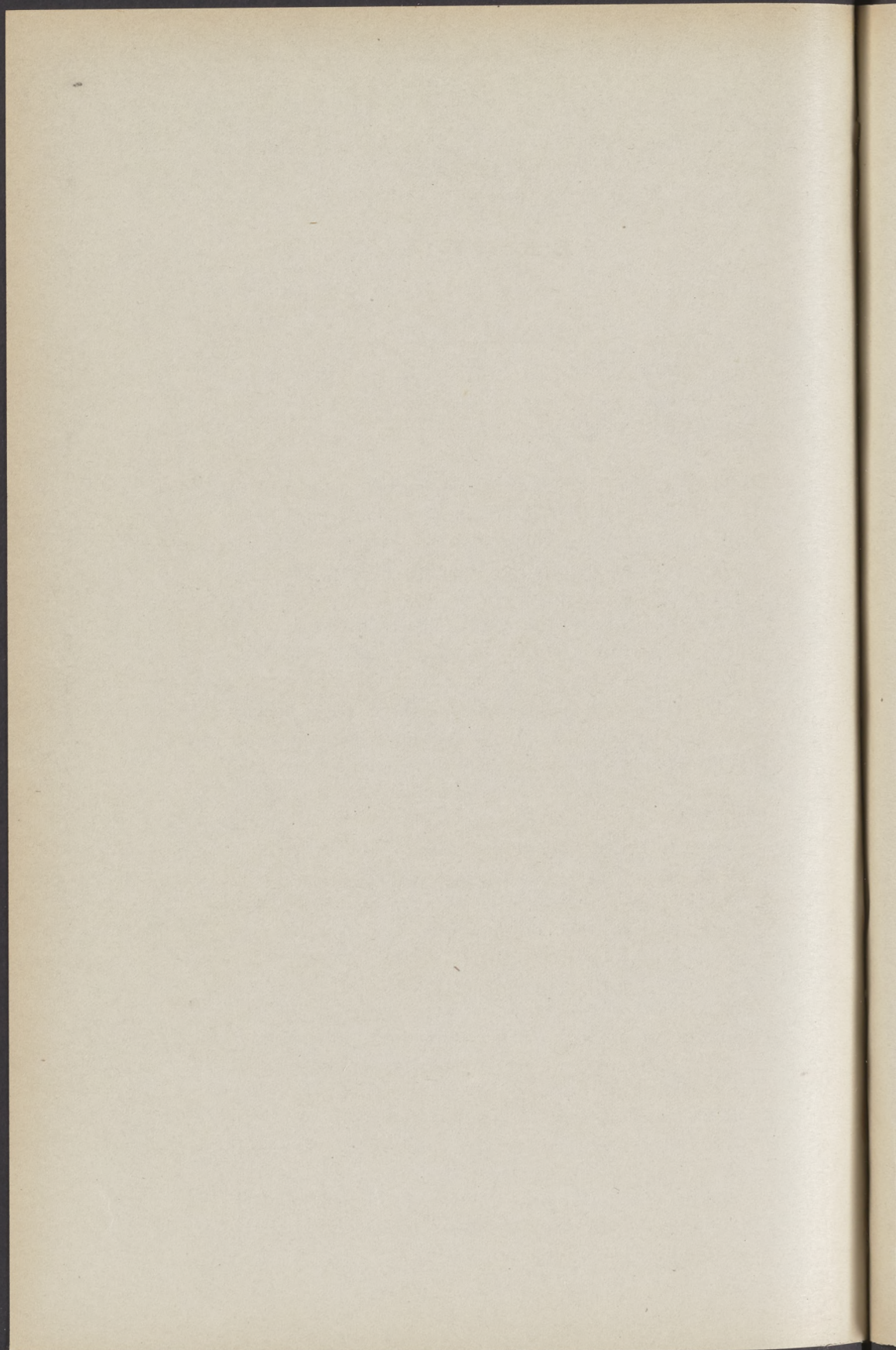
Exhibit D-1.

Extract from contract between The Boards of Chosen Freeholders of the Counties of Hudson and Essex and William Baker.

P. 37.

The said contractor hereby agrees to complete 10
all the work called for under this agreement, in
all parts and requirements, within eighteen
months after being directed by the engineers to
commence work; provided, however, that the joint
board shall have the right, at its discretion, to
extend the time for said completion of the work.
P. 89.

D.—The said party of the third part hereby 20
further agrees that he will commence work on
such day and at such place or places as the said
Boards of Chosen Freeholders or the Engineers
may designate, and progress therewith so as to
complete the work in accordance with this agree-
ment on or before the expiration of Eighteen
months (18 months) after being directed to begin
work, and in the computation of said time (ex-
pressed in days or parts of days) during which
the work or any part or section thereof has been 30
delayed in consequence of the condition of the
weather, or by any act or admission of the parties
of the first and second parts, or strikes beyond
the control of the party of the third part whereby
the receipt of material is delayed (all of which
shall be determined by the Engineers, who shall
certify to the same in writing), and also the time
during which the prosecution of the whole work
is suspended by the Engineers in charge shall be
excluded. 40



New Jersey Court of Errors and Appeals.

AGOSTINO TROIANO,

Plaintiff-Respondent,

vs.

WILLIAM BAKER,

Defendant-Appellant.

On Appeal.

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POINTS FOR APPELLANT.

Statement.

Plaintiff is in the business of supplying laborers to contractors. Defendant had a contract with the Counties of Hudson and Essex for the rebuilding of one of the sections of the Newark Plank Road which runs from Jersey City to Newark across the Hackensack Meadows. 20

Plaintiff's declaration alleges (p. 3) that on September 1, 1910, Defendant and he entered into an oral agreement by which it was agreed that Plaintiff would supply 100 to 125 laborers to Defendant "steady," and furnish board and lodging in buildings he would erect to laborers to be employed by Defendant in rebuilding the said Road; and by which contract Defendant agreed to have all his laborers board with Plaintiff, and to deduct the amount of their board from their wages and to pay the same to Plaintiff. 30

Plaintiff finished the erection of buildings (which were not on land owned or controlled by Defendant) October, 1910, and he began to supply men May 22 or 23, 1911.

The declaration alleges that on November 1, 40

1911, Defendant neglected and refused to perform the alleged agreement.

The only testimony in reference to any agreement between the parties was given by the Plaintiff and very vaguely (See p. 19); and it is difficult to spell out from that testimony the agreement alleged in the Declaration, or indeed any agreement.

10 Assuming that the testimony shows that an agreement was made September 1, 1910, it appears that the same was not enforceable because of the provisions of the Statute of Frauds.

20 The Contract (Exhibit D-1) of the Defendant with the Counties provided that the work on the Road should be completed within eighteen months after Defendant was directed by the engineers to commence work. It appears that this was a minimum time. The probability of contingencies is referred to in the contract, which would extend the time much beyond eighteen months; and as the engineers did not direct the Defendant to commence work until long after the time the Plaintiff alleged he made the agreement with Defendant, the work on the Road, under the contract, was not completed until nearly three years from the time when Plaintiff alleged he made his oral agreement with the Defendant.

Plaintiff testified:

30 That when he made his alleged agreement with Defendant he "knew all about the contract. Mr. Baker told me himself" (pp. 30-31).

He knew "about how long it would take to finish the work" (p. 31).

"Q. Quite a big job, he told you, didn't he?
A. Why it was a big job, yes.

40 "Q. And did he tell you, or did you know, how long the job was going to keep up, how long the work would last? A. Well, it didn't—I don't remember he said how long, but of course with any common sense that

work it couldn't be finished in less than two years.

"Q. So you agreed then to supply him 100 or 125 men for about two years? A. Yes, about that; about that; steady. (p. 32.)

"Q. And you thought the work would be finished in about two years? A. Of course it could not be finished before that; they couldn't do it" (p. 37).

Defendant explicitly denied ever having made any agreement with the Plaintiff of the kind alleged in the declaration. 10

Plaintiff was "a commissary man" (p. 85).

He asked Defendant "if he could supply the labor for this job" (p. 85).

Defendant "had no agreement whatever" with Plaintiff (p. 87).

Plaintiff told Defendant "that he would take a chance of getting contractors and the plants that is around in the meadows. There is some large plants in that meadows. There is the Trexler Lumber Co., there is some oil works in there, and different works with a lot of men employed there, and he was taking a chance of getting the board from all men there" (p. 87). 20

The testimony clearly shows that Plaintiff built the shacks with the expectation that he would supply laborers and board laborers who would be employed by Defendant on the contract D-1, and also that he would be able to so act with respect to other sections of the Road, "the whole Plank Road," and with respect to other laborers (p. 36). 30

Plaintiff's testimony that he spent large sums in preparing to board laborers shows that he expected the work under contract Exhibit D-1 to last much more than one year.

Defendant's employees, to oblige Plaintiff, made some collections for the Plaintiff of amounts due for board from the laborers. Defendant did not know of this. Mr. Hartigan, Defendant's Super- 40

intendent, tells why this was done (p. 95). It was not done pursuant to any agreement, or pursuant to any right of Plaintiff to have it done.

10 Plaintiff furnished too much intoxicating liquor to the laborers, and also "he assessed each man 50c. a day for his privilege of shanty, and most of these men lived at home, and of course were not donating 50c. a day to Troiano" (p. 94). Plaintiff also did not supply laborers in the number and as he himself testified, he should have done under his alleged agreement.

Plaintiff asked Defendant's employees to collect sums from the laborers representing, not only board, but also liquor, shoes and clothing, sold to laborers, and also cash advanced to them, &c. Defendant's employees refused to deduct such sums from the wages of the laborers.

Plaintiff claimed \$2262.74 (p. 7).

20 The judgment was for \$400. No one can tell how the jury arrived at this amount. It represents, I respectfully state, an illogical compromise, and an attempt to "give the plaintiff something."

POINTS.

Because of the provisions of the Statute of Frauds, the agreement alleged was not enforceable.

We have this situation:

30 a. The terms of the agreement were such that it is thereby shown that the agreement was not to be performed in a year.

b. Plaintiff knew that the alleged agreement would not be performed in one year from the time it was made.

c. It was impossible, certainly impracticable, to perform the alleged agreement in one year from the time it was made, if the agreement is given a
40 reasonable construction.

d. If the alleged agreement was made it was distinctly contemplated by both parties that its

performance would take more than one year from the time it was made.

e. More than one year actually elapsed between the time when the Plaintiff alleged the agreement was made, viz.: "August or September, 1910," to the time when the Plaintiff states the Defendant refused to perform, viz.: November, 1911.

f. The agreement covered a period of nearly three years.

10

The Statute of Frauds is no shield at all against the enforcement of oral agreements if it does not apply to the facts of this case.

The trial judge should either have granted the motion to non-suit, or directed a verdict. His reasons for holding the case for the jury do not fit the facts in the case. The case of *Okin v. Selidor*, 78 Atl. 778 referred to by him, when he refused to non-suit, does not apply; and I do not need to question the authority of that case at all.

20

A verbal agreement which cannot be performed within one year from the making thereof is within the Statute, although performance might have been completed within one year from the time it was to begin. The year runs from the day when the agreement is made and not from the day when performance is to begin.

20 *Cyc.* p. 198.

30

The fact, however, that by a mere possibility a contemplated act may be performed within a year will not of itself suffice to withdraw a case from the operation of the Statute if it clearly appears from the terms of the contract or from its nature that it was not the intention or understanding of the parties that it should be performed within that time.

Ibid., pp. 199, 200.

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The Plaintiff's testimony clearly showed that

the contract could not be performed within a year from the time it was made; and it also clearly appeared, by the Plaintiff's own testimony, that from the terms of the contract and from its nature that it was not the intention or understanding of the parties that it should be performed within a year from the time it was made.

10 A verbal agreement, which, although it stipulates no definite time for its performance, will of necessity, according to a reasonable interpretation of its terms, require more than a year for its performance is within the Statute and void.

20 *Cyc.* 206.

The trial judge was of the impression that the intention of the parties had little, if any, bearing on the matter. He said (p. 82): "All we have in this case to show that this contract might take over a year is the expression of Mr. Troiano that he thought it would take over a year; and he said in explanation of that notion on his part that that was a mere opinion or notion on his part that it might take longer."

What the Plaintiff said was much more than this (see his testimony on a previous page of these Points). He did not say it was "a mere opinion or notion on his part." What he said was,

30 "With any common sense that work it couldn't be finished in less than two years" (p. 32).

"Of course it could not be finished before that; they couldn't do it" (p. 37).

Plaintiff viewed the agreement as one that was certain to take two years.

The trial judge held that (to make an agreement unenforceable) there should be "such affirmative terms in the contract as exclude performance within the year," or "where the subject matter itself is of a character that renders it impossible that it should be performed within the

year." The agreement alleged contained no express or stated terms amounting affirmatively to an exclusion of performance within a year, for the agreement falls within the classification of "Agreements Containing No Definite Stipulation as to time of Performance." As the alleged agreement was not to be performed until the time of the completion of the work to be done by the defendant under his contract with the counties, and the terms of this latter contract must be read into the alleged agreement, it may be fairly said that the agreement was impossible of performance within a year. Plaintiff testified he "knew all about the contract" which defendant had entered into with the counties. "Mr. Baker told me himself" (pp. 30-31). So that the contract of defendant with the counties became "a term" of the agreement alleged by the plaintiff, and a term showing that the agreement was not to be performed in a year from the time it was made. It seems to me that the principle above herein cited applies, viz.: "A verbal agreement, which, although it stipulates no definite time for its performance, will, of necessity, according to a reasonable interpretation of its terms, require more than a year for its performance is within the Statute and void."

I think "impossibility" should receive "a reasonable interpretation." Otherwise, it might be held that it is "possible" to perform in a week a contract to build a road which could not be built in any reasonable or customary way in three years. Surely the "reasonable interpretation" which we contend for, may be put upon the agreement when such interpretation agrees with the interpretation of the plaintiff seeking to enforce the agreement.

If the parties did not contemplate performance within a year, the agreement is within the Statute, although no time for performance is specified.

If it appears to have been the understanding of the parties to an agreement at the time that it was not to be completed within a year, though it might, and was in fact performed within that time, it is within the Statute and cannot be enforced.

Bodell v. Drummond, 11 East., 142.

10 It is, of course, true that the Statute applies when from the language used it must necessarily be understood that the agreement was not to be performed within a year or it was the distinct intention of the parties that it should not be performed in that time.

Elliott on Contracts (1913), Section 1281.

20 A consideration of the subject matter of a contract may, however, show just as clearly that it was not to be performed within a year as if there were an express agreement in the terms of the contract. So, also, a consideration of the circumstances and subject matter might show that performance of it within a year would require such extraordinary methods, such extraordinary appliances or resources, as could not, by fair construction, be regarded as within the intention of the parties at the time when the contract was
30 made. Thus, contracts for the cutting and sawing of timber, where, when considered in connection with the amount of timber to be cut and the facilities for doing the work, it is apparent that a period longer than one year will elapse before the work can be fully performed, have been held within the Statute.

Elliott on Contracts (1913), Section 1287.

40 The "circumstances existing at the time" the agreement was made, must be considered, in as-

certaining the "terms" of the agreement, and the terms must have "a fair and reasonable interpretation."

Also "reasonable implications must be made." Surely, when the plaintiff has testified, "Of course with any common sense that work it couldn't be finished in less than two years," and, "Of course it could not be finished before that; they couldn't do it," and it appears that the two years were not to begin until sometime after the agreement was made, it is "a reasonable implication" that the plaintiff made an agreement not to be performed in one year from the time when he made it.

10

The case of *White v. Filts*, 102 Me., 210, 66 Atlantic Rep., 533 (1906) is instructive. The opinion in this case quotes *Brown on the Statute of Frauds* (5th Ed., par. 281). I quote parts of the opinion:

"Where the manifest intent and understanding of the parties, as gathered from the words used and the circumstances existing at the time, are that the contract shall not be executed within the year, the mere fact that it is possible that the thing to be done may be done within the year, will not prevent the statute from applying. * * * Such an accomplishment must be an execution of the contract according to the understanding of the parties. *Brown on Statute of Frauds* (5th Ed., Sec. 281).

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30

"The provisions of the statute render a verbal contract void, if it appears to have been the understanding of the parties at the time that it was not to be completed within a year, although it might be, and was, in fact, in part performed within that period (citing authorities).

"Who can doubt what the express and specific understanding of the parties in the case at bar was? And that it was not to be performed within one year? Or, at any rate, that it appears to have been so understood by them?

40

10 "The subject-matter of a contract might be a thing which could not possibly be done within a year. A consideration of the subject-matter would show just as clearly that it was not to be performed within a year, as if there was an express agreement in the terms of the contract that it was not to be performed within a year. So, also, a consideration of the circumstances and subject-matter might show that performance of it, within a year, would require such extraordinary methods, such extraordinary appliances or resources, as could not by fair construction be regarded as within the intention of the parties, at the time when the contract was made; and the question is, considering the subject-matter, and the situation of the parties as known to each other, and reading the contract in the light which these give, whether, by fair construction, it was within the understanding and intention of the parties, as expressed in the contract, that it might be performed in a year, or not."

20 (The contract of the defendant with the counties, Exhibit D, has not been printed as an exhibit, for it is very voluminous. A copy has been filed with these Points; from which it will be seen how extensive the work to be done was; and from which can be seen the details and the complications of the work, covering, as it did, the rebuilding of the important and much traveled "Plank Road" and the preserving the use of the

30 road for vehicular and trolley traffic during the time the rebuilding was done.)

40 "The meaning of the terms of a contract, it need not be said, is to be ascertained by interpreting them in the light of the subject-matter to which they relate. They may mean something when used in reference to one subject, or by parties in one situation, and another thing when used under other circumstances in regard to another subject and the true construction in each instance will be that which applies the contract to the *res* about which the parties were dealing,

and reproduces the intent which they themselves have expressed in it. A description of the nature and extent of the work stipulated to be done, in the absence of express provision on the subject, may be an indispensable element in determining whether the work was by the contract to be done in a year, or whether the contract was one not to be performed in that time. It may show performance impossible in that period, or so impracticable as to be plainly beyond the scope and intent of the agreement as expressed in the language used. 10

"What was the contemplation of the parties in the case at bar? What was understood by them as a matter of contract respecting the time within which the work was to be completed?

"Considering then, the terms and subject-matter of the contract, the nature and extent of the work to be done, and the knowledge of the parties respecting the capacity of the mill, and all the circumstances governing the progress of the work, the conclusion is irresistible that it was not contemplated or understood by the parties that the contract was to be performed within one year from the making of it, and that no other reasonable inference can be drawn from the testimony." 20

The trial judge assumed that the evidence showed that "the function of one of the parties was to be fully performed within the year." But this was not in accordance with the fact. And if it were so I contend it would make no difference. For one thing, plaintiff was to supply 100 to 125 men "steady" during the whole period of the contract of defendant with the counties. He did not do that. 30

Moreover, performance by one party is not performance of the agreement, and, in any view, the part of the contract sued upon comes within the Statute for which the part performance is 40

only the consideration, and a valid legislative enactment is binding upon the Court and all parties until repealed or modified by the legislature, and to hold that performance on one side within the year takes the case out of the Statute amounts to judicial legislation.

- 10 "The doctrine that part performance of a contract will make valid a contract invalid by the statute is exclusively the creature of equity, and applies only to contracts relating to land."

McElroy v. Ludlum, 32 Eq., 828.

- 20 The Courts of Massachusetts, New York, New Hampshire and Vermont hold that contracts in which all that one of the parties is to do in performance of the agreement is to be or has been done within a year, the performance by the other party being postponed for a period longer than one year, are within the Statute.

Frary v. Sterling, 99 Mass., 462;

Emery v. Smith, 46 N. H., 151 (in which numerous cases are cited and discussed);

Pierce v. Paine, 28 Vt., 34;

Broadwell v. Getman, 2 Denio, (N. Y.) 87;

Kellogg v. Clark, 23 Hun, (N. Y.) 393.

- 30 "The Statute applies with equal force to a contract where the consideration has been executed fully by one of the parties, and to one where the whole promise is executory."

Marcy v. Marcy, 9 Allen (Mass.) 11.

In this case of *Marcy v. Marcy*, this phase of the question was before the Massachusetts Supreme Court for the first time, and the question is fully discussed by Bigelow, C. J.

- 40 "But this action it is said, is not brought upon the agreement itself, but upon the refusal of the appellee to execute the agreement. In other words, although no action

can be brought upon the agreement because it is a verbal agreement, yet it is contended that an action may be maintained to recover damages of the appellee because of its refusal to execute agreement. Such a contention is, it seems to us, a contradiction in terms.

"If no action will lie upon the agreement, upon what principle can the appellee be held liable in damages for a refusal to carry out the terms of the agreement? The object of the statute was to prevent fraud and perjury in setting up verbal agreements not to be performed within a year, and the evidence in support of an action for the refusal by one of the parties to carry out such an agreement, must necessarily be the same—that is to say, parol evidence—as would be required in an action upon the agreement itself, thus coming directly within the mischiefs which it was the object of the statute to prevent. Such a contradiction is inconsistent altogether with both the spirit and the letter of the statute."

Green v. Pa. Steel Co., 75 Md., 111. 20

Even though this action be viewed as one based on the money counts, the plaintiff cannot recover.

"The sole object of the plaintiff's action was the recovery of damages for the non-performance of the executory portion of the agreement made. That, he was bound to establish for the purpose of sustaining the legal theory of his case. And when he did so, the statute interposed against him, by declaring the stipulation he relied upon void, by reason of the circumstance that it still remained executory. If the power exists to maintain an action for the non-performance of one portion of a contract, void by the statute of frauds, it is difficult to see what can stand in the way of allowing the same thing to be done where an entire omission to perform may be shown by the evidence. And that would be no less than a repeal of the statute itself. If the statute can be disregarded as to any one part of the contract remaining executory, the same reason will

justify the Courts in doing the same thing by it or to the others, and as to all of them together. It can hardly require authority to show the impropriety of such an administration of the law. In this respect the case is very much like that of *Bautett v. Wheeler* (44 Barb., 162), where it was held that an action could not be maintained for the recovery of damages for the non-performance of a portion of an entire contract void by the statute of frauds, even if other and material portions of the agreement had been fully executed" (citing cases).

Weir v. Hill, B Lans. (N. Y.), at pages 281-282.

If it should be argued that the defendant may be held on the money counts, it is to be said that the damages sought to be proved were not of a nature to be recoverable under those counts. Defendant received no benefit from the alleged breach of the agreement. Nothing in the list of the losses alleged by the plaintiff came to the defendant as a benefit now to be recovered by the plaintiff from the defendant under the money counts. The amount sought to be recovered cannot be viewed as damages for a breach of contract, if I am right in my contention that there was no enforceable agreement. If plaintiff could recover from the defendant on the money counts, he could recover only "the consideration of the contract." What was the consideration? He could recover on the money counts only "such consideration as came to the defendant's use." (Ch. J. Redfield, *Pierce v. Paine*, 28 Vt., 34.)

Plaintiff proved sums alleged to be due plaintiff from laborers, for liquor, clothes, and shoes, sold by him to them, for board the laborers had not paid to plaintiff, for cash advanced by plaintiff to laborers, all of which sums he claimed defendant *should have collected* for plaintiff. But defendant *did not receive* these sums; *he had no*

benefit from them; they were not consideration for the agreement which the plaintiff could recover from the defendant on the money counts on the theory that as defendant repudiated an agreement unenforceable under the statute of frauds, he should return the consideration for the agreement received by him from the plaintiff.

These sums alleged by the plaintiff to have been lost by him *were not paid to the use of the defendant*, and so no implied contract arose in favor of the plaintiff to have the sums returned by defendant to him. It would not be sufficient for the plaintiff to prove, generally, merely a payment made by the plaintiff on account of the defendant; he would need to show an order or request by defendant to make the payment (*Saunders on Pleading*); and he could not show such order or request without relying upon the proof of the unenforceable agreement alleged by him. 10

Moreover, plaintiff could recover on the money counts only where he had fully performed the agreement and performance had been accepted. Also, plaintiff proved *damages alleged to have arisen not within the year*, but after November, 1911 (the time of breach alleged by plaintiff), a time more than one year after the time the contract was alleged to have been made. 20

I respectfully submit that the Appeal should be sustained, and the judgment reversed.

MARSHALL VAN WINKLE,
Attorney for Defendant. 30

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NEW JERSEY
Court of Errors and Appeals.

AGOSTINO TROIANO, -

Plaintiff,

vs.

WILLIAM BAKER,

Defendant.

On Contract.

Brief of Plaintiff-Respondent.

This action was brought by Agostino Troiano against William Baker, to recover damages which the plaintiff alleges accrued to him by reason of the breach of a contract which he claims existed between the defendant and himself with respect to furnishing shacks and shanties, &c., on a job which Mr. Baker had in the construction of the Plankroad, running from Jersey City to Newark.

Plaintiff sued on a special count and the common counts.

The plaintiff claimed \$2,662.74 damages. The verdict was \$400 (p. 9). The defendant admits that an item of \$27.00 for a desk was properly found against him (p. 2). As to the balance of the verdict amounting to \$373.00, the defendant claims that it should not be allowed to stand because of Section Five of the Statute of Frauds which provides: "That no action shall be brought upon any agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or

some other person thereunto, by him or her lawfully authorized."

The fact seems to be undisputed that the contract of the plaintiff was actually performed within the year. The defendant relies on what is referred to by him as the intention of the parties not to perform the contract within the year. This is set forth in the motion for non-suit (p. 80): "Mr. Troiano said that the work that Mr. Baker was to do on this Plankroad could not be done in less than two years, and he said he knew all the circumstances of the contract, and that he erected these buildings with the intention—and I think the intention governs in cases of this kind to a large extent—with the intention of using the buildings for the boarding of men that Mr. Baker might employ on this and probably on other sections that he might later get contracts to do on the Plankroad." There was no request to direct a verdict and no exceptions to the charge.

It is admitted by the notice of appeal (p. 2) that there was a contract between plaintiff and the defendant. The only question raised is whether that contract could have been performed within the year. The defendant claims that while the contract was actually performed within the year, yet there was an intention not to perform it within the year, and that because of such intent it should have been in writing.

The plaintiff claims that there was no intent that the contract should not be performed within one year. The contract, on the part of the plaintiff was performed within one year. As to the expenditure of about \$2,075, it was intended that this expenditure was to be made within the year, because the contract could not be carried out in any respect until this had been done, and the defendant loaned money to the plaintiff for this purpose. The de-

fendant must, however, base its contention that the contract was not intended to be performed within one year, on the ground that the plaintiff expected to board the employes of the defendant so long as the contract between the defendant and the Board of Chosen Freeholders might exist (Ex. D 1, p. 135). The attention of the Court is directed to the terms as expressed in Ex. D 1: "The said contractor hereby agrees to complete all the work called for in this agreement, in all parts and requirements, within eighteen months," etc. There is nothing in this contract that provides it shall not be completed within one year and, in fact, the contract might have been completed in six months. The defendant, however, was required to complete his contract with the freeholders within eighteen months. This did not mean that the contract between Troiano and Baker should continue for eighteen months. There was no specified term for the contract between Baker and Troiano, and it was, in fact, completed in less than a year. The defendant's whole case fails to show that there was an intention on the part of either Mr. Troiano or Mr. Baker not to complete the contract between them, within one year.

The contract on Mr. Troiano's part was completed when the buildings were erected and equipped ready to board employes. The damages accrued to Mr. Troiano within the year, when the defendant would no longer have his employes board with Mr. Troiano.

The attention of the Court is directed to the notice of appeal. The notice of appeal does not set up as a ground of appeal that the contract was not actually performed within one year. It seems proper, therefore, to assume that the defendant admits that the contract was actually performed

within the year. The jury finds that it was performed within the year, and the defendant finds no legal fault with the verdict of the jury in this regard.

The following cases have been decided in New Jersey, construing the part of that section of the Statute of Frauds which is relied upon by the defendant:

Mowed R for board, and in 1849 sold a lot of land to D. In consideration thereof, D promised M that he would pay, as part of the consideration money, to R \$100 per year after the death of M as long as R should live. M died in 1849 and R in 1858. On an action of assumpsit brought by the administrator of R against D in 1859—

The fifth ground of demanding a non-suit was because the agreement was void under the statute of frauds, as it was not reduced to writing, and was an agreement not to be performed within a year. But here the contract on the part of Mead was actually and entirely performed, at the very time of making it. His deed was actually executed and delivered, and the defendant went immediately into possession under it, and always has been, and still is in possession of the premises under it, and always has, and still does receive the rents of the same under it. He now seeks to keep the land under the deed, and repudiate the consideration money by force of the statute of frauds. But the statute of frauds applies to no such case. It only applies to cases where neither side is to perform the contract within one year. At least it does not apply to cases where one of the parties is to perform, and does in fact perform immediately.

Berry vs. Doremus, 30 N. J. L., 403.

The action was brought by the plaintiff below

against the executors of the estate of his father to recover compensation for work and labor performed for his father upon a contract made after he became of age. A verdict was rendered for the plaintiff. On the trial various exceptions were taken by the defendants to the ruling of the Court and were afterwards brought before this Court by writ of error.

Now, taking it as a contract to work for the father while he lived, to be paid at his death, it would not be void of the statute of frauds, as a contract not to be performed within a year. It comes within those cases where the agreement depends upon a contingency which may happen within the year. The testator might have died within the year and compelled the performance of the contract. Brown on Frauds, Sec. 273-4-5-6, and the cases referred to.

If the testator turned the plaintiff away, so that he could not perform that contract, then the plaintiff could maintain his action for his labor already performed, and upon the common counts. Story on Contracts, Sec. 972; 1 Parsons on Contracts, 527, note V., and cases there cited. And, even if such contract was void by the statute of frauds, if the testator was in fault by turning the plaintiff away, the suit could be brought for the services rendered under the common counts. Smith vs. Adm'rs of Smith, 4 Dutcher, 217; Brown on Frauds, Sec. 118.

And some cases go so far as to allow the plaintiff to recover for personal services when there is only a part performance of a contract not to be performed within a year and he himself has repudiated it. Brown on Frauds, Sec. 122.

Udike vs. Ten Broeck, 32 N. J. L., 116.

Although a contract in term covers a period of five years yet, if under its terms performance may be required of the promisor within one year, an action is not barred by the statute of frauds (2 Gen. St., 1895, p. 1602,) if within such year the event upon which the duty of performance depended actually happened. A contractor who agreed that a sidewalk laid by him should stay in good condition for five years is liable to an action based upon a breach of such contract occurring within one year from the date, such agreement not being one "that is not to be performed within one year from the making thereof."

Subdivision 5, Sec. 5, Statute of Frauds, 2 Gen. St., 1895, p. 1603; *Okin vs. Seldor*, 78 At., 770.

The District Court found that the plaintiff had resided with the defendant prior to his marriage; that upon that event, he provided another house for her, and promised to pay her a certain sum (afterwards fixed at \$10) weekly as long as she should continue to reside in the new house; that she was still residing in the house; and that the defendant had failed to pay the weekly allowance for ten weeks. He rendered judgment in favor of the plaintiff for \$30.

Before the Trial Court, this objection was stated to be that the contract was not to be performed within one year. That contracts of this character do not require a memorandum in writing under the fifth section of our statute of frauds has been decided by this Court. (*Eiseman vs. Schneider*, 60 N. J. Law, 291; 37 Atl., 623).

Burgesser vs. Wendel, 62 At., 994.

The defendant made an oral agreement twenty

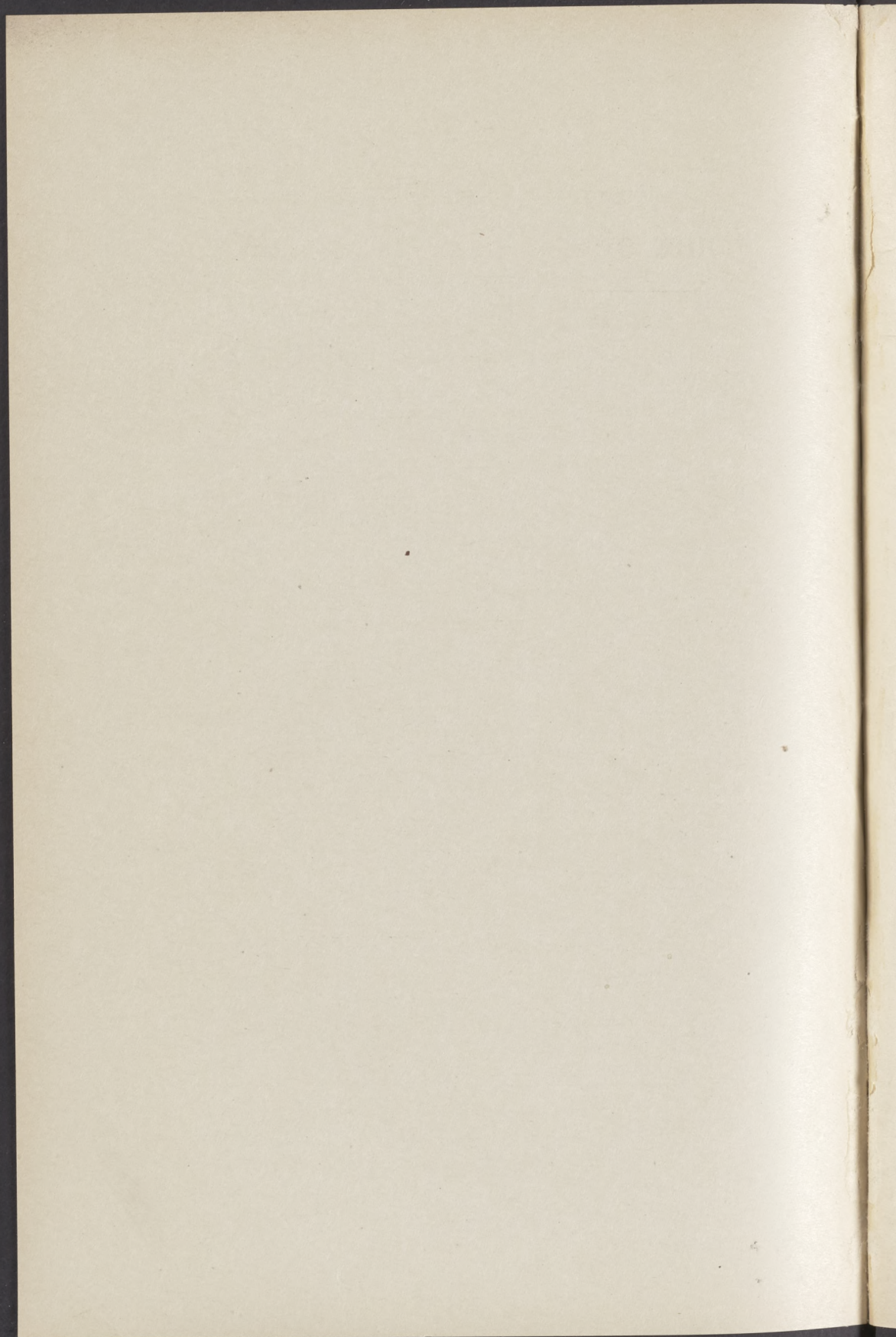
years ago that in consideration of certain domestic services to be performed by the plaintiff, he would maintain and support her during her lifetime. Held, that this contract was not within the statute of frauds, because it might have been fully performed and terminated by her death within a year. Where the agreement was to be performed upon a contingent, and it does not appear within the agreement that it is to be performed after the year, there a note in writing is not necessary, for the contingent might happen within a year; but where it appears by the whole tenor of the agreement that it is to be performed after a year, there a note is necessary; otherwise, not.

Eiseman vs. Schneider, 60 N. J. L., 291.

In the case before the Court the suit was based upon a contract and also upon the common counts. Baker was at fault in refusing to have further dealings with Troiano. Baker broke his contract. The plaintiff, Troiano was, therefore, entitled to recover under the common counts. Updike vs. Ten Broeck, 32 N. J. L., 116.

It is respectfully submitted that the appeal should be dismissed and the judgment of the Trial Court should be affirmed.

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Atty. and of Counsel with Respondent.



the *clear yearly income*. In this case it is practically nothing calculated on the clear yearly income. It is \$1,146.41 calculated on the gross proceeds.

Now the rule is imperative that the difference between that calculated on the clear yearly income, which is nothing, and that calculated on the gross proceeds of sale, shall be divided in half, and that that half shall be the amount to which the widow is entitled.

In this case, on that calculation and under that rule, she would be entitled to \$573.21.

This is the hard and fast rule.

This is the only definite calculation provided for a gross sum in lieu of dower. The decision before referred to and the rule (185) leaves it then in the opinion, "under all the circumstances of the case, for the person calculating, to determine whether this is a reasonable satisfaction."

The reason of this is clearly evident.

If a piece of land *produced no income*, it is of *no value* to the plaintiff as doweress.

She could not sell it. All she could do was to have her dower assigned and hold one-third. In paying the taxes for this, it was a loss to her.

In other words, the income may be naught or anything above naught, and the rule will apply.

The only use that the plaintiff could have of the land was the income she received. She could not put any improvements on it that would not accrue to the benefit of the remaindermen, which was absolutely worthless to her.

The heirs could have held this land and allowed it to increase in value, and the widow get nothing out of it.

She knew that. And everything she gets out of it is a pure gain to her.

If she is allowed \$573 it is an absolute gift.

If it was not sold, her dower assigned her in

the one-third, she would have gotten no income and been obliged to pay the taxes or lose her life right for waste.

The claim made in the plaintiff's brief that she was to have 22 per cent of the selling price is preposterous. They naturally would not sell the property on those terms. The state of the case, and everything indicates that she was to have a *gross sum in lieu of her dower* as calculated by the rules.

Had she intended, it was easy for the plaintiff to have fixed a specified price that she would release her dower for. And had she had any fixed price in mind, the most natural thing when the question came under discussion would have been for her to have asserted that she had closed at a definite price, but instead the parties' minds continued to run on the manner in which the price should be determined, and all through the correspondence the question of how it was to be calculated continued to be discussed.

The plaintiff had no way of converting her dower into money or of doing anything but having one-third of the land set off.

The value of her dower is what her dower would bring in cash. This is probably the best way to determine it.

Suppose her one-third of this property had been set off, it would have been a strip of land 33 1/2 feet by 175 feet for her to use for life, she to pay the taxes.

What would this be worth?

If the fee was worth \$1,500, what was her life estate in it, taking all the uncertainties of her living?

Would anyone have given for her life estate in that strip of land, \$500?

