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NOTICE OF APPEAL.

Filed February 5, 1931.

Essex County Circuit Court

GIOVANINA CAPARASO,

Plaintiff,

vs.

SAMUEL SCHECHNER,

Defendant.

*Action
at Law.*

*Notice of
Appeal.*

10

To Stein, McGlynn & Hannoch, Esqs., attorneys
of defendant:

TAKE NOTICE that the plaintiff appeals to the
Court of Errors and Appeals from the whole of
the judgment entered in this cause.

20

Dated February 4, 1931.

FRANK E. BRADNER,
Attorney of Plaintiff.

Service is hereby acknowledged this 4th day of
February, 1931.

30

STEIN, MCGLYNN & HANNOCH,
Attorneys of Defendant.

40

SUMMONS.

Filed October 21, 1926.

The State of New Jersey to Samuel Schechner:

10 (L. s.) YOU ARE SUMMONED to answer the annexed complaint of Giovannina Caporaso, in an action at law in the Essex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the Essex County Circuit Court, at Newark, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 Witness, Nelson Y. Dungan, Judge of the Essex County Circuit Court, at Newark, this twentieth day of October, one thousand nine hundred and twenty-six.

JOHN H. SCOTT,
Clerk.

ZINK & LAFFERTY,
Attorneys.

30

40

COMPLAINT.

ESSEX COUNTY CIRCUIT COURT.

GIOVANNINA CAPORASO, <i>Plaintiff,</i> <i>vs.</i> SAMUEL SCHECHNER, <i>Defendant.</i>	}	<i>Action at Law.</i> <i>Complaint.</i>	10
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Plaintiff, Giovannina Caporaso, residing in the City of Newark, County of Essex and State of New Jersey, says that:

1. On August 1, 1924 plaintiff became entitled to receive from Vinanzo Luciani and Maria, his wife, a bond conditioned upon payment of the sum of \$5,940 and a mortgage to secure payment of said sum. 20

2. On said date, without the knowledge or consent of plaintiff, the defendant by his agent and attorney, caused said bond and mortgage to be made payable to defendant.

3. Defendant has received the full amount of said \$5,940 with interest from August 1, 1924 to the dates of payment. 30

4. Defendant is entitled to a credit on account of the amount so received in the amount of \$1,534.76.

5. The balance of \$4,405.24, with interest, is now due and owing to plaintiff, no part thereof having been paid by defendant to plaintiff.

Plaintiff demands as damages \$3,905.24, with interest from August 1, 1924.

ZINK & LAFFERTY,
Attorneys of Plaintiff. 40

ANSWER.

Filed April 19, 1928.

The defendant, Samuel Schechner, of the City of Newark, in the County of Essex and State of New Jersey, answering, says:

10

1. He denies the truth of the matters contained in the complaint except so far as admitted in the following statement:

On June 28, 1924 the plaintiff Giovannina Caporaso and Emilio Caporaso, her husband, being the owners of premises 310-312 Fourteenth avenue, Newark, New Jersey, entered into an agreement with Vinanzo Luciani for the sale of said land and premises which agreement was consummated on August 1, 1924.

20

Defendant at that time was the holder of a bond and mortgage in the principal sum of \$4,000 made by said plaintiff and her husband, embracing said land and premises and was also the holder of a promissory note made by said plaintiff and her husband to the defendant in the sum of \$500 and upon which mortgage and note there was due on August 1, 1924 the sum of \$4,578.

30

Plaintiff and her husband were unable to satisfy defendant's mortgage out of the proceeds of said sale and an arrangement was thereupon entered into between the defendant and the plaintiff and her husband, whereby the purchase money mortgage given by said Vinanzo Luciani and Maria Luciani, his wife, in the principal sum of \$5,940 were made and executed to the defendant, in consideration of which the bond and mortgage so held as aforesaid by the defendant were delivered up for cancellation and the said note paid.

40

Answer.

Subsequently the defendant accounted to the plaintiff and her said husband for their interest in said bond and mortgage after deducting the amount owing to the defendant and in consideration thereof the plaintiff and said Emilio Caporaso released any interest which they may have had in said bond and mortgage. 10

FIRST SEPARATE DEFENSE.

Defendant says that he has paid to the plaintiff whatever sums were due her for her interest in the bond and mortgage referred to in the complaint.

SECOND SEPARATE DEFENSE.

Defendant says that Emilio Caporaso, the husband of said plaintiff acted as her agent in the transaction referred to in the complaint and was authorized by the plaintiff to receive payment on her behalf of any sums which may have been due her from the defendant. 20

Defendant hereby gives notice that at or before the trial of said action he will object that said complaint does not allege or disclose any cause of action against the defendant and the defendant hereby and herein sets up and raises the objection that said plaintiff does not allege or disclose any cause of action against the defendant. 30

SAMUEL ROESSLER,
Attorney of Defendant.

Consent is hereby given to the filing of the within Answer as within time.

FRANK E. BRADNER,
Attorney for Plaintiff. 40

REPLY.

Filed April 24, 1928.

Plaintiff, in reply to the answer filed by the defendant, says:

10 1. She denies that there was \$4,578.00 due to the defendant as alleged in said answer.

2. She denies that the proceeds of sale of the property were insufficient to pay a mortgage held by the defendant and denies that the mortgage of \$5,940.00 was made in consideration of a bond and mortgage held by the defendant, and repeats the allegation in paragraph 2 of the complaint.

20 3. Plaintiff denies that she has been paid the amount due her from said defendant, and denies that she has released him or released any interest in the said bond and mortgage.

REPLY TO FIRST SEPARATE DEFENSE.

Plaintiff denies that the defendant has paid her the amount due to her for her interest in the bond and mortgage referred to in the complaint.

REPLY TO SECOND SEPARATE DEFENSE.

30 Plaintiff denies that Emilio Caparaso, her husband, acted as her agent, and denies that he was authorized to receive payment on her behalf of any money due her from the defendant.

FRANK E. BRADNER,
Attorney of Plaintiff.

Service is hereby acknowledged this 23rd day of April, 1928.

SAMUEL ROESSLER,
Attorney of Defendant.

RULE FOR REFERENCE.

Filed January 9, 1929.

The above-entitled cause being regularly upon the calendar, at this December Term, 1928, and it appearing to the Court that matters of account are involved in said cause, it is on this 9th day of January, 1929, on motion of Stein, McGlynn & Hannoch, attorneys for the defendant, 10

ORDERED, that the same be referred to Nicholas La Vecchia, Esq., a Supreme Court Commissioner, to take and state the account between the parties, and to report the same to the Court within sixty days; and it is further

ORDERED, that the rights of the respective parties hereto to a trial by jury are hereby reserved to them. 20

WM. A. SMITH,
Judge.

Rule entered January 9, 1929.

We hereby consent to the entry of the above order.

FRANK E. BRADNER,
Attorney for Plaintiff. 30

STEIN, MCGLYNN & HANNOCH,
Attorneys for Defendant.

**RESERVATION OF RIGHT TO TRIAL
BY JURY.**

Filed January 10, 1929.

10 This cause coming on for trial and the Court
having referred the same to Nicholas La Vecchia
to state and report an account between the
parties, the plaintiff hereby reserves her right
to trial by jury pursuant to the statute in such
case made and provided.

Dated January 9, 1929.

On motion of

FRANK E. BRADNER,
Attorney of Plaintiff.

20

REPORT OF REFEREE.

Filed February 27, 1930.

To Honorable William A. Smith, Circuit Court
Judge:

30 In pursuance of an order of the Court made
in the above cause, bearing date the 9th day of
January, 1929, whereby it was ordered that the
above-entitled cause be referred to me, Nicholas
La Vecchia, to take and state the account between
the parties; and to report the same to the Court,
I, the said Referee, do respectfully report to the
Court that I was first duly sworn faithfully
and fairly to hear and examine the cause in ques-
tion, and make a just and true report according
to the best of my skill and understanding, as will
appear by the oath taken by me and hereunto
annexed; that I was attended by Frank E. Brad-
40 ner, attorney of plaintiff, and Edward R. Mc-

Report of Referee.

Glynn, attorney of defendant; that Louise W. Woerner and Louis Winard were duly sworn by me to faithfully and truthfully take stenographically and reproduce in typewriting the testimony to be given in the above-entitled cause, as will appear by the oaths taken by them and hereunto annexed; 10

I find and report as follows:

The plaintiff brought this suit to recover from the defendant the sum of \$3,905.24, representing her alleged share of moneys collected by the defendant on account of a certain mortgage in the sum of \$5,940.00, made by one Venanzio Luciani and his wife to secure the payment of part of the purchase price of premises No. 310-312 Fourteenth avenue, Newark, N. J., which the plaintiff sold to the said mortgagor said mortgage being taken in the name of the defendant to secure the payment of an indebtedness due him from the plaintiff. Plaintiff alleges that the defendant has received the full amount of said mortgage, viz: \$5,940.00 with interest from August 1, 1924; that the defendant is entitled to a credit of \$1,534.76, representing moneys due to the defendant from the plaintiff, leaving a balance of \$4,405.24. 20

The facts as I find them from the testimony were as follows: 30

The plaintiff, who is the wife of Emilio Caparaso was the record owner of premises No. 310-312 Fourteenth avenue, Newark, N. J., upon which she had erected a building under the supervision, direction and control of her husband, who appears to have been the beneficial owner of said lands and premises. The defendant assisted the plaintiff financially and otherwise in the con- 40

Report of Referee.

struction and erection of said building, having previously assisted the plaintiff's husband financially in connection with other real estate transactions. During the course of construction of said building, controversies frequently arose with contractors and materialmen. All matters pertaining to the erection and construction of said building and the settlement of controversies with materialmen and contractors and the details of financing the said construction work were attended to by the plaintiff's husband. Said plaintiff held her husband out as her general agent for the purpose of transacting such business, all of the said agent's acts being ratified by the plaintiff.

Upon completion plaintiff sold the said lands and premises to one Vinanzio Luciane and his wife for the purchase price of \$45,200.00 which was paid as follows:

Statement of Account between Giovannina Caporaso and Vinanzio Luciani and Maria his wife, on closing of title to premises 310-312 Fourteenth avenue, Newark, N. J.

Title closed July 30th as of August 1, 1924.

Purchase price	\$45,200.00
30 Plate glass insurance	13.42
Unexpired fire insurance..	75.91
	20.22
	30.51
	\$45,340.06

Report of Referee.

Credit		
By deposit	200.00)	
By additional deposit	800.00)	
By amount due on Alert B. & L. Assn. mtge. of \$28,00 as per secretary's statement	25,924.82	10
Interest on above mtge. for July 19th— $\frac{1}{2}$ month....	70.00	
By amount due on mtge. held by Hyman Shwager	8,000.00	
By interest on above mtge. from Mar. 16, 1924....	180.00	
By 1st half of 1924 taxes and interest	537.14	
By 2nd half apportioned (1 month)	88.20	20
By water bill to July 3rd	10.00	
By water for July 3rd esti- mated	6.66	
By security on lease for store	120.00	
By cash	3,463.24	
By purchase money mtge.	5,940.00	
	\$45,340.06	30

There was due to the defendant from the plaintiff at the time of the consummation of said transfer and sale the sum of \$2,034.76, computed as follows:

Statement showing the funds which came into the hands of Samuel Roessler, upon the closing of the aforementioned title.

Cash due Mrs. Caporaso for the balance of the purchase price shown on at- tached statement	\$3,463.24	40
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Report of Referee.

	Less		
	Agent's commission paid out of		
	said amount	\$ 600.00	
	Bill of Samuel Roessler for legal		
	services and disbursements..	150.00	
10	Bill of Charles Rapa for legal		
	services	20.00	770.00
	Balance on hand		\$2,693.24
	By check to Caporaso, dated		
	Aug. 4/24		150.00
			\$2,543.24
	Amount due on Schechner mtge.		
	for principal and interest ..	\$4,078.00	
	Amount due on Schechner note,		
20	dated November 13, 1923	500.00	
			4,578.00
	By check to Schechner, dated		
	Aug. 4/24		2,543.24
	Balance due Mr. Schechner		\$2,034.76
	Dated August 4, 1924.		

30 For the purpose of securing payment of said indebtedness of \$2,034.76, the purchase money mortgage aforesaid of \$5,940.00 was made and delivered to the defendant with the knowledge, acquiescence and consent of the plaintiff who was entitled to receive therefrom all moneys over and above the sum of \$2,034.76 due to the defendant as aforesaid.

40 At the time of said transfer and conveyance the defendant was in Europe and Mr. Samuel Roessler, the defendant's attorney, represented the defendant at the closing of title and made

Report of Referee.

all disbursements, giving to the plaintiff copies of the aforesaid statements.

Subsequently the defendant purchased from the plaintiff her interest in the said mortgage for \$3,250, which was paid in full to the plaintiff by a series of checks as follows:

Date	Payee	Amount	
1925			10
Jan. 5.	Giovanina Caporase & Emilio Caparaso.....	\$250.00	
Mar. 16.	Emilio Caporaso	200.00	
Apr. 3.	Giovanina Caporaso	500.00	
Apr. 20.	Giovanina Caporaso	100.00	
May 8.	Giovanina & Emilio Caporaso.....	200.00	
May 16.	Emilio & Giovanina Caporaso.....	200.00	
May 29.	Emilio & Giovanina Caporaso.....	200.00	
June 5.	Emilio & Giovanina Caporaso.....	200.00	
June 11.	Emilio & Giovanina Caporaso.....	100.00	
July 23.	Emilio Caporaso & Giovanina Caporaso....	100.00	
Aug. 7.	Giovanina Caporaso & Emilio Caporaso.....	150.00	
Aug. 15.	Giovanina Caporaso & Emilio Caporaso.....	100.00	
Aug. 31.	Genina & Emilio Caporaso.....	125.00	
	Emilio & Giovanina Caporaso.....	125.00	
Sept. 18.	Emilio & Giovanina Caporaso.....	100.00	20
Sept. 26.	Emilio Caporaso & Giovanina Caporaso....	125.00	
Oct. 2.	Giovanina & Emilio Caporaso.....	125.00	
Oct. 14.	Emilio & Giovannina Caporaso.....	200.00	
Nov. 7.	Giovanina Caporaso & Emilio Caporaso....	100.00	
Nov. 20.	Emilio Caporaso & Giovanina Caporaso.....	25.00	
Nov. 21.	Emilio Caporaso & Giovanina Caporaso....	120.00	

Most of said checks were made payable to the order of plaintiff and her husband and were delivered to her husband. It appears that the husband forged the plaintiff's endorsement and thereby obtained the said funds. The plaintiff denies receiving payment of said sum of \$3,250.00 claiming that her husband was not her authorized agent for the purpose of collecting the said funds and that the defendant is therefore liable to her for the payment of said sum. I cannot agree with the plaintiff's factual contentions that her husband was not her agent for the purpose of collecting the said funds. While I find that the plaintiff's husband was her duly authorized agent to collect the said funds and that the plaintiff ratified her husband's acts in collecting

Report of Referee.

the said funds for her, I find, in addition thereto, abundant and convincing evidence indicating that the plaintiff, by her voluntary acts had placed her husband in such a situation that the defendant, using ordinary prudence, was justified in presuming that the plaintiff's husband was her
10 duly authorized agent for the purpose of collecting the funds in question and had full and complete authority to perform the acts repudiated and that the defendant relied on such a holding out by the plaintiff of her husband as her general agent, and the plaintiff is, therefore, estopped from denying her husband's authority. It is significant that several months elapsed after full payment before plaintiff complained of non-payment. It is likewise significant
20 that such complaint of non-payment was made by the plaintiff only after she had quarreled with her husband and caused his incarceration in the Essex County Penitentiary for desertion and non-support. It is to me apparent that plaintiff's complaint of non-payment and her repudiation of her husband's acts in collecting the said funds were aftermaths. Nor can I place any credence in the testimony of the plaintiff's husband to the effect that the defendant
30 knew that the plaintiff's husband was endorsing the plaintiff's name on the checks in question and acquiesced therein, and that the defendant in fact assisted plaintiff's husband in cashing such checks with knowledge of the fact that the plaintiff did not endorse the same.

The testimony of plaintiff's husband is vague, indefinite and unreliable.

It is exceedingly improbable that the defendant would knowingly countenance such practice
40 on the part of plaintiff's husband and assist him,

Report of Referee.

where the risk of such practice might fall upon the defendant. The story by the plaintiff's husband was planned and concocted for a two-fold purpose, to wit: to protect himself and to assist the plaintiff.

I am satisfied that the defendant has paid to the plaintiff all moneys due her under the said purchase money mortgage and find that there is nothing due to the plaintiff from the defendant. 10

NICHOLAS LA VECCHIA,
Supreme Court Commissioner.

20

30

40

DEPOSITIONS.

ESSEX COUNTY CIRCUIT COURT.

10	GIOVANNINI CAPORASO, <i>Plaintiff,</i> <i>vs.</i> SAMUEL SCHECHNER, <i>Defendant.</i>	}	<i>Action at Law. Depositions.</i>
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Depositions taken in the above-entitled cause before me, Nicholas La Vecchia, a Supreme Court Commissioner, on Friday, March 1, 1929, at 10:30 o'clock in the forenoon at the office of Stein, McGlynn & Hannoeh, 17 Academy street, Newark, N. J., in pursuance of an order dated January 9, 1929, and in the presence of Frank E. Bradner, attorney for plaintiff, and Edward R. McGlynn, of the firm of Stein, McGlynn & Hannoeh, attorneys of defendant.

NICHOLAS LA VECCHIA,
Supreme Court Commissioner.

30 STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

LOUISE W. WOERNER, being duly sworn according to law, on her oath deposes and says:

I will faithfully and truly take stenographically and reproduce in typewriting the testimony to be given in the above-entitled cause.

LOUISE W. WOERNER.

Giovanni Caporaso, for Plaintiff, direct.

Subscribed and sworn to before me
this 1st day of March, 1929.

NICHOLAS LA VECCHIA,
A Master in Chancery of New Jersey.

GIOVANNI CAPORASO, the plaintiff, residing
at 473 South 14th street, Newark, N. J., being
duly sworn says:

10

Direct examination.

Q Mrs. Caporaso, did you own some prop-
erty, 310 and 312 Fourteenth street, in the City
of Newark? A Yes.

Q Do you know what mortgages were on that
property? A First, \$28,000 building and loan
and the second mortgage \$8,000 and the third of
\$4,000.00.

20

Q What building and loan association was
it? A The Alert Building and Loan Associa-
tion.

Q Who was the lawyer for the building and
loan? A Mr. Samuel Roessler.

Q Who had the second mortgage? A Mr.
Shwager.

Q Who had the third mortgage? A Mr.
Louis Dvin.

30

Q Did you borrow some money from Mr.
Dvin? A I gave him a mortgage for \$4,000.

Q What was that for? A For the house.

Q Did you ever pay any interest in that
mortgage? A Sure.

Q Is that the check? A Yes.

Check on Liberty Trust Company dated
April 7, 1924, to the order of B. Dvin, at-
torney, \$127.00 signed Giovannina Caprosa

40

Giovanni Caporaso, for Plaintiff, direct.

offered and received in evidence and marked Exhibit P. 1 for plaintiff.

Q Did you sell the property? A Yes.

Q To whom did you sell it? A Venanzio Luciani.

10 Q For how much? A For \$45,200.00.

Q Did you ever receive any of that \$45,200.00? A I got \$1,000 deposit.

Q From whom did you get that? A From Mr. Luciani.

Q Did you have an attorney? A Mr. Roessler. When he gave me the deposit \$1,000.00, the agreement was drawn by Mr. Repa, another lawyer, because it was Saturday afternoon and we could not find Mr. Roessler and we called Mr. Repa.

20 Q When the deal was closed up did you have an attorney? A I had Mr. Roessler.

Q I show you a paper and ask you from whom you received that paper? A From Mr. Repa.

Paper "Statement of closing" offered and received in evidence and marked Exhibit P. 2 for plaintiff.

30 Q This paper shows that there was cash of \$3,463.24, did you know about that? A Mr. Luciani gave \$4,000 cash to Mr. Roessler.

Q Do you know what became of that \$3,463.24? A The money was turned over to Mr. Roessler and he knows who got the money.

Q Do you know whether any money was to be paid to Mr. Dvin? A Yes.

40 Q There was \$5,940.00 more, do you know anything about that? A That is a mortgage that comes back to me.

Giovanni Caporaso, for Plaintiff, direct.

Q Did you ever get the mortgage? A I leave it with Mr. Roessler.

Q Did you ever see it? A Sure I saw it and Mr. Roessler made the mortgage; I believe what Mr. Roessler said.

Q Where is the mortgage now? A Mr. Roessler must prove it. 10

Q Do you know Mr. Schechner? A Yes, I saw him.

Q Did you ever receive any money from Mr. Schechner? A No, sir.

Q I show you paper dated December 20, 1924, look at that paper, do you know that paper? A My husband brought two papers like that and said "sign one, I am going to buy a piece of property from Mr. Schechner and pay a deposit of \$200.00." 20

Q Can you read it? A No, I cannot read.

Paper offered and received in evidence and marked Exhibit P. 3 for plaintiff.

Q Your husband brought no papers? A Yes, one I signed and I kept one.

Q Did you sign this one, too? A I signed another one. 30

Paper, which is signed, reads as follows:

"Dec. 20, 1924.

On mortgage of \$5,940, covering premises #310 Fourteenth Avenue, Newark, owned by Vinanzo and Maria Luciani dated July 30, 1924 and due August 1st, 1927 there is due Mr. Samuel Schechner \$2,034.76, and the balance due to Mr. Emilio and Giovanni Caparaso, his wife.

Giovanni Caporaso, for Plaintiff, direct.

Said Emilio and Giovanni Caporaso do hereby agree to sell their share in said mortgage for the sum of thirty-two hundred and fifty dollars (\$3250)."

This paper is signed Emilio Caporaso.

1/5/25.

10

"Balance due Caporaso \$3,000. S. S."

Q Who wrote that on the side of the paper?

A I don't know.

Q Was the paper read to you? A Mr. Caporaso read it to me.

Q Mrs. Caporaso, did you know that Mr. Schechner had the Luciani mortgage? A I did not know that he had it.

Q When did you find out that Mr. Schechner
20 had the mortgage? A This man in the bank wanted me to sign because Luciani wanted to change the mortgage and take money by the bank.

Q I show you a letter dated March 9, 1926 from Mr. Roessler; did you get that letter? A Yes.

Q I show you a paper; did that come with it?

A No, this is the paper.

30

Letter offered and received in evidence and marked Exhibit P. 4 for plaintiff and Exhibit I. 1 for identification.

Q Did you ever see Mr. Schechner after that?

A Mr. Luciani said that he got the money from the bank and asked me why I did not want to sign.

Q I ask you if you went to see Mr. Schechner.

A Yes.

Q Where did you see him? A I went to Mr.
40 Schechner's office.

Giovanni Caporaso, for Plaintiff, direct.

Q Did you see Mr. Schechner? A Yes.

Q When was that? A A couple weeks after I got the letter; I think it might have been in the month of April, 1926.

Q Was anybody with you? A The gentleman beside me.

Q What is his name? A Joseph De Martin. 10

Q What did you say to Mr. Schechner? A I wanted to see Mr. Roessler first and he was not there and then I saw Mr. Schechner and then I had Mr. Schechner read the papers of the house to me.

Q Did Mr. Schechner and Mr. Roessler have offices together? A Yes, in the same suite.

Q What papers did he show you? A I showed him these papers and I asked him what about it.

Q What papers did he show you? A A paper like that (referring to Exhibit P. 3). 20

Q What did you say to him? A I asked him what about this paper, let me understand better, and he got kind a yellow in the face, and said "your money is all gone," and then I said to him, "What do you mean, the money that my husband was supposed to get when he sold the property?" and he said, "no, your money," and then he showed me checks and then he said, "you bring your husband down here and I can explain the whole situation to you." Then I got my husband and I brought him down and I got him as far as Broad street and he refused to go upstairs, he wanted to go to Mr. Masuccia's office and from then on the fight started. Then he went to Masuccia's office and Musuccia said to me he would like to see what I signed. 30

Q Did you ever get any of the money? A No. 40

Giovanni Caporaso, for Plaintiff, cross.

Q Did Mr. Schechner say that he had paid money to your husband? A Yes, he said he paid him by check.

Q You never got any of the money? A Nothing.

10 Q Did you know that your husband was getting money from Mr. Schechner? A No.

Cross examination.

Q You were living with your husband at this time? A Yes.

Q From the time you signed the contract to sell the property on June 28, 1924 up to December 20, 1924, you were living with your husband? A Yes.

20 Q For how long after that did you continue to live with your husband? A Three years ago I have not lived with my husband.

Q In the spring of 1926? A The first complaint was in May, 1926.

Q Where is he? A In Caldwell, New Jersey.

Q This was not the first piece of property that you owned? A Yes.

Q This was not the first transaction you ever had with Mr. Schechner about real estate? A Yes, I sold other property.

30 Q You had other real estate transactions with Mr. Schechner? A Mr. Schechner sold me the lot and I built the building.

Q I show you a note dated November 13, 1923 in the sum of \$500.00 to the order of Mr. Samuel Schechner and ask you to look at the first signature down there; is that your signature? A Yes.

Q You know about this \$500.00 note? A Sure.

40 Note offered and received in evidence and marked Exhibit I. 2 for identification.

Giovanni Caporaso, for Plaintiff, cross.

Q At the time you sold the Fourteenth avenue property you owed Mr. Schechner this \$500.00? A Yes.

Q How much was due on the Dvin mortgage of \$4,000.00 at the time you sold the property to Luciani? A \$4,000.00.

Q I show you a paper dated December 20, 1924 and ask you if that is your signature? A Yes. 10

Paper offered in evidence and marked Exhibit I. 3 for identification.

Q Do you know Mr. Anthony De Angelo, a real estate man? A Yes, I know him.

Q Did he explain to you in Italian this paper that you signed? A No, my husband brought that home, De Angelo did not. 20

Q Did Mr. De Angelo, before you put your signature on this paper in December 20, 1924, explain to you in Italian what this paper was? A He was not there.

Q In addition to this paper (referring to Exhibit P. 2) didn't you get a certain paper like that? A There were other papers and I don't remember.

Q Didn't you receive a paper which showed that the money, namely, \$3,463.24, which was the balance of the purchase price of the Fourteenth avenue property, out of it, had been spent. Didn't you get a paper like that? A He gave me another paper with what I was short. 30

Q There was agent's commissions of \$600.00 to be paid, was there not? A Yes, he paid the whole business.

Q Mr. Roessler paid the agent \$600.00? A Yes. 40

Giovanni Caporaso, for Plaintiff, cross.

Q Mr. Roessler had a bill of \$150.00 for his services; he was to see that Mr. Repa who had a bill for \$20.00 was to be paid? A Sure.

10 Q After those payments were made to the agent and Mr. Roessler and Mr. Repa there was not enough money left in cash to pay the Dvin mortgage, was there? A Yes, that is right and there was a shortage there and that is the difference. Mr. Roessler put the difference in to make it up.

Q And that is the reason the mortgage which you were to get from Luciani was put in Schechner's name instead of yours? A He did not explain it to me at that time; he should have told me that is why he did it, but he did not.

20 Q Where did you understand that the money was to come from; that was moneys to pay on these bills the commission, Mr. Roessler's bills and the \$500.00, where was it to come from? A That is the reason I spoke to him about it and he said, "that is all right; I will take care of that."

Q Spoke to whom? A Mr. Roessler.

Q You got the first \$200.00 from Luciani and the second \$800.00? A Yes.

Q That is the deposit of \$1,000.00? A Yes.

30 Paper of "statement showing funds which came into hands of Samuel Roessler" offered and received in evidence and marked Exhibit D. 1 for defendant.

Q Later on didn't you get another paper dated November 21, 1925 which was an account between Mr. Schechner showing just how all the money had been spent? A No.

40 Q You say there was another, wasn't there another paper? A Mr. Roessler gave me one

Giovanni Caporaso, for Plaintiff, cross.

bunch of papers and in that it showed what I was short. The other lawyer had another paper showing what I was short.

Q Did anybody give you a paper showing how Mr. Schechner paid out checks of \$200.00, \$500.00 and \$100.00? A At the same time I got this paper I got other papers.

10

Q Didn't your husband arrange for you, or talk for you, about buying a piece of property at 589-591 South Eighteenth street? A Yes, and he came with an agreement, too, at the house.

Q Didn't your husband tell you he was arranging with Mr. Schechner for you to get an advance of \$500.00 to use as a deposit to buy that property? A Yes, I understand I was—receive \$200.00 to pay a deposit on the other property.

20

Q Wasn't that deposit paid and later gotten back? A No, I did not receive the cash.

Q Didn't your husband tell you afterwards that the property on Eighteenth street where Mr. Schechner loaned \$200.00 to put up as a deposit had been sold and your share of the profit was \$300.00? A No, all I spoke to Mr. Schechner was I was to sign a paper and he was to advance \$200.00; he never gave me the cash.

Q What did your husband tell you, what happened to the 18th street property? A My husband told me that they bought these two properties and that they re-sold them and made profits of about \$2,000 or about twenty-three or twenty-four hundred dollars profit.

30

Q After you finished this building on 14th street you owed a lot of money, didn't you? A No, Mr. Roessler paid everybody.

Q But you had a lot of creditors to pay everybody? A Yes, I owed them money before Mr. Roessler paid them.

40

Giovanni Caporaso, for Plaintiff, cross.

Q Who made all the arrangements about the building of this building and the agreement with creditors, you or your husband? A The contracts I signed because I was the owner.

10 Q But didn't your husband have all the business to do with the payments and everything? A My husband did all the talking with the contractors, but I did it with Mr. Roessler.

Q But your husband acted for you in connection with the various people who did work on this building? A Yes.

Q I show you a check dated January 5, 1925, on the National Newark and Essex Banking Company in the sum of \$250.00 and ask you to look at the endorsement, is that your signature? A No.

20 Q Is that your husband's signature? A Yes.

Q Have you ever seen your husband write your name? A Yes.

Q Does that look like his handwriting? A I don't know.

Q That is your husband's signature? A Yes.

30 Q I show you check dated March 16, 1925, National Newark and Essex Banking Company in the sum of \$200.00 is that endorsement your husband's signature? A Yes.

Q I show you check dated April 3, 1925, on the same bank in the sum of \$500.00 and ask you to look at that endorsement "Giovannina Caporaso," is that your signature? A I don't sign no check; that is my name.

40 Q I show you check dated April 20, 1925, same bank, \$100, is that your signature, did you sign that? A No.

Giovanni Caporaso, for Plaintiff, cross.

Q Check dated May 8, 1925, in the sum of \$200.00, did you sign that? A No.

Q Check dated May 16, 1925, same bank, \$200.00, is that your signature, did you sign that?
A I didn't sign no checks.

Q Check dated May 29, 1925, same bank, \$200.00, did you sign that? A No. 10

Q Check dated June 5, 1925, same bank, \$200.00, did you sign that? A No.

Q Check dated July 11, 1925, same bank, \$100.00, did you sign that? A No.

Q Check dated July 23, 1925, same bank, \$100.00, did you sign that? A No.

Q Check dated August 7, 1925, same bank, \$150.00, did you sign that? A No.

Q Check dated August 15, 1925, same bank, \$100.00, did you sign that? A No. 20

Q Check dated August 31, 1925, same bank, \$125.00, did you sign that? A No.

Q Check dated Sept. 8, 1925, same bank, \$125.00, did you sign that? A No.

Q Check dated Sept. 18, 1925, \$100.00, same bank, did you sign that? A No.

Q Check dated Sept. 26, 1925, same bank, \$125.00, did you sign that? A No.

Q Check dated October 2, 1925, same bank, \$125.00, did you sign that? A No. 30

Q Check dated October 14, 1925, same bank, \$200.00, did you sign that? A No.

Q Check dated November 7, 1925, same bank, \$100.00, did you sign that? A No.

Q Check dated November 20, 1925, same bank, \$25.00, did you sign that? A No.

Q Check dated November 21, 1925, same bank, \$120.60, did you sign that? A No.

Q Check dated January 5, 1925, same bank, \$250.00, did you sign that? A No. 40

Joseph De Martin, for Plaintiff, direct.

Above checks offered and received in evidence and marked D. 2 for defendant.

This contract of sale to Mr. Luciani, is that your signature?

A Yes.

10

Contract offered and received in evidence and marked Exhibit D. 3 for defendant.

Re-direct examination.

Q Mrs. Caporaso, I show you paper purporting to be signed by Samuel Schechner, do you know that paper? A I don't remember seeing any paper like that.

Q I find it here among the papers, where did you get it? A My husband gave me that among a lot of other papers.

20

Q When? A When he started the fight with Schechner.

Paper offered and received in evidence and marked Exhibit P. 4 for plaintiff.

Q Did you know that your husband was getting checks from Mr. Schechner? A No, I did not.

30

JOSEPH DE MARTIN, residing at 17 Speedway avenue, Newark, New Jersey, a witness produced on behalf of the plaintiff, being duly sworn, says:

Direct examination.

Q Are you related to Mrs. Caporaso? A Yes.

40

Samuel Roessler, for Defendant, direct.

Q What is she? A She is my sister-in-law.

Q Did you ever go with her to Mr. Schechner's office? A Yes.

Q Did you hear what was said between them?
A She came to me for this paper and she did not understand it; she said "I don't know, my husband gave me this paper, what is it?" I said, "it is a paper to go to Schechner's office and see about it" and we found Schechner and he started to holler and I said "what is this paper" and he said "I gave her all the money." I said "you gave the money, we don't get anything" and we had a fight with her husband because he don't bring any money home. 10

Q Did you go to see a lawyer after that? A Yes, I went to Mr. Masucci's office.

PLAINTIFF RESTS. 20

SAMUEL ROESSLER, a witness produced on behalf of the defendant, being duly sworn, says:

Direct examination.

Q You are a practicing lawyer of this State? A I am. 30

Q You handled the building and loan transaction covering this 14th avenue property? A I did.

Q Had you represented Mr. Schechner in connection with any other transaction with these Caporosas before? A I had.

Q Other real estate transactions? A Yes.

Q And building and loan matters, I understand, were closed? A It was closed way back in 1923. 40

Samuel Roessler, for Defendant, direct.

Q Then later they sold this property on 14th avenue and entered into a contract of sale, finally reaching you? A Exactly.

Q Mr. Schechner was away at the time and you attended to the closing? A Correct.

10 Q How much did Mr. Schechner have coming from these people at the time these transactions were closed? A He held, as assignee the mortgage made by Giovannina Caporaso to Louis Dvin in the principal sum of \$4,000 and upon which there was interest due at the time of closing, amounting to \$78.00 and he was also the holder of a note dated November 13, 1923, for \$500.00 made by Giovannina Caporaso and husband.

20 Q As the result of the closing of title, how much cash was available to liquidate the total amount of this indebtedness? A \$3,463.24.

Q That was all the cash that was available? A Yes.

Q There was to be liquidated \$4,578.00? A Yes, and the agent's commission.

30 Q And in addition he owed the agent's commission of \$600.00, your bill of \$150.00 and Charles Repa, \$20.00, that made a total of the two items of \$770.00 and \$4,578.00 to be liquidated out of \$3,463.24? A Exactly.

40 Q What arrangements were made at the closing? A She was there with her husband and I explained we had only \$3,463.24 out of which we had to pay the agent's commission and the other payments and they wanted some cash for themselves and I explained there was due to Mr. Schechner alone \$4,578.00 and he was entitled to receive his mortgage which was past due and also the promissory note; it was then arranged that the mortgage be taken in the name of Samuel

Samuel Roessler, for Defendant, direct.

Schechner I mean the purchase money mortgage of \$5,940.00 Mr. Schechner was in Europe at the time and I was acting as his attorney in fact under a power of attorney and my instructions were to receive payment of that mortgage and before Mr. Schechner left I was instructed that if the mortgage could not be paid, if there was not sufficient cash available, to take back a purchase money mortgage in his name and he, on his return, would adjust matters with Caporaso. 10

Q This was not the first transaction with Caporaso and Mr. Schechner? A No, Mr. Caporaso had been in the habit of coming to our office years prior to this transaction; he came to Mr. Schechner's office three or four times a week, very rarely did I see Mrs. Caporaso. I recall very plainly when they built this building, they bought the land through Mr. Schechner and my building and loan The Alert granted the loan. Subsequent the Caporastos got in financial difficulty, they were unable to pay their creditors. 20

Q In connection with this building? A Yes, and I spent many weeks in trying to effect a settlement with the creditors and I eventually succeeded and all those negotiations were had with Mr. Caporaso. 30

Q What arrangements were made with Mr. Caporaso in connection with the settlement of these outstanding creditors on the building? A When Mrs. Caporaso came in they were straightened out.

Q And they involved the second and third mortgage? A Yes.

Q And she executed those papers and remitted the disbursements of those matters? A Exactly. 40

Samuel Roessler, for Defendant, direct.

Q After taking the mortgage in Mr. Schechner's name because of the loan you just mentioned, did you have any more to do with the transaction after that? A After they left the office of Mr. Cavicchia, who represented Luciani, they came to my office and I prepared the supplemental statement, this charge of \$3,463.24 showing a balance due Mr. Schechner of \$2,034.76.

Q Was the Dvin mortgage cancelled of record? A It was cancelled of record on August 2, 1924.

Q That was in order to carry out the consummation of the contract? A Exactly.

Bond and mortgage given by Giovannina Caporaso and Emilio Caporaso her husband to Louis Dvin, dated April 4, 1923, in the sum of \$4,000.00, mortgage recorded April 4, 1923, in Book S 47 of Mortgages for Essex County offered and received in evidence and marked Exhibits D. 4 and D. 5, respectively for defendant.

Q Is this the mortgage of \$3,500.00 dated July 30, 1924? A Yes, sir.

Bond and mortgage given by Vinanzio Luciano and Maria Luciano his wife to Samuel Schechner dated July 30, 1924, in the sum of \$5,940.00, mortgage recorded July 31, 1924, in Book Y 51 of Mortgages for Essex County offered and received in evidence and marked Exhibits D. 6 and D. 7, respectively for defendant.

A When they came to my office, after the closing at the office of Mr. Cavicchia, Mr. and Mrs. Caporaso came to my office and it was then I pre-

Samuel Roessler, for Defendant, direct.

pared this supplemental statement, showing that I had on hand \$3,463.24; at that time I drew the check in payment of the agent's commission for \$600.00; I drew a check to myself for \$150.00 in payment of my bill; drew a check to Charles Repa for \$20.00 and thereupon the Caporosas asked me to give them some money; I told them I did not think it was fair to Mr. Schechner to pay out any more money; that I let the matter rest until his return from Europe. Finally, I drew a check, on August 4th, at my office, for \$150.00 and I drew that check, I believe, to Emilio Caporaso, in her presence; I thought as long as they were husband and wife it was allright. 10

Q That check was drawn at the time this statement was drawn? A Yes, and it appears on this statement. 20

Q That check was drawn to his order alone and was handed to him in her presence? A Exactly, I also wish to say that I learned during the course of these negotiations and while these transactions were pending that Emilio Caporaso at one time was the owner of real estate; I don't know whether he owned this particular property and I also learned there were judgments against him, which are still open of record and it was after those judgments were entered that Mrs. Caporaso began vesting to the legal title to this property, but I always dealt with Emilio Caporaso; he always impressed me as very bright and Mrs. Caporaso entrusted her business affairs to her husband. 30

Q Instead of opinion, that was a matter of fact, all your transactions you had were with her husband, regardless of in whose name the property was in? A Exactly. 40

Samuel Roessler, for Defendant, cross.

Q And they were consummated by her without any objection? A Exactly.

Q Did she give you any notice she did not want you to transact any of her business with her husband? A Never.

10 Q I understand the building contract was made by her with him? A Yes, I learned of that from the search I made and I also learned in that way that there were judgments against him.

Q After you took them back to your office the day of the closing of title, from that time on Mr. Schechner dealt directly with them? A Exactly.

Cross examination.

20 Q Do you know when Mr. Schechner acquired ownership of the Dvin mortgage? A I cannot tell exactly, the record shows that Louis Dvin assigned this mortgage to Jacob Castlebaum on April 16, 1923, and Jacob Castlebaum on April 8, 1924, assigned this mortgage to Samuel Schechner.

Q Does it say anything in there as to how much was due on the assignment to Schechner? A It contains a clause that there was due \$4,000.00 and interest at six per cent. from October 4, 1923.

30 Q After you went back to your office from Mr. Cavicchia's office, I understood you to say you prepared this statement (referring to Exhibit—), showing the funds which came into the hands of Mr. Schechner upon the closing of the aforementioned title? A Yes.

Q Who was present when you prepared it? A Miss Jean Kemper, Mr. Schechner, Mr. and Mrs. Caporaso and myself.

40 Q Did you give Mrs. Caporaso a copy of it? A I did.

Samuel Roessler, for Defendant, cross.

Q Into her own hands? A I will correct that; I have no recollection at this moment as to whom I handed the statement; it may be I handed it to Mr. Caporaso because I considered him the master of the house; he was acting for his wife and she was present. I may have handed it to him, but she was there. 10

Q You gave your own check for the \$150.00? A I will have it here in a moment.

Q At any rate, there was a check given? A Exactly.

Q To whom was that handed? A I think it was handed to Mrs. Caporaso.

Q Were there any papers signed at that time by Mr. and Mrs. Caporaso? A Not to my knowledge.

Q Did you give them anything in writing signed by Mr. Schechner, or signed by you as his agent, showing that this mortgage which was to be made to him was held by him for them? A I think the statement indicated that. 20

Q What did you give to Mrs. Caporaso to show that that purchase money mortgage was to be made directly to Mr. Schechner and held by him in trust for her? A The only thing I gave her or him was the statement, but I explained the transaction and in addition to that I wish to say they had known Mr. Schechner several years and that came to him from time to time. 30

Q Suppose anything had happened to these people, what was there, was anything on record that they had an interest in that mortgage? A Both Mr. Schechner and Mr. Luciano would have to deny that; there was nothing put in writing in relation to the assignment, except the signed statements. I knew Mr. Schechner would be back from Europe in a short time and I said upon his 40

Antonio D'Angelo, for Defendant, direct.

return he would straighten out the transaction. I explained to them they had an interest in the mortgage and I knew he would straighten it out.

Q I show you Exhibit P. 4 for the plaintiff and ask you if that is Mr. Schechner's signature?

A Yes.

10 Q And that paper is dated when? A February 25, 1925.

Q Was this a purchase money mortgage? A Exactly.

Q Made directly to him? A Yes.

Q Will you read that paper? A This was drawn by Mr. Schechner.

Q You don't know who had charge of that paper signed by Mr. Caporaso? A This paper was undoubtedly dictated by him to Jean Kemper, his secretary, who prepared it.

20 Q You don't know about it being sent to Mr. Caporaso to be signed by her? A No.

ANTONIO D'ANGELO, residing at 266 South Sixth street, Newark, New Jersey, a witness produced on behalf of the defendant, being duly sworn, says:

30 *Direct examination.*

Q Do you know Mrs. Caporaso? A Very well.

Q How long have you known her? A May be fifteen or sixteen years; I lived in the same section.

Q Do you know her husband? A Yes.

Q Did you have anything to do with this transaction between Mr. Schechner and the Caporasos involving the Fourteenth avenue prop-

40

Antonio D'Angelo, for Defendant, cross.

erty? A One evening, about half-past six, I stopped at her house to get some signatures on a paper.

Q Who sent you there? A Mr. Schechner; I think it was in the winter and I said I would get the signatures; Mr. Schechner said to explain the papers and he waited downstairs in the machine. 10

Q You accompanied Mr. Schechner to their house and left him in the car and you went upstairs with this paper I show you, dated December 20th, marked Exhibit — for defendant? A That looks like mine; there were two of them, apparently both dated the same date; I don't recognize what it is, but I remember one of them.

Q What did you do when you got up there? A I asked Mrs. Caporaso to sign some papers and I started to read it and she said she knew everything about it and she signed it and I went down. 20

Q Did you speak Italian? A Yes.

Q Was her husband there when you went in? A He was in the kitchen.

Q Was the husband there? A Yes, he was in the kitchen.

Q Where was Mrs. Caporaso? A In the kitchen. 30

Q They were both together when you went with this paper? A Yes.

Q Did you take more than one paper up there or only one paper? A One paper, but I don't remember exactly, but one time I went to the Fourteenth avenue house.

Cross examination.

Q Where were they living when you went in their home and they were both in the kitchen, 40

Antonio D'Angelo, for Defendant, cross.

what house? A In the brick house, I think, 309 or 311 Fourteenth avenue.

Q Is that the house that sold to Luciano?
A I don't know; he was living in a brick house and it was the only brick house in the block.

10 Q Which floor did they live on? A The second floor; it was a twelve-family house and store.

Q Why did you come in there? A I had to make a few calls for Mr. Schechner, as we do every day, and he said, "do you know Mr. Caporaso?" and I said I knew him very well.

Q Are you working for Mr. Schechner? A Yes.

Q Did Mr. Schechner send you up there? A No, I went myself; he asked me did I know Mr. Caporaso and I went myself.

20 Q Did he ask you to have that paper signed?
A He told me Mr. Caporaso would have to sign some papers and I took the paper and went myself.

Q You took the paper upstairs to have it signed? A Yes.

Q Did you read it to them? A I explained in Italian and she answered, "I know very well what it is."

30 Q Who was there when you explained it? A The husband and wife. She said, "my husband explained to me today."

Q Did Mr. Schechner tell you what was in the paper before you went there? A No.

Q Can you read it in English? A Yes.

Q Do you remember what the paper was? A I cannot remember.

Q Is that the paper? A I cannot say.

40 Q After you went there to see her sign it, why didn't you put your name on it as a witness? A It was not necessary.

Samuel Schechner, for Defendant, direct.

Q Did the husband sign, too, while you were there? A No.

SAMUEL SCHECHNER, the defendant, being duly sworn, says:

10

Direct examination.

Q I show you a paper dated December 20, 1924, which has been marked in evidence and ask you who drew it? A I did.

Q You drew an original and a copy? A I did.

Q Tell us the circumstances under which that was signed, what happened? A Mr. Caporaso was in the office and we adjusted this matter about the difference which was due him; we arrived at the amount and after I knew the mortgage was in my name I did not think it was necessary; he wanted me to keep this money in my place because he had judgments and I drew up this paper and had him and his wife sign it, showing the amount, and Caporaso called at my office and after he left my office we went up there and got Mrs. Caporaso's signature; it was cold weather, around six o'clock, and I forgot to ask D'Angelo to witness it; I asked him before, "do you remember the case?" and he said "yes, I remember very well."

20

30

Q When did you come back from Europe in 1924? A The early part of September.

Q Before you had gone, I understand that you had left instructions with Mr. Roessler in regard to this transaction? A I did.

Q You then owned a \$500.00 note signed by them and a mortgage of \$4,000 held by Dvin on this property? A That is right.

40

Samuel Schechner, for Defendant, direct.

Q When you got back you found out what had happened? A Yes, sir.

Q After you got back, did you check out any money in connection with that transaction? A I checked out after the understanding I had with Mr. Caporaso.

10 Q This understanding was on the share that was due him? A I never knew Mrs. Caporaso and I never had any dealings with her; first, I sold Mr. Caporaso on Sixth street and he told me to put it in her name because he had trouble with the synagogue and he fell down on the job and had judgments against him and he said he would have to put it in his wife's name and he said to leave the money in his wife's name because he could not pay it in the bank and I was
20 to pay him as he needed it. All the dealings I had with Mr. Caporaso; I met Mrs. Caporaso twice.

Q There is a transaction set forth in one of these statements after they had sold the 14th avenue property and after this mortgage was put in your name, apparently you advanced \$200.00? A Yes, I sold him a piece of property.

Q Who did you have dealings with that time? A Mr. Caporaso.

30 Q You advanced \$200.00 as a deposit? A Yes, on this 18th street property.

Q And sold that before they took title, you gave them credit for what they made? A Yes.

Q Were all those negotiations with him or her? A Always with him.

Q You say you had numerous transactions before 18th avenue? A Absolutely.

Q After making this agreement in December, 1924, for the purchase of the interest in that mortgage for \$3,000 you then started to give him
40 checks on account? A Yes.

Samuel Schechner, for Defendant, cross.

Q This exhibit—is a statement of the entire transaction and that on that day you gave him a check for \$20.60 which balanced your account completely? A Yes.

Q So that the aggregate of these checks, the final check on November 21, 1925, in the sum of \$120.60 cleaned up the whole transactions and you assumed you were the collector of the mortgage and the matter was closed? A Yes.

10

Q So that after November 21, 1925? A After November 21st, I considered the Caporaso out of this mortgage; all I owed him was this money, I figured it was twenty-six or twenty-eight hundred dollars and he called every Friday or Saturday and we made out the checks; many times I hardly saw him, my secretary paid it.

Q And you accounted him with the interest in the same manner? A Yes.

20

Q This statement in evidence which shows the adjustment of interest items? A Yes, I O. K.'d that and we paid him the checks.

Cross examination.

Q Did you collect the whole amount of the mortgage of \$5,940.00? A No, you can have it now; it is still there.

Q Did you ever collect any of it? A No.

30

Q Never collected anything from Luciano? A Interest on the mortgage, but not the principal.

Q Was the building and loan mortgage foreclosed? A It is being foreclosed now.

Q There has been no sale yet? A Not, in a couple months.

Q You have stamped on here an authorization of cancellation, haven't you? A They called me and were supposed to pay it off and they did not have the money.

40

Samuel Schechner, for Defendant, cross.

Q You sold the lot to Mrs. Caporaso, did you not? A To Mr. Caporaso, I never saw her at that time until she came down to sign the mortgage.

10 Q When you made the deed you had not seen her? A No, maybe to come in and sign the mortgage; I never spoke to her about any dealings, I never saw her.

Q The record shows that the deed is dated May 6, 1922, and made by you to Giovannina Caporaso, wife of Emilio Caporaso, do you remember you made the deed to her? A I don't remember.

Q Why did you make the deed to her? A Because he had judgments against him.

20 Q You knew he defrauded his creditors? A I don't know about that; he told me to put it in his wife's name and I did that.

Q So that when you were dealing with Mr. Caporaso you were dealing with him on the idea that he was the real owner of the property and that he had put it in his wife's name for the purpose of cheating his creditors? A No, he told me that he took a contract on 16th avenue and somebody cheated him and he said unfortunately there were judgments against him.

30 Q You knew from him he had judgments against him? A Yes, and he told me to put in his wife's name.

Q Afterwards you had her sign a note for \$500.00? A Yes, because the property was in her name.

Q You had him sign it, too? A Yes, he was my man.

40 Q What did that note represent? A I don't remember now.

Samuel Schechner, for Defendant, cross.

Q Did you give any money to her for that note? A I never gave her any money; all the money was given to him; I had no dealings with her.

Q When you made these checks, I observe in looking at them they are all made to the order of Giovannina Caporaso? A I made them as he asked. 10

Q Did you go to the bank with him to get money for these checks? A I never went to the bank.

Q Do you know whether anyone in your office went to the bank with Mr. Caporaso? A No.

Q Here is a check dated January 5, 1925, No. 19898, pay to the order of Giovannina Caporaso and Emilio Caporaso, \$250 drawn on the National Newark and Essex Banking Company and purporting to be endorsed Giovannina Caporaso and Emilio Caporaso and endorsed also "pay to the order of Liberty Trust Company, Morris Rosenberg;" do you know who Morris Rosenberg is? A No. 20

Q Did you know Giovanni' Caporaso's signature? A Yes.

Q Do you think that is her signature? A I don't know; when these checks came back from the bank I never looked at them. 30

Q You didn't know when the bank statement came in with the vouchers whether the checks had exactly been endorsed by Mrs. Giovannina Caporaso or not? A No.

Q You cannot say now whether the endorsement on here is her genuine signature? A I never looked at it.

Q Mr. Schechner, this mortgage for \$5,940.00 was payable on the first day of August, 1927, with interest chargeable from August 1, 1924, that is right? A Yes. 40

Samuel Schechner, for Defendant, cross.

Q Why did you distribute it in installments of \$100.00 and \$200.00? A Because he wanted money; he was afraid to put the money in the bank because he had trouble and as he needed it I paid him; I paid him as he requested.

10 Q You knew he was taking the money that way to defeat his creditors? A No, he needed the money to pay the laborers. He told me he had judgments.

Q Was this mortgage put in your name for the purpose of defrauding his creditors? A No, it was put in my name at my office; he owed me money.

Q You recall that Mr. DeMartino and Mrs. Caporaso came to your office? A Yes.

20 Q Did she ask you then for the mortgage money? A Yes, they came, both together and I told them both they were crazy. I said, "I know who cooked this up, it was Mr. Repo."

Q You told them you paid out the money? A I showed them my checks immediately. They came about six or seven months after the money was paid out and I asked them why they never came before, the money was in my office over a year and she never came over to see me. They collected the money.

30

At this point the taking of depositions was adjourned indefinitely.

Emilio Caporaso, for Defendant, direct.

Friday, May 2, 1929, at 11 A. M., the taking of depositions was resumed in the above-entitled cause, before me, at the Essex County Penitentiary, Caldwell, New Jersey, in the presence of Frank E. Bradner, attorney for plaintiff, and Edward R. McGlynn, of the firm of Stein, McGlynn & Hannoch, attorneys of defendant.

10

EMILIO CAPORASO, a witness produced on behalf of the defendant, being duly sworn, says:

Direct examination.

Q Mr. Caporaso, you are the husband of Giovanni Caporaso? A Yes.

Q Do you recall the property 310-312 Fourteenth avenue, Newark, New Jersey? A Yes. 20

Q Do you remember the transaction with reference to the sale of that property? A Yes.

Q You sold the property? A Yes.

Q Who owned that property? A My wife.

Q Did you have any money invested in the property? A I sold another property 134-136 and 138 Sixteenth avenue, and the money I got out of that property I put in this property on Fourteenth avenue.

Q Who owned the Sixteenth avenue property? A My wife and her two brothers. 30

Q Three people owned it? A Yes, my wife, Emilio and Joseph DeMartino, and Sam Schechner sold the property; the property was originally sold to me; originally I gave him the deposit, then when we made the deed, the deed was made in the three names.

Q Why was the deed put in your wife's name and not in your name? A The reason is that I was in business and always more or less in 40

Emilio Caporaso, for Defendant, direct.

trouble and the second reason is because her brothers loaned my wife some money, too, and that is the reason, it was put in her name.

Q Was there any property before the 16th avenue that you bought? A No.

Q Sixteenth avenue was first? A Yes.

10 Q Was it your money that bought 16th avenue or your wife's money? A The money belonged to my wife, afterwards all the money, while I was working at Port Newark, I turned all the money over to her for the property.

Q Do you remember on the 14th avenue when you sold it, you had not enough money to pay off the mortgage and then— A Yes.

Q Do you remember the new second mortgage you got when you sold, Mr. Roessler, Mr. Schechner's lawyer, took. The mortgage was held by
20 Dvin for \$4,000? A I went to Dvin before that to ask him to renew the mortgage and he asked me for a bonus of \$700.00 to renew it, then I went and told Mr. Schechner about it and he says leave it to me, I will take the mortgage and help you out and instead of turning over the money to Dvin I turned everything over to Mr. Schechner.

Q 14th avenue property, when you bought it,
30 had no building on it, it was a vacant lot, wasn't it? A It was vacant land.

Q Who built the building on it? A I did.

Q You took care of all the details in connection with the building? A Yes.

Q You borrowed the money on the first mortgage from the Alert Building and Loan Association? A Mr. Roessler was the lawyer and gave me some money to build the building.

Q After the building was finished you got
40 a building and loan mortgage? A \$28,000 was

Emilio Caporaso, for Defendant, direct.

the first and a second mortgage of \$8,000, it was \$8,400.00 and \$4,000.00 third.

Q When you sold the building on 14th avenue you were there when they closed title? A Yes.

Q Mr. Schechner was away to Europe, wasn't he? A No, he was not there.

10

Q Did you know that Mr. Roessler was paying off Mr. Dvin's mortgage and taking the mortgage from the man you sold the property to in Mr. Schechner's name? A No, I did not know it, Mr. Schechner did not tell me, but Mr. Roessler told me about it, he was paying it off because he was short.

Q When Mr. Schechner got back from Europe, did you and your wife go to see Mr. Schechner and straighten out the matter? A Mr. Schechner did not see my wife's face; he saw me, but not my wife.

20

Q Did Mr. Schechner give you some money on the second mortgage that was coming to you? A He gave me \$200.00 to buy property, 591 and 589 South 18th street. He put the deposit for me of \$200.00.

Q Did your wife know that? A Yes, I told my wife I was going to buy two properties.

Q I show you a deed dated February 25, 1925, is that your signature? A Yes, that is my signature.

30

Q I show you a statement marked Exhibit P. 2 and ask you if you remember in November, 1925, talking to Mr. Schechner and having a statement like that handed to you showing the money which had been advanced to you and the balance.

A I don't know nothing about this, Mr. Roessler sent papers to my house about a mortgage, it showed how much money I was to receive; it

40

Emilio Caporaso, for Defendant, direct.

showed how much this man got and how much the other man got and what we were to get.

Q When you say "how much we were to get" you mean your wife and you? A My wife was the boss; she asked me what it was. Mr. Roessler never put me in anything, in a mortgage or in
10 a deed.

Q But you know that your name was on some of the checks? A All the checks he gave to me.

Q I don't mean checks while you were building the building, but after the building was built and after you sold it, didn't Mr. Schechner give you checks on account of your interest in this second mortgage? A Mr. Schechner owed me \$2,300.00, I gave him a mortgage of \$500 from Joseph D. George a one-year mortgage.

20 Q I show you a paper dated December 20, 1924, that is your name? A Yes.

Q That is your wife's signature? A Yes.

Q Do you know your wife's signature? A Yes.

Q Do you remember this paper (paper being read to witness)? A Mr. Roessler knows about it. He gave me \$200.00 for which I bought two properties and paid a deposit and then he gave me \$400.00 for another mortgage.

30 Q Don't you remember that the second mortgage on 14th avenue after you sold the property, was \$5,940.00 and that you and your wife had an interest of about \$3,900 in that, Mr. Schechner agreed to buy your interest and your wife's interest for \$3,250.00? A What is the use of doing all this stuff, it is in writing, whatever the mortgage was is right, Mr. Roessler knows it.

Q I show you a check dated May 16, 1925, on the National Newark and Essex Banking Company, Emilio and Giovanni Caporaso,
40

Emilio Caporaso, for Defendant, direct.

\$200.00? A Yes, he told me to sign on the back here and I went over and cashed it.

Q You knew you were signing your wife's name? A I knew it and Mr. Schechner knew it; he went over and had it cashed for me.

Q What right did you have to sign your wife's name, was it your money? A This was my money because this was profit on the properties that I bought, 589-591 18th street. 10

Q I show you some more checks, all signed by you? A Yes, I signed them.

Q You signed your wife's name each time? A Mr. Schechner told me it was alright to sign it, because it was my money.

Q Did your wife know you were signing her name? A No, my wife didn't know I was signing her name. 20

Q Did you tell her at any time you were getting those checks from Mr. Schechner? A No.

Q When you built the house on 14th avenue, did your wife know you were taking care of all the building and got all the checks and was paying out all the money? A I was the contractor and I was the one who went and got the money. 30

Q And your wife knew you were getting the money? A I knew because she went down there and signed a mortgage in Mr. Roessler's office.

Q Your wife did not put any of her own money in the building? A Yes, she put money in that belonged to her and I will show you how it was. From the property we sold at 16th avenue.

Q That money she put in 14th avenue when she bought the property, didn't she? A Yes, 40

Emilio Caporaso, for Defendant, direct.

that is the money that she bought the property on 14th avenue.

10 Q After you bought 14th avenue, when you built the new building on 14th avenue property, your wife did not put any more money in them, did she? A She didn't pay for the land altogether, Mr. Schechner took a mortgage and we paid off the mortgage.

Q How much did you pay for 14th avenue when you bought it? A \$2,900.

Q How much cash did you put in it? A I don't remember, \$400 or \$500.

Q How much cash did you put in the new building? A \$35,000 in money, my wife the money of the property if I didn't build her brothers wouldn't have given her the money.

20 Q At the time you cashed these checks, Mr. Schechner gave you, you was living with your wife then? A Yes.

Q You were supporting your wife and family at that time? A I was always the boss of the family and the father of the family. I am married pretty near twenty years.

30 Q You recall that you and your wife agreed to sell your interest in the mortgage on 14th avenue to Mr. Schechner for \$3,250.00? A If the mortgage was \$5,900.00, how was it my part was only \$3,250.00?

Q Don't you remember that Mr. Schechner paid out money for you to pay the Dvin mortgage? A I sold the property for \$45,500.00, where is all the money?

Q Don't you remember Mr. Schechner had to pay the agent's commission of \$600.00? A Yes, I remember that.

40 Q Don't you remember Mr. Roessler's bill for legal fees of \$150.00? A He had the money in his hands.

Emilio Caporaso, for Defendant, direct.

Q Don't you remember Mr. Charles Repo got \$20.00? A Through Mr. Roessler.

Q Don't you remember you got a check in August, 1924, for \$150.00? A I don't remember that.

Q Don't you remember Mr. Schechner had \$4,078.00 coming with interest and a \$500.00 note? A That note is no good; he asked me to give him a note. This is how it was, the mortgage was \$28,000, instead of that he said "I will make it for \$32,000, but you have to give me a note for \$500" and he charged me \$500 for making the mortgage bigger. 10

Q But you remember the note? A Yes, I do. I did not know anything about these transactions until I got the papers at home, then I did not want to tell my wife about it and that is the reason I left it go. 20

Q Why did you sign that agreement, selling your interest in the mortgage for \$3,250.00 to Mr. Schechner? A Mr. Schechner didn't tell me what's in this paper.

Q Where did your wife sign it? A Schechner and I were in the machine; he came to my house and Mr. Schechner stayed downstairs in the car with his son.

Q Who had it signed, you? A I told my wife that this was a paper that she was signing, that I bought some property and that was a \$200.00 deposit I got. 30

Q Do you remember Mr. D'Angelo? A Yes, I know him.

Q Did Mr. D'Angelo take that paper up to your house? A No, sir, he did not come to my house at all because we weren't on good terms. D'Angelo wanted to take the house from me without any money. 40

Emilio Caporaso, for Defendant, cross.

Q When you sold this property for \$45,500, you knew there was not enough money coming out of the transaction with all the mortgages on it? A I had \$2,000 worth of back shares. I figure that I should have a profit of \$5,000 or \$6,000 and I wanted to have it figured, whatever goes to Schechner goes to him; I only want what's right.

Q Don't you remember on November 21, 1925, after getting all these checks from Mr. Schechner that you were down there and Mr. Schechner gave you a statement that showed that there was coming to you \$120.60, that was the last that cleaned up the whole transaction and he gave you a check to your order and your wife's order, dated November 21, 1925, in the sum of \$120.60, which you cashed and that was all you were to get? A Why don't Schechner come here. I never received a paper like this, but he gave this check, but it was not any signed statement.

Q What explanation have you that the check is for such an odd amount? A That money for \$120.60 was in settlement of a note transaction that I had with Schechner.

Cross examination.

Q What are you in the Penitentiary for? A I broke probation.

Q What were you on probation for? A For non-support.

Q Of your wife and family? A Yes, that is what they say here.

Certificate of Commissioner.

I hereby certify that the foregoing depositions were taken by Louise W. Woerner, a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given and that such depositions were taken in my immediate presence and hearing by said stenographer as therein indicated and sworn as above stated, and I believe that they accurately state the evidence given.

10

NICHOLAS LA VECCHIA.

Filed February 27, 1930.

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Giovanni Caporaso, for Plaintiff, direct.

ESSEX COUNTY CIRCUIT COURT.

10	GIOVANNI CAPORASO, <i>Plaintiff,</i> <i>against</i> SAMUEL SCHECKNER, <i>Defendant.</i>
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Transcript of shorthand notes of testimony taken in the above entitled matter on Friday, October 18th, 1929, at two-thirty o'clock in the afternoon, at the office of and before Nicholas La Vecchia, Esq., Referee, at his office, 60 Park Place, Newark, New Jersey.

20 *Appearances:*

Frank E. Bradner, Esq., on behalf of the plaintiff.

Edward R. McGlynn, Esq., of Stein, McGlynn & Hannoeh, on behalf of the defendant.

Louis Winard, stenographer.

GIOVANNI CAPORASO, sworn.

30 *Direct examination by Mr. Bradner.*

Q Mrs. Caporaso, did you ever tell your husband to collect any money from Mr. Roessler or Mr. Scheckner? A No, sir.

Q On the Fourteenth avenue property, how much money did you put in there? A \$4,000.

Q Where did you get that money? A I sold the house on Sixteenth avenue.

Q How much money did you get for that?
 40 A \$4,000.

Joseph De Martin, for Plaintiff, direct.

Q Who owned that property? A My brother-in-law and my brother, as partners.

Q They let you have this \$4,000? A Yes, sir.

Q Is your brother here? A Yes, sir.

Mr. McGlynn: No questions.

10

JOSEPH DE MARTIN, sworn.

Direct examination by Mr. Bradner.

Q Did you ever own any property on Sixteenth avenue? A Yes, sir. Ten-family house, brick.

Q Did anybody else own it with you? A My brother-in-law, we were three. 20

Q Are you a brother of Mrs. Caporaso? A My wife and Mrs. Caporaso are sisters? She is my sister-in-law.

Q Do you know anything about Mrs. Caporaso buying property on Fourteenth avenue? A I don't know anything. She went and took money. I gave her the money.

Q How much money did you give her? A I gave her \$4,000. 30

Mr. McGlynn: No questions.

EXCEPTIONS TO REFEREE'S REPORT.

Filed March 4, 1930.

The plaintiff states the following exceptions to the report filed by Nicholas La-Vecchia, Esq., to whom the above stated cause was referred:

10

1. The finding by the referee that there was a balance due to the defendant of \$2,034.76 on August 4, 1924, is not sustained by the evidence.

2. The finding by the referee that Emilio Caparaso, the husband of the plaintiff, was the beneficial owner of the lands and premises referred to, is without any support whatever by the evidence in the case.

20

3. The finding by the referee that the plaintiff held her husband out as her general agent and ratified his acts, is not sustained by the evidence in the case.

4. The finding by the referee that the defendant purchased from the plaintiff her interest in the mortgage given to her by Luciano for \$3,250.00 is not sustained by the evidence.

30

5. The finding by the referee that the defendant paid to the plaintiff the sum of \$3,250.00 for the said mortgage, is not sustained by the evidence and such finding is directly contrary to the evidence.

6. The finding by the referee that Emilio Caparaso was the agent of the plaintiff to collect the moneys that he received from the defendant and was her agent to endorse her name on the various checks, is directly contrary to the evidence and is contrary to law.

40

Exceptions to Referee's Report.

7. The finding by the referee that the defendant did not know that Emilio Caparaso was endorsing his wife's name on the various checks, is contrary to the evidence produced by the defendant himself.

8. The finding in favor of the defendant is contrary to the evidence and is contrary to law and is a finding that the defendant is entitled to be credited with money which he admittedly paid to Emilio Caparaso in collusion with him to hinder, delay and defraud the creditors of the said Emilio Caparaso. 10

Dated February 28, 1930.

FRANK E. BRADNER,
Attorney of Plaintiff.

20

30

40

DECISION.

Filed July 8, 1930.

ESSEX COUNTY CIRCUIT COURT.

10	GIOVANINA CAPARASO, <i>Plaintiff,</i> <i>vs.</i> SAMUEL SCHECHNER, <i>Defendant.</i>	}	<i>Action at Law.</i>
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On case submitted to the Court for trial without a jury.

Frank E. Bradner, attorney for plaintiff.

20 Stein, McGlynn & Hannoeh (by Edward R. McGlynn) attorneys for defendant.

SMITH, J.

In this cause there was an order of reference to a referee, whose report has been presented with the testimony taken before him as referee. A dissent was filed, and in lieu of having the case tried before a jury, the parties have waived a jury and submit the same to the Court to be decided upon the testimony taken before the referee.

30

I have considered this testimony and also the referee's report and am satisfied that the referee correctly decided the case.

I find as a fact the facts as he found them for the reasons stated.

Counsel may submit a finding of fact and rule for judgment.

WM. A. SMITH,
Judge.

40

July 2, 1930.

RULE FOR JUDGMENT.

Filed August 1, 1930.

ESSEX COUNTY CIRCUIT COURT.

GIOVANNINA CAPORASO,

*Plaintiff,**vs.*

SAMUEL SCHECHNER,

*Defendant.**Action
at Law.**Rule for
Judgment.*

10

It appearing to the Court that in the above-entitled matter there was an Order of Reference to a referee, whose report was presented with the testimony taken before him and the parties having filed a dissent with the Order of Reference and exceptions having been filed to the referee's report and it having been stipulated that in lieu of having the case tried before a jury, the parties would waive a jury and submit the case to the Court for a decision on the testimony taken before the referee; and it appearing that the testimony has been considered, together with a referee's report, and the Court being of the opinion, from the testimony that there was nothing due from the defendant and that any money which at any time was due from the defendant to the plaintiff was either paid to her directly or to her husband, as her agent, under such circumstances as justified and entitled the defendant to assume her husband acted with her authority or if without her express authority, then with such proof of acquiescence and ratification as entitled the defendant to legal protection which would be afforded him under such circumstances;

20

30

40

Rule for Judgment.

It is therefore, on this 31st day of July, 1930, on motion of Stein, McGlynn & Hannoch, attorneys of the defendant,

ORDERED, that a judgment in the above-entitled matter be entered in favor of the defendant and against the plaintiff; and it is further

- 10 ORDERED, that in addition to the costs to be taxed, there should be included the sum of three hundred (\$300.00) dollars to be paid to Nicholas La Vecchia, as referee, and that the same shall be included in said taxed bill of costs.

WM. A. SMITH,
Circuit Court Judge.

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30

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JUDGMENT.**ESSEX COUNTY CIRCUIT COURT.**

41587

GIOVANNINA CAPORASO,

*Plaintiff,**vs.*

SAMUEL SCHECHNER,

*Defendant.**Action
at Law.*

10

*On Referee's
Report.*

Judgment entered August 1, 1930.

Costs \$369.35.

Stein, McGlynn & Hannotch, attorneys for de-
fendant.

20

Judgment on referee's report in the above-entitled action was rendered on the first day of August, A. D. nineteen hundred and thirty in favor of the defendant Samuel Schechner and against the plaintiff Giovannina Caporaso for the sum of three hundred and sixty-nine dollars and thirty-five cents.

Judgment signed and entered August 1, 1930.

WILLIAM S. GUMMERE,

C. J.

30

Book 111, page 160, C. C. Judgments.

40

Certificate of Clerk.

ESSEX COUNTY CLERK'S OFFICE.

(SEAL)

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

10 I, JOHN H. SCOTT, Clerk of the Circuit Court,
in and for the County of Essex in the State of
New Jersey.

Do HEREBY CERTIFY, That the foregoing is a
true and correct copy of all the pleadings in the
case of Giovannina Caporaso, plaintiff *v.* Samuel
Schechner, defendant, together with a copy of the
judgment record entered August 1, 1930, in Book
111, page 160 of Circuit Court Judgments and
the same is taken from and compared with orig-
20 inals copies of all records and as the same now
remains on the files of said court.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the official seal of said
Court and County at Newark, N. J., this twenty-
sixth day of February, A. D. 1931.

JOHN H. SCOTT,

(SEAL)

Clerk.

30

40

*Plaintiff's Exhibits.***Exhibit P. 1.**

LIBERTY TRUST COMPANY

Central Ave. and Warren St.

Newark, N. J. April 7, 1924.

Pay to the order of B. Dvin, Atty.	\$127.00	
One Hundred & Twenty-Seven 00/100	Dollars	10
Giovannina Caparaso		

Exhibit P. 2.

Statement of Account between Giovannina Caparaso and Vinanzio Luciani and Maria his wife on closing of title to premises 310-312 Fourteenth Avenue, Newark, N. J.

Title closed July 30th as of August 1, 1924. 20

Purchase price \$45,200.00

Plate glass insurance 13.42

Unexpired fire insurance 75.91

20.22

30.51

 \$45,340.06

Credit.

By deposit 200.00) 30

By additional deposit 800.00)

 By amount due on Alert
 B & L Assn. mtge of
 \$28,000. as per Secretary's statement 25924.82

 Interest on above mtge fr
 July 19th— $\frac{1}{2}$ month 70.00

 By amount due on mtge
 held by Hyman Shwager 8000.00

 By interest on above mtge
 from Mar. 16, 1924 180.00 40

Plaintiff's Exhibits.

	By 1st half of 1924 taxes and interest	537.14	
	By 2nd half apportioned— (1 month)	88.20	
	By water bill to July 3rd	10.00	
10	By water fr July 3rd— estimated	6.66	
	By security on lease for store	120.00	
	By cash	3463.24	
	By purchase money mtge	5940.00	
			\$45,340.06

Exhibit P. 3.

20 SAMUEL SCHECHNER
REAL ESTATE AND INSURANCE
No. 11 Clinton Street

Newark, N. J. Dec. 20, 1924.

On mortgage of \$5940, covering premises #310
Fourteenth Avenue, Newark, owned by Vinanzo
and Maria Luciani, dated July 30, 1924, and due
August 1st, 1927, there is due Mr. Samuel
Schechner \$2034.76 and the balance due to Mr.
30 Emilio and Giovanni Caparaso, his wife.

Said Emilio and Giovanni Caporaso do hereby
agree to sell their share in said mortgage for
the sum of thirty-two hundred and fifty dollars
(\$3250).

1/5/25 Emilio Caporaso
Emilio Caporaso
Balance due Caparaso \$3000. S. S.

*Plaintiff's Exhibits.***Exhibit P. 4 and I. 1 for Identification.**

SAMUEL SCHECHNER
 REAL ESTATE AND INSURANCE
 No. 11 Clinton Street.

Newark, N. J. Feb. 25th, 1925. 10

On Jan. 5th,—balance due G. & E. Caporaso on mortgage which was assigned to me, on premises #310 Fourteenth Avenue\$3000.

Paid to E. Caporaso\$200.

Due Mr. Schechner, as deposit for premises #589-591 South 18th St. 200. 400.

Balance due Caporaso on mortgage \$2600.
 Interest on \$3000 paid to March 1st \$25. 20
 Interest on balance of \$2600. to be paid at the rate of 5% per annum.

Samuel Schechner

Bal.	\$2600		\$1600	
Mar. 16, 1925	200	May 16, 1925	200	
	2400		1400	
Apr. 3, 1925	500		200	
				30
	1900		1200	
Apr. 20, 1925	100		200	
	1800		1000	
May 8, 1925	200		100	
	1600		900	

*Plaintiff's Exhibits.***Exhibit P. 5.**

SAMUEL ROESSLER

Counsellor at Law

Union Building

9-15 Clinton Street, Newark, N. J.

10 Telephone Market 4247

March 9, 1926.

Mrs. Giovannina Caporaso,

310—14th Ave.,

Newark, N. J.

Dear Madam:—

I am informed that a representative of the Fidelity Union Trust Co. left with you an affidavit for you to sign. I have a copy of the affidavit and I know of no reason whatsoever why you should not sign it. Please call at my office without delay and bring the affidavit with you.

20

Yours truly,

SAMUEL ROESSLER

IN RE TITLE NO. 65105

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

30

GIOVANNINA CAPORASO of full age, being duly sworn according to law, upon her oath deposes and says: that she resides at 310 Fourteenth Avenue, Newark, New Jersey, and that she is a former owner of said premises.

Deponent states that her name was Giovannina De Martino previous to May, 1912, the date of her marriage to Emilio Caporaso.

Deponent further states that she makes this affidavit knowing that the fidelity Union Title

40

Plaintiff's Exhibits.

and Mortgage Guaranty Company relies upon the truth of the statements contained herein in issuing a guaranty covering the said premises.

Sworn to and subscribed before me
this day of March A. D.
1926.

10

Exhibit I. 2 for Identification.

\$500 00/100 Newark, N. J. Nov 13th 1923
On Demand after date we promise to pay to
the order of Samuel Schechner
Five Hundred 00/100.....Dollars
value received at American National Bank
No.....Due....

20

Giovannina Caporaso
Emilio Caporaso

Exhibit I. 3 for Identification.

SAMUEL SCHECHNER
Real Estate and Insurance
No. 11 Clinton Street

30

Newark, N. J. Dec. 20, 1924.

On mortgage of \$5940, covering premises #310—Fourteenth Avenue, Newark, owned by Vinanzo and Maria Luciani, dated July 30, 1924 and due August 1st, 1927, there is due M. Samuel Schechner \$2034.76, and the balance due to Mr. Emilio and Giovanni Caporaso, his wife.

Said Emilio and Giovanni Caporaso do hereby agree to sell their share in said mortgage for

40

Defendant's Exhibits.

the sum of thirty-two hundred and fifty dollars
(\$3250).

Giovannina Caporaso
Emilio Caporaso

WRITTEN IN INK—Paid 1/5/25 \$250 on acct
to g. c.

10

Exhibit D. 1.

Statement showing the funds which came into
the hands of Samuel Roessler, upon the closing
of the aforementioned title.

20	Cash due Mrs. Caporaso for the balance of the purchase price shown on attached statement		\$3463.24
	Less		
	Agent's commission paid out of said amount	600.00	
	Bill of Samuel Roessler for legal services and disburse- ments	150.00	
30	Bill of Charles Rapa for legal services	20.00	770.00
	Balance on hand ...		\$2693.24
	By check to Caporaso, dated Aug. 4/24		150.00
			\$2543.24
	Amount due on Schechner mtge for principal and in- terest	\$4078.00	

40

Defendant's Exhibits.

Amount due on Schechner note, dated November 13, 1923	500.00	
	4578.00	
By check to Schechner dated Aug. 4/24	2543.24	10
Balance due Mr. Schechner	\$2034.76	
Dated, Aug. 4, 1924.		

Exhibit D. 2.

Twenty-one checks drawn on National Newark & Essex Banking Company, by Samuel Schechner, defendant, as follows: 20

DATE	PAYEE	AMOUNT	
1925			
Jany. 5.	Giovannina Caporaso & Emilio Caporaso	\$250.	
	End. Giovanina Caporaso & Em- ilio Caporaso		
	End. "Pay to the order of Liberty Trust Company, New- ark, N. J. Morris Rosenberg."		30
Mar. 16.	Emilio Caporaso	\$200.	
	End. Emilio Caporaso		
April 3.	Giovannina Caporaso	\$500.	
	End. Giovannina Caporaso		
April 20.	Giovannina Caporaso	\$100.	
	End. Giovanni Caporaso		
May 8.	Giovanni & Emilio Caporaso End. Giovanni Caporaso. Emilio Caporaso	\$200.	40

Defendant's Exhibits.

	May 16.	Emilio & Giovannina Caporaso End. Emilio Caporaso. Giovannina Caporaso	\$200.
	May 29.	Emilio & Giovannina Caporaso End. Giovannina Caporaso. Emilio Caporaso For Deposit Joseph Indarola	\$200.
10	June 5.	Emilio & Giovannina Caporaso End. Emilio Caporaso. Giovannina Caporaso. Emilio Caporaso	\$200.
	July 11.	Emilio & Giovanna Caporaso End. Emilio Caporaso. Giovannina Caporaso, 310 14th Ave. Samuel Siegler. Recd. Payment Fed. Trust Co.	100.
20	July 23.	Emilio Caporaso & Giovanni Caporaso End. Emilio Caporaso. Giovannina Caporaso. Emilio Caporaso. Samuel Siegler. Recd. payment Federal Trust Co. Newark, N. J.	\$100.
	Aug. 7.	Giovanni Caporaso & Emilio Caporaso End. Giovannina Caporaso. Emilio Caporaso. Samuel Siegler. Recd. payment August 8, 1925, West Side Trust Co.	\$150.
30	Aug. 15.	Giovanni Caporaso & Emilio Caporaso End. Giovanni Caporaso, Emilio Caporaso. Samuel Siegler. Recd. payment Aug. 22, 1925. Federal Trust Co., Newark, N. J.	\$100.
	Aug. 31.	Genina & Emilio Caporaso. End. Giovanina Caporaso. Emilio Caporaso. Endorsements O. K.— Sheridan Schechner.	\$125.
40			

Defendant's Exhibits.

	Emilio & Giovannina Caporaso	
	End. Emilio Caporaso. Giovannina Caporaso.	\$125.
Sept. 18.	Emilio & Giovanna Caporaso	
	End. Emilio Caporaso. Giovannina Caporaso. Emilio Caporaso.	\$100.
		10
Sept. 26.	Emilio Caporaso & Giovanni Caporaso	
	End. Emilio Caporaso. Giovanni Caporaso Emilio Caporaso...	\$125.
Oct. 2.	Giovanni & Emilio Caporaso	
	End. Giovannina Caporaso. Emilio Caporaso.	\$125.

D 2 continued.

1925		20
Oct. 14.	Emilio & Giovannina Caporaso	
	End. Emilio Caporaso. Giovannina Caporaso. Emilio Caporaso	\$200.
Nov. 7.	Giovanni Caporaso & Emilio Caporaso	
	End. Giovannina Caporaso. Emilio Caporaso	\$100.
Nov. 20.	Emilio Caporaso & Giovannina Caporaso	
	End. Emilio Caporaso. Giovannina Caporaso. Emilio Caporaso	\$ 25.
Nov. 21.	Emilio Caporaso & Giovanni Caporaso	
	End. Emilio Caporaso. Giovannina Caporaso. Emilio Caporaso	\$120.

*Defendant's Exhibits.***Exhibit D. 3.**

Contract of Sale made by Giovannina Caporaso and Emilio, her husband, to Venanzio Luciani, of the property, 310-312 Fourteenth Avenue, Newark, N. J. for \$45200.00. Dated June 28, 1924.

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Exhibits D. 4 and D. 5.

Bond & Mortgage made by Giovannina Caporaso and Emilio, her husband, to Louis Dvin, for the amount of \$4000.00, dated April 4, 1923, on Fourteenth Avenue property, and cancelled of record August 2, 1924.

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Exhibits D. 6 and D. 7.

Bond & Mortgage made by Vinanzio Luciano and Maria, his wife, to Samuel Schechner, for the amount of \$5940.00, dated July 30, 1924, on Fourteenth Avenue property. Interest at 6% credited on Bond to July 30, 1927.

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GROUND S OF APPEAL.

Filed March 3, 1931.

JOSEPH F. S. FITZPATRICK,
 Clerk.

NEW JERSEY COURT OF ERRORS
 AND APPEALS.

GIOVANINA CAPARASO, <i>Plaintiff-Appellant,</i> <i>vs.</i> SAMUEL SCHECHNER, <i>Defendant-Respondent.</i>	}	<i>On Appeal from Essex County Circuit Court.</i> <i>Grounds of Appeal.</i>
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The appellant states the following grounds of appeal:

1. There is no legal evidence to sustain the finding by the Court that Emilio Caparaso was the agent of the plaintiff to collect and receipt for any money due to her from the defendant.

2. There was no evidence in the cause to sustain the finding by the Court, that the plaintiff ratified any act of her husband as the supposed agent of herself in collecting any money from the defendant.

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3. The Court erred in matter of law in determining that Emilio Caparaso was the agent, or acted as the agent of the plaintiff, in collecting and receiving the money due to her from the defendant.

4. The Court erred in considering the report made by the referee, as that report was not in-

40

Grounds of Appeal.

roduced in evidence as a part of the defendant's case on the trial before the Court without a jury.

10 5. The Court failed to consider the testimony of Emilio Caparaso, the husband of the plaintiff, who was called as a witness by the defendant and stated that he had forged his wife's name on the several checks delivered to him by the defendant, and that she had not received any part of the money and did not know that he had received the same.

20 6. The Court failed to consider the testimony of the defendant, that he had colluded with Emilio Caparaso, the husband of the plaintiff, to defraud the creditors of the said Emilio Caparaso, and therefore, could not recover any money that he had paid to the said Emilio and could not receive any credit for the same as against the claim of the plaintiff, who had no knowledge of the fraud.

7. The Court should have found under the evidence submitted to the Court, that the defendant was indebted to the plaintiff in the sum of \$3,905.24, together with interest thereon from August 4, 1924.

30 FRANK E. BRADNER,
Attorney of Appellant.

Served on attorneys of respondent, March 6, 1931.

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

New Jersey Court of Errors and Appeals

GIOVANINA CAPARASO, <i>Plaintiff-Appellant,</i> <i>vs.</i> SAMUEL SCHECHNER, <i>Defendant-Respondent.</i>	}	<i>Action at Law.</i> <i>On Appeal from Essex County Circuit Court.</i>
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BRIEF FOR APPELLANT.

Abstract of the Case.

The plaintiff is a married woman; her husband Emilio, is a builder by trade. She purchased a plot of land in Newark and had borrowed from her brothers \$4,000 for that purpose. (Testy. pp. 54 & 55.) (This testimony is printed out of place; it should have been before the referee's certificate on p. 53.) She made a contract with her husband for the construction and erection of a building on the land and borrowed money from a building and loan association, of which Samuel Roessler was the attorney. (Testy. p. 34, line 10.) (Testy. of plaintiff, p. 22, line 30.) She afterwards made a contract to sell the building and land to Luciani. (Ex. D. 3, p. 72.) When the title was closed, a statement was made showing the selling price and the moneys to be paid out and what would be coming to Mrs. Caparaso. (Ex. P. 2, p. 63.) It is expressly stated at the top of this Ex. P. 2, that it is a statement of account between Giovanina Caparaso and Venanzio Luciani and Maria, his wife, on closing of title to premises, 310-312 14th avenue, Newark, N. J. The deposit of \$1,000 made on this sale, was paid directly to the plaintiff. (Testy. of Plff. p. 24, line 28.) After the title had been

closed, it seems that the plaintiff went with her husband to Mr. Roessler's office, and he prepared a statement showing the funds which came into his hands upon the closing of the aforementioned title. (Ex. D. 1, p. 68.) This statement shows that the plaintiff was indebted to the defendant in the sum of \$2,034.76. Mr. Roessler testified that at this meeting he represented the defendant, who was absent in Europe, and that it was agreed that a purchase money mortgage in the sum of \$5,940.00 to be given by Luciani, should be made directly to Samuel Schechner, and that Schechner should pay to the plaintiff the difference between the amount due him and the amount of the mortgage; that is \$3,905.24. (Testy. of Roessler, pp. 30 & 31.) It appears that the plaintiff understood that Mr. Schechner would collect the mortgage and would pay her, because she must have so instructed her attorneys Zink & Lafferty, when they prepared the complaint, which is drawn on the theory that Schechner was to collect the money for her.

The case was tried upon the theory that the defendant had agreed to pay the plaintiff the difference between his claim and the amount of the mortgage, as above stated. Afterwards on December 20, 1924, the plaintiff's husband induced her to sign a document, which he represented was a request to defendant to let him have \$200.00 to make a deposit on a purchase of land on South Eighteenth street. (See plff's testy. p. 19.) The paper produced by the plaintiff was not signed by her, but was signed twice by her husband. (See Ex. P. 3, p. 64). The defendant produced a duplicate of this document except that it purported to be signed by both the plaintiff and her husband. (Ex. I. 3 for identification, p. 67.) This last mentioned exhibit was

considered by the referee, although it does not appear to have been offered in evidence.

On January 5, 1925, the defendant began to make payments by check. A list of the checks offered in evidence by the defendant, is printed on pp. 69, 70 and 71. There are 21 checks and only one is made payable to the order of Emilio Caparaso alone, and that one is dated March 16, 1925, for \$200.00 p. 69). All of the checks except the one aforesaid, appear to have been endorsed by the plaintiff, but she testified that she did not actually endorse any of the checks and did not know they had been given and did not receive any of the money. Emilio was called on behalf of the defendant (p. 45) and testified that he forged his wife's name on the checks and that she did not know that he had received any of the checks and that she did not get any of the money.

The defence to the action is that the defendant paid to the plaintiff the whole amount of \$3,905.24, and that she released him and that Emilio Caparaso was the agent of the plaintiff and that the payments were made to him.

The burden of proof was upon the defendant to prove the agency and the payments. On or about March 9, 1926, the plaintiff received a letter from Samuel Roessler, enclosing a draft of an affidavit to be made by her. (Testy. plff. p. 20.) (Ex. P. 5, p. 66.) Upon receipt of this letter and the affidavit enclosed, Mrs. Caparaso went to Mr. Roessler's office, but the defendant had offices in the same suite with Mr. Roessler. She saw the defendant and learned from him for the first time that there was no money coming to her, and she then consulted Mr. Masucci, attorney-at-law, and no doubt, after-

wards went to Messrs. Zink & Lafferty. She testified that she tried to take her husband to the defendant's office, but he refused to go. It should be observed at this point, that interest was being paid on the bond and mortgage by Luciani to the defendant and is credited to July 30, 1927, and the mortgage was not due until August 1, 1927. (Exhibits D. 6 and D. 7, p. 72, and testy. of deft., p. 43, line 40), and that the plaintiff must have understood that she was not to get her money until it had been collected from Luciani. As soon as she learned that all the money coming to her, had been paid to her husband she consulted counsel and took proceedings. The cause was tried by the court without a jury and was submitted upon the same testimony that had been produced before the referee. The findings of the court are stated in the Rule for Judgment signed by Circuit Court Judge William A. Smith, p. 59.

SPECIFICATION OF ERRORS.

1. The finding by the Court that the plaintiff's husband was her agent to collect and receive the money due to her from the defendant.
2. The finding by the Court that the plaintiff ratified any acts of her husband in collecting and receiving money due to her from the defendant.
3. The finding by the Court that the alleged agreement to accept \$3,250.00 instead of \$3,905.24, was a valid contract and discharged the defendant to the extent of the difference between \$3,250.00 and \$3,905.24.
4. The finding by the Court that the defendant was entitled to credit for the money paid, although it appeared from his own testimony that he was acting in collusion with the plaintiff's

husband to defraud his creditors and that she had no knowledge of the fraud.

5. The consideration of the Referee's Report by the Court as evidence in the cause.

ARGUMENT.

1. There was no evidence whatever of agency.

As heretofore stated in the abstract of the case, the plaintiff used money belonging to herself to purchase the land upon which the building was erected, which she afterwards sold. It may be true that the defendant had previous dealings with the plaintiff's husband, who was a builder by trade. The defendant testified in effect that he conveyed the land in question to the plaintiff and that he dealt with plaintiff's husband and that plaintiff's husband had judgments against him and wanted the property put in his wife's name. (See Testy. pp. 42, 43.) He also testified that he made payments in installments, as requested by Emilio, and that he never looked at the checks when they came back from the office and did not know whether the plaintiffs had endorsed them or not (p. 44). He also testified that he made checks to plaintiff's order at Emilio's request (p. 43).

There is no intimation by the defendant that the plaintiff ever requested him to make any payments to her husband or was present when he did make payments to the husband. If he had taken the trouble to examine the vouchers when they were returned by the bank, he undoubtedly would have discovered the forgery.

Samuel Roessler testified (p. 31) that his building and loan association made the loan for the erection of the building and that he dealt with

Emilio in paying the creditors, particularly the materialmen and laborers; but he was not dealing with Emilio as the agent of the plaintiff, because Emilio had the contract for the construction of the building. At p. 33, he testified: "Finally I drew a check on August 4, 1924, at my office for \$150.00, and I drew that check I believe, to Emilio Caparaso in her presence; I thought as long as they were husband and wife, it was all right." The check was not produced. Mr. Roessler's testimony does not prove that Emilio was the agent of the plaintiff, as he only thought it was all right to make a check to him, because he was the plaintiff's husband. There is certainly no evidence of express authority given by the plaintiff to her husband to collect the money. The only evidence relied upon by the defendant, is the testimony of the defendant and Mr. Roessler, and I respectfully contend that it is not sufficient to raise an inference of authority to collect the money. The fact that the husband forged his wife's name raises an inference that he did not have authority to collect the money and committed the forgery to conceal from her the fact that he had received the money.

The legal inferences from the testimony are, that the defendant was acting in collusion with the plaintiff's husband to defraud his creditors, and that he did not at any time have the idea that the husband was acting as the agent of the plaintiff. I cannot find in the testimony any act or declaration on the part of Mrs. Caparaso, from which it could be inferred that her husband was acting as her agent to receive this money. Of course, the acts and declarations of Emilio do not bind her in the slightest respect.

Law v. Stokes, 32 N. J. Law, 3 Vr. 249;

Smith v. D. & A. Tel. & Tel. Co., 64 N. J. Eq. 19 Dick 770.

In *Law v. Stokes*, Mr. Justice Depue, writing the Opinion, says, on p. 251: "An agent employed to make sales and selling on credit, is not authorized subsequently to collect the price in the name of his principal, and a payment to him will not discharge the purchaser unless he can show some authority in the agent other than that necessarily implied in a mere power to make sales. A principal is bound by the acts of his agent, within the authority he has actually given him, which includes not only the precise act which he expressly authorizes him to do, but also whatever usually belongs to the doing of it, or is necessary to its performance. Beyond that he is liable for the acts of the agent, within the appearance of authority which the principal himself knowingly permits the agent to assume, or which he holds the agent out to the public as possessing." In the instant case, there is no evidence that the defendant ever had any dealings with Emilio in which Emilio acted in behalf of his wife in making a sale of any property, and consequently, he could not assume that Emilio was acting for his wife in making this sale or in collecting the amount due. There is no evidence that she knowingly permitted her husband to appear to have authority to collect. He seems to have treated the plaintiff and her husband as joint owners of the property in making the checks payable to them jointly.

In *Smith v. D. & A. Tel. & Tel. Co.*, Judge Adams writing the Opinion in this court says, at p. 772: "A person cannot by his own mere assertion prove that he is the agent of another." In the instant case, the defendant testified that Emilio requested him to give him the checks and that he did not see the plaintiff. He relies upon the implied assertion of Emilio, that he was au-

thorized to collect. In order to establish ratification of the acts of Emilio in collecting the money from the defendant, it must appear that the plaintiff had full knowledge that the defendant was making the payments to her husband and made no objection thereto.

Gulick v. Grover, 33 N. J. Law, 4 Vr. 463.

2. There was no ratification of the husband's acts.

There is no evidence that the plaintiff had any knowledge that payments had been made to her husband until after they had all been made and she got the information from the defendant in April 1926. It was at the time she went to the office in response to Mr. Roessler's letter containing an affidavit for her to make, as has been stated in the abstract of the case. Instead of ratifying what her husband had done, she immediately consulted counsel. Although no suit seems to have been actually brought until the following October, it is probable that considerable time was taken by counsel to get information and in negotiations. There is no evidence that she caused the delay in bringing the action.

3. There was no consideration for the agreement to accept less than the amount due.

The plaintiff testified (p. 19) that her husband requested her to sign a paper so that he could get money from the defendant to make a deposit to purchase land on South 18th street. Emilio, called by the defendant, testified at p. 47: "Mr. Schechner gave me \$200.00 to buy property 591-589 South 18th street. He put the deposit for me of \$200.00. Q Did your wife know that? A Yes, I told my wife I was going to buy two properties." He testified, at p. 48, on being

shown the exhibit dated December 20, 1924, that his wife signed it and that he got \$200.00 and \$400.00 to buy other properties.

Anthony DeAngelo, a witness produced by the defendant, testified (p. 36) that he went to the plaintiff's house and requested the plaintiff to sign the exhibit of December 20, 1924, and that he started to explain it to her and she said that her husband had told her all about it. On that occasion, Mr. Schechner, the defendant, was sitting in the automobile waiting outside.

It is apparent that the plaintiff was deceived by her husband when she signed the agreement to accept \$3,250. No attempt has been made to prove that any consideration was paid or given to the plaintiff for agreeing to accept a less sum than the amount due to her. The alleged agreement being without consideration, is invalid.

Chambers v. Niagara Fire Ins. Co., 58 N. J. Law 216;

Eckert v. Wallace, 75 N. J. Law 171;

Daniels v. Hatch, 21 N. J. Law 391;

Line v. Nelson, 38 N. J. Law 358.

4. The defendant is estopped by his collusion with plaintiff's husband to defraud the husband's creditors, from claiming any credit for moneys paid.

If Schechner's testimony is true and he paid out this money to Emilio to aid him in defrauding his creditors, he cannot recover it from Emilio, and he cannot recover or get any credit for it from Mrs. Caparaso, for that would be permitting him to profit by his own wrongful act.

Church v. Muir, 33 N. J. Law, 4 Vr. 318.

Beasley, *C. J.*, says: "The rule both in law and in equity is, that the courts will not lend any

aid to the parties, either to undo or to enforce such a fraudulent transaction.”

5. The Referee's Report was not evidential.

When the order of reference was made, the plaintiff (p. 8) entered a rule reserving right to trial by jury, but the record does not show that the defendant entered any such rule. When the cause came on for trial after exceptions had been filed to the Referee's report, it was agreed that trial by jury should be waived and the cause submitted to the court upon the same testimony that had been produced before the Referee. The Referee's report was entirely left out of the case and was not offered in evidence. If the Referee's report had been offered in evidence and had been received, it would have made a *prima facie* case for the defendant. As it was not offered in evidence, the burden of proof remains the same. It rests upon the defendant to prove the payments to the plaintiff.

CONCLUSION.

It appearing that the alleged agreement to accept less than \$3,905.24 is illegal and that there is no proof that the plaintiff's husband was her agent to collect and receive the money due to her from the defendant and that she has not ratified any acts of her husband, it follows that the plaintiff is entitled to recover from the defendant the sum of \$3,905.24, together with interest thereon from August 1, 1924.

It is respectfully submitted that the judgment of the Circuit Court should be reversed and an order made by this court that judgment be entered for the plaintiff for the above amount.

FRANK E. BRADNER,
Of Counsel with Plaintiff-Appellant.

43 OCT. 1. 1931

New Jersey Court of Errors and Appeals

GIOVANINA CAPARASO,
Plaintiff-Appellant,

vs.

SAMUEL SCHECHNER,
Defendant-Respondent.

Action at Law.

BRIEF FOR RESPONDENT.

We desire to set forth our version of the facts involved in this case, because we believe that they are most important and are not clearly set forth in appellant's brief.

This case was first heard by a Referee, whose report will be found in State of Case, pp. 8-15. From his report in favor of the defendant, exceptions were filed (See State of Case, pp. 56-57) by the plaintiff and the parties having originally filed a dissent, it was stipulated that in lieu of having the case tried before a jury, it should be submitted to a Circuit Court Judge (Honorable William A. Smith) upon the testimony taken before the Referee, and the record of the case. Judge Smith filed an opinion (State of Case, p. 58) finding again in favor of the defendant, and a rule for judgment was entered (State of Case, pp. 59-60). From the judgment, which was entered August 1st, 1930, this appeal was taken on February 4th, 1931.

It will be noted that no exceptions were taken by appellant, which are the basis of any of the grounds of appeal (State of Case, pp. 73-4). When analyzed, it will be found that appellant's points all involve questions of fact, which were resolved against her, both by the Referee and the Circuit Court Judge and that there is an abundance of proof in the record to support the findings of fact.

Facts.

Plaintiff, a married woman, brought suit to recover \$3905.24, which she claimed to be due her from the defendant, as her alleged share of moneys collected by the defendant on account of a mortgage originally in the sum of \$5940.00. This mortgage was made by one Venazio Luciani to secure payment of part of the purchase price of premises 310-312 Fourteenth Ave., Newark, N. J., which premises the plaintiff had sold to Luciani. The purchase money mortgage, instead of running to the plaintiff, had been made directly to the defendant, for the purpose of securing payment of an indebtedness due the defendant from the plaintiff.

Plaintiff was the record owner of the premises on Fourteenth Ave., described in the mortgage just mentioned, and on these premises she had erected, some time before the sale, a building. All the numerous details in connection with the building operation had been under the supervision, direction and control of the plaintiff's husband, Emilio. The defendant had assisted the plaintiff financially in the construction of this building and had also previously assisted the plaintiff and her husband in other real estate transactions. During all of this time, any disputes that arose during the building operation, or previous thereto, with material-

men, contractors and with the financing details of the project, had been attended to by the plaintiff's husband, and the plaintiff had never objected to any such agreements or arrangements, but had ratified them without exception, by executing any documents necessary to carry out what her husband had previously arranged. When the sale of the property was consummated, the plaintiff and her husband were living together, and apparently friendly. It will be observed significantly, that when the hearings before the Referee took place, plaintiff's husband was in jail, where he had been placed on the complaint of his wife for non-support and desertion.

When the title closing, just referred to, took place, the defendant was in Europe, and his attorney, Samuel Roessler, represented him. Defendant at that time was the holder of a mortgage by assignment on the plaintiff's property, on which there was due \$4078.00, and also held a note on which the plaintiff was the maker, of \$500.00, making a total due him of \$4578.00. The total amount of cash paid by the purchaser on the closing of title was \$3463.24, from which cash the agent's commissions and legal expenses had to be deducted. These aggregated \$770.00. In addition to these disbursements, the plaintiff was given \$150.00 in cash, making the total amount of cash available, to pay defendant's indebtedness at that time, \$2543.24, leaving a balance admittedly due defendant of \$2036.76. (See State of Case, page 10-12). Summarized, the figures just mentioned are as follows:

Cash paid by purchaser for Fourteenth Ave. property, at time of closing title	\$3,463.24
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Less:

Agent's commission paid out of said amount	\$600.00	
Bill of Samuel Roessler for legal services and disburse- ments	150.00	
Bill of Charles Rapa for legal services	20.00	770.00
Balance on hand		\$2,693.24
By cash advanced to plaintiff		150.00
Balance available to pay defendant's indebtedness		\$2,543.24
Brought forward		\$2,543.24
Amount due on mortgage held by defendant, princi- pal and interest	\$4078.00	
Amount due on note held by defendant, dated November 13th, 1923	500.00	4,578.00
Cash available as above set forth		2,543.24
Balance due defendant		\$2,034.76

To secure defendant payment of the amount due him as shown above, the purchase money bond and mortgage of \$5940.00 was put in defendant's name, leaving due to the plaintiff on the mortgage, when collected, the sum of \$3905.24.

After the defendant returned from Europe, as a result of negotiations between plaintiff, her husband, and the defendant, the defendant agreed, in writing, to purchase from the plaintiff, her equity or interest in this purchase money mortgage, for

\$3250.00 (See Exh. P-3, State of Case, p. 64) (See also Exh. I-3, for identification, pp. 67-68):

Samuel Schechner
Real Estate and Insurance
No. 11 Clinton Street

Newark, N. J. Dec. 20, 1924

On mortgage of \$5940, covering premises #310 Fourteenth Avenue, Newark, owned by Vinanzo and Maria Luciani, dated July 30, 1924 and due August 1st, 1927, there is due Mr. Samuel Schechner \$2034.76, and the balance due to Mr. Emilio and Giovanni Caporaso, his wife.

Said Emilio and Giovanni Caporaso do hereby agree to sell their share in said mortgage for the sum of thirty-two hundred and fifty dollars (\$3250.).

Giovannina Caporaso
Emilio Caporaso

Written in ink—Paid 1/5/25 \$250 on acct to g. c.

Defendant's contention and proof was that this entire sum of \$3250.00, together with interest at 5% had been paid to the plaintiff by a series of checks beginning January 5th, 1925, extending up to November 21st, 1925. These checks were drawn to the order of the plaintiff and her husband. Plaintiff's proof was that her husband had forged her name and appropriated the proceeds of all these checks, and that she had never received any money. Defendant's contention and proof was that the plaintiff had, throughout her dealings with the defendant, held out her husband as her agent and had ratified every transaction he had ever made for her, and that therefore, the plaintiff was estopped to deny her husband's authority to receive the checks from the defendant, and that, having

placed him in a position where the defendant had a right to deal with him, the defendant had the right to deliver the checks to the plaintiff's husband, and the plaintiff, having been the one who placed her husband in a position where he could commit the wrong, that any loss which resulted should be borne by her and not by the defendant.

It is also significant in this connection that quite a lengthy period of time, to wit, from November 1925 to April 1926, elapsed between the date of the last payment made by the defendant, before plaintiff made any complaint about not receiving her money, and that at the time of the complaint, the plaintiff had quarreled with her husband and had had him arrested for non-support and desertion.

The Referee Mr. Nicholas LaVecchia, a well-known Italian lawyer in Newark, acted as Referee, and found the facts as indicated in his report. The Learned Circuit Court Judge who had the testimony which the Referee had taken, also found in favor of the defendant.

Argument.

Although there is nothing in the printed record to show how the case reached the Circuit Court Judge who decided it, there is no dispute, and it is apparent both from the opinion of the Circuit Court Judge, and from the recitals in the Rule for Judgment, and from appellant's brief, that it was agreed by the attorneys representing both parties, that a jury would be waived and the matter heard by the Circuit Court Judge without the necessity of taking any testimony, but that the testimony taken before the Referee should be considered in the same way and manner as if taken in open Court. It is the respondent's contention that the entire record of the case, as it existed when it

was submitted to the Circuit Court Judge, was to be before the Court in making its decision, and that this naturally included the Referee's report which was then a part of the record.

Respondent therefore contends that the same rule which applies when exceptions are filed to a referee's report, applies in this case, namely: that a referee's report is *prima facie* evidence of the facts as found by the Referee. However, in addition to the Referee's report, there is more than abundant testimony in the record to support the findings of fact, both by the Referee and the Circuit Court Judge.

Mr. Roessler, a reputable lawyer of Newark, whose testimony appears on pages 29-36, is replete with testimony proving agency and a holding out by the plaintiff of her husband as her agent for a long period of time and of her ratification on numerous occasions of transactions arranged by her husband in connection with her affairs, including the property on Fourteenth Ave.

Defendant's agreement to purchase plaintiff's interest in the second mortgage of \$5940.00, for less than the amount due her, needed no consideration to support it, as is urged by the appellant. It will be noted that the mortgage was not due until July 30th, 1927 (Ex. E-6 and 7, State of Case p. 72). The agreement to purchase was in December 1924. Defendant paid the entire consideration by November 1925 and when the original hearings took place in March 1929, the defendant had collected no part of the principal due on the \$5940.00 mortgage, and in fact, the first mortgage on the property in question was then under foreclosure (See p. 41, ll. 30-40).

There is no proof in the record that the defendant was in collusion with plaintiff's husband to defraud the husband's creditors, as is contended by

the appellant. The only testimony that appellant could possibly have in mind in this connection is on page 40, lines 10-22; page 42, lines 16-33; page 44, lines 1-16; page 45, lines 38-40; page 46, lines 1-3. An examination of this meagre testimony will clearly indicate that there is nothing to this argument.

While it is undoubtedly true that under Chapter 62 of the Laws of 1916 "that where causes are submitted to the Court to be heard without a jury, any error made by the Court in giving final judgment in the cause shall be subject to change, modification or reversal without the grounds of objection having been specifically submitted to the Court" that an appellant in a case similar to the one now before the Court can specify grounds of appeal and have them considered in the same way and manner as if raised by proper objection and exception in a trial before a court with a jury. Still, as was said by this Court in *Pamonia Building & Loan Association vs. West Side Trust Company*, 93 N. J. L. 381, this only permits a review of any errors of law residing in the findings of the Trial Judge.

An analysis of the seven grounds of appeal (State of Case, p. 73-74) will clearly show that grounds 1, 2, 5, 6 and 7 surely raise no question of law. They very clearly come within what was said by this Court in *Lapayowker vs. Levitsky*, 102 N. J. L. 164 (at 165):

"It is settled in this court that the findings of fact by a trial judge sitting without a jury settles the facts. When such findings of fact are supported by evidence, they are not reviewable on appeal. *Bound Brook Stove Works vs. Ellis*, 98 N. J. L. 523; *Mayor, etc. of Jersey City vs. Tallman*, 60 Id. 239.

There was no exception taken to the ruling of the trial court in giving judgment for the plaintiff. But, even if the case falls within the scope of the act of Pamph. L. 1916, p. 109, of cases submitted to the court without a jury, any error made by the court in giving final judgment shall be subject to change, modification or reversal without the grounds of objection having been specifically submitted to the court. But there is no legal question now raised. The only point is that judgment should have been given for the defendant on the facts submitted to the court. As stated above, the court found in accordance with the evidence."

Ground of appeal number 3, respondent likewise contends raises a question of fact, and not one of law, and ground of appeal number 4, respondent contends has no foundation, because there is nothing in the record disputing appellant's argument that the Referee's report should not have been considered by the Circuit Court Judge, sitting without a jury.

Respondent quotes as authority for his contention that the plaintiff was estopped to deny her husband authority to collect the checks in question from the defendant because of her having held him out to the defendant as her agent for a long period of time, the following:

"As between the principal and third persons the true limit of the agent's power to bind the principal is the apparent authority with which the agent is invested. The principal is bound by the acts of the agent within the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing. And the reason is that to permit the principal to dispute the authority of the agent in such cases would be to enable him

to commit a fraud upon innocent persons. *Law vs. Stokes*, 32 N. J. L. 249.

The question in every such case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages, and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question, and when the party relying upon such apparent authority presents evidence which would justify a finding in his favor, he is entitled to have the question submitted to the jury." *J. Wiss & Sons Co. vs. H. G. Vogel Co.*, 86 N. J. L. at page 621.

In this connection, we also refer to the case of *Marx & Rawolle vs. Standard Music Roll Co.*, 98 N. J. L. 516, Court of Errors and Appeals 1923, *Kalisch, J.*; *The "White" Door Bed Company vs. United States Mortgage & Title Guaranty Co. of N. J.* (VII A. R. 862, Court of Errors and Appeals 1929), *Gummere, C. J.*; *Crescent Ring Co. vs. Travelers Indemnity Company*, 102 N. J. L. 85, Court of Errors and Appeals 1926 *Walker, Chancellor*; *Manhattan Upholstering Co. vs. Epstein*, 6 Misc. 103, N. J. Supreme Court 1928; *Feist & Feist vs. Spitzer*, VIII A. R. 429 Court of Errors and Appeals 1930, *Bodine, J.*

Conclusion.

In conclusion, it is apparent that the plaintiff, is a married woman who had, for a long period of time, left all of her business affairs to her husband, and while living happily or otherwise with him, and thus had held him out to the defendant, a respected, honest and well-known business man, as her agent and then, without any notice to the

defendant of any change of conditions and only after she had quarreled and had trouble with her husband and had him arrested, tried to make the situation look as though the defendant had defrauded her by withholding from her any information with regard to her interest in the mortgage in question, and then attempted to collect money which apparently she knew her husband had already collected from the defendant.

It is therefore urged that the judgment under review be affirmed.

Respectfully submitted,

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Attorneys for Defendant-Respondent.

E. R. McGLYNN,
Of Counsel.

The last of the year, 1880, was a very
dry one, and the crops were much
affected. The wheat, which was
planted in the fall, did not
grow well, and the corn, which
was planted in the spring, was
much injured by the drought.
The result was a very poor
crop, and the people were
much distressed.

The winter of 1881 was a very
cold one, and the people were
much distressed. The snow was
very deep, and the people
were unable to go out.

The spring of 1882 was a very
warm one, and the crops were
much improved. The wheat, which
was planted in the fall, grew
well, and the corn, which was
planted in the spring, was
much improved.

The summer of 1883 was a very
warm one, and the crops were
much improved. The wheat, which
was planted in the fall, grew
well, and the corn, which was
planted in the spring, was
much improved.

The autumn of 1884 was a very
warm one, and the crops were
much improved. The wheat, which
was planted in the fall, grew
well, and the corn, which was
planted in the spring, was
much improved.

The winter of 1885 was a very
cold one, and the people were
much distressed. The snow was
very deep, and the people
were unable to go out.

The spring of 1886 was a very
warm one, and the crops were
much improved. The wheat, which
was planted in the fall, grew
well, and the corn, which was
planted in the spring, was
much improved.

The summer of 1887 was a very
warm one, and the crops were
much improved. The wheat, which
was planted in the fall, grew
well, and the corn, which was
planted in the spring, was
much improved.



